

Dec 13 2018

Clerk, Environmental Appeals Board
INITIALS *BD*

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

_____)	
In re:)	
)	
Jordan Development Co., LLC)	
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 CONSOLIDATING PETITIONS FOR REVIEW,
ESTABLISHING DEADLINE FOR RESPONSE, AND
ADDRESSING SERVICE BY E-MAIL**

On October 23, 2018, Region 5 (“Region”) of the U.S. Environmental Protection Agency (“EPA”) issued Class II Underground Injection Control (“UIC”) Permit No. MI-051-2D-0031 to Jordan Development Co., LLC (“JDC”), pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300h to 300h-8, and implementing regulations at 40 C.F.R. parts 124 and 144-148. The permit authorizes injection through the “Grove #13-11 Salt Water Disposal” well in Gladwin County, Michigan.

Between November 21-28, 2018, four petitions for review were filed with the Environmental Appeals Board (“Board”) seeking remand or denial of the Region’s permit decision. The petitioners are: (1) Mr. Emerson J. Addison, UIC Appeal No. 18-06; (2) Dr. Ronald J. Kruske, DDC, UIC Appeal No. 18-07; (3) Ms. Amy Kruske, UIC Appeal No. 18-08; and (4) Ms. Jennifer Springstead, UIC Appeal No. 18-09.

On December 11, 2018, the Region filed an opposed motion to consolidate the four appeals into one matter and to obtain an additional seventy-five-day extension of time, over and above the regulatory timeframe, to file a single response to the consolidated petitions. *See* EPA

Region 5, Opposed Motion for Consolidation of Petitions and Extension of Time for Response (Dec. 11, 2018) (“Motion”). The Region represents that, pursuant to 40 C.F.R. § 124.19(f)(2), it attempted to ascertain whether each party concurred with or objected to the motion. According to the Region, it received no response from Ms. Springstead, but the three other petitioners objected to the consolidation of their petitions, as well as to Region’s request to extend its time to file a response. Dr. Kruske expressed a specific concern that Region 5 might not address each petitioner’s arguments completely if the petitions are consolidated.

Region’s Motion for Consolidation of Petitions

The Region states that consolidation will conserve administrative resources, as each petition appeals the same permit decision and draws from the same procedural history and fact set, and thus it would be more efficient to address these items once rather than repetitively. Motion at 2-3. The Region states further that the petitions contain overlapping arguments, pointing out that UIC Appeal Nos. 18-07 and 18-09 are virtually identical and that three of the four petitions present similar arguments about injection volume. *Id.* at 3. Consolidation, the Region believes, would enhance decisionmaking efficiency and conserve agency resources. *Id.* at 3-4. The Region also indicates that it will respond in full to each of the petition’s arguments if the petitions are consolidated, and further points to the petitioners’ ability to file a reply if they take issue with the Region’s response. The Region cites Board precedent for consolidation of appeals that have a common administrative record and raise similar or overlapping arguments. *Id.* at 3 (citing *In re Eagle Oil & Gas Co.*, NPDES Appeal Nos. 15-02 to -05, at 3-4 (EAB May 8, 2015) (Order Consolidating Petitions for Review and Establishing Briefing Schedule); *see also, e.g., In re MHA Nation Clean Fuels Refinery*, NPDES Appeal Nos. 11-02 to -04 (EAB Sept. 30, 2011) (Order Consolidating Appeals and Granting Motion for Extension of Time to

File Response). The Board agrees that it is consistent with Board practice to consolidate appeals that involve a common permit decision, have a common administrative record, and raise similar or overlapping arguments. By this order, and pursuant to 40 C.F.R. § 124.19(n), the Board administratively consolidates these permit appeals.

Region’s Request for Extension of Time to Respond

Despite its argument that two of the pending petitions are virtually identical and that there is overlap among other petitions, the Region requests an additional seventy-five days beyond the thirty-day regulatory response period to file a response to the consolidated petitions. Motion at 4. Without any extension, the Region’s response would be due on or about Friday, December 28, 2018. The Region attempts to justify its lengthy extension request by stating that “[m]ultiple bases” support it.

First, the Region argues that the petitions raise “complex technical matters, such as seismicity concerns and injection volume,” along with “significant legal and policy issues, such as [the Region’s] application of EPA’s Environmental Justice policy to this matter.” *Id.* The Region states that it will need time to coordinate its response with EPA Headquarters’ Office of General Counsel and Office of Water, which may require “multiple sets of parallel reviews” with “multiple vertical tiers of review.” *Id.* Second, the Region contends that if the Board grants its request for consolidation, its response will have to address a larger number of arguments in one brief. The Region asserts that the “sheer volume of arguments” supports its need for additional response time. *Id.* Third, the Region states that its lead attorney and other individuals involved in the response coordination process have leave commitments during portions of the weeks of December 16-22, 23-29, and December 30 through January 5, making interoffice coordination more difficult. *Id.* at 4-5.

Under the regulation governing permit appeals, the Board may, for good cause, grant extensions of time to the filing requirements prescribed by the applicable regulation. 40 C.F.R. § 124.19(n). The Board recognizes the complexity of the issues in this case, and the other bases for the Region's request for an extension. However, the Region's statements about the nature of this case, work schedule, and coordination do not support a one-hundred-and-five-day period to respond to a consolidated appeal. Indeed, the case that the Region cites to support its request for consolidation, *Eagle Oil & Gas*, NPDES Appeal Nos. 15-02 to -05, involved five separate permits and multiple parties and resulted in an approximately thirty-day extension of time for EPA to file a response. Accordingly, the Board does not grant the Region's request for a seventy-five-day extension of time to respond to the consolidated petitions.

Instead, based on the Region's representations in this case, and for good cause shown, the Board ORDERS that the Region file its responsive materials -- including a consolidated response to the consolidated petitions, a certified index to the administrative record, and relevant portions of the administrative record -- on or before **Monday, February 11, 2019**. To the extent that permittee JDC wishes to participate in this matter, the deadline for JDC to file a notice of appearance and a response also is **Monday, February 11, 2019**.

In addition, the Board ORDERS the Region to file with the Board copies of the final permit decision in this case, along with the response-to-comments document and any fact sheet or statement of basis provided to the public with the draft permit, by **Friday, December 21, 2018**. This filing involves mere transmittal of existing administrative record documents and will facilitate the review of this case during the briefing period.

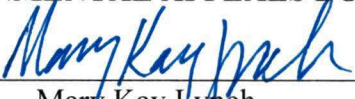
Service via Electronic Mail

Finally, pursuant to 40 C.F.R. § 124.19(i)(3)(iii), the Board may use electronic mail (sent under the address: Clerk_EAB@epa.gov) to serve orders and decisions in this matter at the addresses provided by the parties. Parties shall promptly file a notice in this matter informing the Board and the other parties if their e-mail addresses change.

So ordered.

Dated: **Dec 13 2018**

ENVIRONMENTAL APPEALS BOARD

By: 
Mary Kay Lynch
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing **Order Consolidating Petitions for Review, Establishing Deadline for Response, and Addressing Service via E-Mail** in the matter of *Jordan Development Co., LLC*, UIC Appeal Nos. 18-06 to -09, were sent to the following persons in the manner indicated:

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Dated: Dec 13 2018



Eurika Durr
Clerk of the Board