

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

| | | |
|------------------------------|---|-----------------------|
| In the Matter of: |) | |
| Jordan Development Co., LLC, |) | Appeal Nos. UIC 18-06 |
| Traverse City, Michigan, |) | UIC 18-07 |
| Grove #13-11 SWD, |) | UIC 18-08 |
| Permit No. MI-051-2D-0031 |) | UIC 18-09 |
| |) | |

**OPPOSED MOTION FOR CONSOLIDATION OF PETITIONS
AND EXTENSION OF TIME FOR RESPONSE**

The U.S. Environmental Protection Agency Region 5 (“Region 5”) respectfully asks the Board to grant this motion and 1) consolidate the four appeals of UIC Appeal Nos. 18-06, 18-07, 18-08 and 18-09; and 2) grant Region 5 a 75-day extension of time to respond to the four consolidated petitions, to March 12, 2019.

INTRODUCTION AND BACKGROUND

On September 15, 2017, Region 5 issued for public comment a draft permit for Jordan Development Company, LLC’s proposed Grove #13-11 Salt Water Disposal (SWD) Class II Underground Injection Control (UIC) well in Gladwin County, Michigan (“Grove #13-11 draft permit”). On October 23, 2018, Region 5 issued a final permit for the Grove #13-11 well, Permit No. MI-051-2D-0031 (“Grove #13-11 Permit”), as well as a response to comments that Region 5

received regarding the Grove #13-11 draft permit. Region 5 issued the Grove #13-11 Permit under the Safe Drinking Water Act, 42 U.S.C. §§ 300h-300h-8, and under the regulations at 40 C.F.R. Parts 124, 144-148. On October 26, 2018, Region 5 mailed the Grove #13-11 Permit and response to comments to all persons who had submitted comments to Region 5 regarding the Grove #13-11 draft permit.

On dates between November 21-28, 2018, four individuals filed petitions with the Environmental Appeals Board (“Board”) appealing the Grove #13-11 Permit decision: UIC Appeal Nos. 18-06 (Emerson Addison), 18-07 (Ron Kruske), 18-08 (Amy Kruske) and 18-09 (Jennifer Springstead). Region 5 now moves to consolidate these four appeals into one matter and obtain an extension of time to file a single response to the consolidated petitions.

Pursuant to 40 C.F.R. §124.19(f)(2), Region 5 sought to ascertain whether each party concurred with or objected to each object of this motion. Specifically, Region 5:

- emailed Mr. Addison and Ms. Springfield on December 4, 2018
- telephoned Mr. and Mrs. Kruske on December 4, 2018 and spoke with Mr. Kruske
- emailed Mr. Kruske on December 5, 2018
- emailed Mrs. Kruske on December 6, 2018

To date Region 5 has received no statement from Petitioner Springstead regarding this motion. Region 5 will set forth the other Petitioners’ responses below.

ARGUMENT

1. The Board should consolidate the four petitions, in the interest of judicial efficiency.

Consolidating UIC Appeal Nos 18-06 through 18-09 will conserve resources and increase judicial efficiency in this matter. First, each petition appeals the same permit decision and

therefore draws from the same procedural history and set of facts. Avoiding repetition in addressing procedural history and facts will increase Region 5's and the Board's efficiency in resolving this matter. The Board has noted common facts in consolidating even petitions appealing different permits. *In re Eagle Oil and Gas Co., et al.*, NPDES Appeal Nos. 15-02 through 15-05, (EAB, May 8, 2015) (*Order Consolidating Petitions for Review and Establishing Briefing Schedule*, 3-4).

Second, some petitions also include overlapping arguments. These legal issues arise from the same set of UIC regulations and EPA can more efficiently and effectively address them in one response brief and one Board opinion. The petitions in UIC Appeal Nos. 18-07 and 18-09 are close to identical, raising the same legal issues and using largely verbatim language. Absent consolidation, Region 5 would have to file separate responses to and the Board would have to issue separate opinions for UIC Appeal Nos. 18-07 and 18-09, addressing the same issues twice. The petitions in UIC Appeal Nos. 18-06, 18-08 and 18-07/UIC 18-09 largely raise different arguments from each other, but some of them share at least one similar argument. Arguments regarding injection volume appear in multiple petitions (UIC 18-06, Filing #2, pp. 12-13; UIC 18-07, Filing #1, pp. 3-4; UIC 18-09, Filing #1, pp. 3-4).

Petitioners Addison, Ron Kruske and Amy Kruske all object to consolidating their petitions. Only Petitioner Ron Kruske stated a reason for his objection: that if petitions are consolidated, then Region 5 will not address each petition's arguments completely. Petitioner's objection is baseless. There is no reason to believe that Region 5 would not respond in full to each petition's arguments if the petitions were consolidated. Petitioners will also have the opportunity to file a reply to Region 5's response under 40 C.F.R. § 124.19(c)(2), in which reply Petitioners may raise issues with Region 5's response as they wish. Responding to consolidated

petitions will on balance conserve Region 5 and Board resources, especially by preventing needless repetition in addressing procedure, facts and arguments. Accordingly, the Board should consolidate UIC Appeal Nos. 18-06 through 18-09.

2. The Board should grant Region 5 a 75-day extension of time to respond to the consolidated petitions.

The Board should grant Region 5 a 75-day extension of time to respond to the consolidated petitions of UIC Appeal Nos. 18-06, 18-07, 18-08 and 18-09, from the date of the most recent petition served on Region 5 among those appeals. Multiple bases underlie this request, which will allow a full and considered response to all arguments in the various petitions.

First, the petitions raise complex technical matters, such as seismicity concerns and injection volume. They also raise significant legal and policy issues, such as Region 5's application of EPA's Environmental Justice policy to this matter. Region 5 will need time to coordinate with headquarters offices such as the Office of General Counsel ("OGC") and the Office of Water ("OW") to respond to these arguments. This can require multiple sets of parallel reviews, each set consisting of multiple vertical tiers of review.

Second, if the petitions are consolidated as requested, EPA's response will need to collectively address a larger number of arguments in one brief. The sheer volume of arguments therefore also supports the need for additional time beyond the time allotted for a single petition response.

Finally, many people involved in the review processes including the lead Region 5 attorney assigned to this matter have leave commitments during portions of the weeks of December 16-22, 23-29 and December 30 through January 5. There are also federal holidays

during this time. Coordinating reviews becomes more difficult during these three weeks. Accordingly, Region 5 asks the Board for additional time, to account for this period of commitments and allow for a full response to the consolidated petitions.

Petitioners Ron and Amy Kruske (UIC Appeal Nos. 18-07 and 18-08) are the most recent Petitioners whose petitions Region 5 currently knows it received.¹ The certificates of service for these Petitioners' petitions all state that the respective Petitioners served their petitions on Region 5 on November 24, 2018, via U.S. mail.² With an additional three days for mail service pursuant to 40 C.F.R. § 124.20(d), a 75-day extension of the 40 C.F.R. § 124.19(b)(2) 30-day response period would set Region 5's response date at March 12, 2019.

Region 5 and EPA headquarters have begun consultation on these appeals. OGC and OW staff agree with the proposed 75-day extension.

Petitioners Addison, Ron Kruske and Amy Kruske all object to any extension of time. Each therefore insists on EPA filing a separate response to each petition, all filed within the 30 day deadline. Only Petitioner Ron Kruske stated a reason for his objection: that when he emailed a Region 5 official before Thanksgiving with questions about his petition, he received an automated out-of-office reply and so Region 5 was not helpful with his issues when he was under a deadline. Petitioner's stated reason for objection does not address the merits of why an extension of time is necessary for Region 5's response, which Region 5 has articulated above.

¹ Petitioner Jennifer Springstead filed the most recent petition with the Board, on November 28, 2018. But her UIC Appeal No. 18-09 petition has no certificate of service, which would state the date she served the petition on Region 5 and which 40 C.F.R. § 124.19(i)(4) requires. Region 5 noticed UIC Appeal No. 18-09 on the Board's docket website and downloaded a copy of that petition from the Board's website. Petitioner Springstead stated in an email to Region 5 that she mailed her petition to Region 5 on November 26, 2018.

² Petitioners Ron and Amy Kruske filed a pair of petitions each. The certificate of service on all four petitions bears the date November 24, 2018.

Therefore Petitioner's argument is irrelevant. For the reasons set forth above, it is not practical for Region 5 to file four responses or even one consolidated response in the 30 days available.

Accordingly, Region 5 asks the Board to grant Region 5 a 75-day extension of time to file its response to the petitions in this matter, to March 12, 2019.

CONCLUSION

The Board should grant this motion and 1) consolidate the four appeals of UIC Appeal Nos. 18-06 through 18-09; and 2) grant Region 5 a 75-day extension of time to respond to the consolidated petitions, to March 12, 2019.

Respectfully submitted,



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Dated: December 11, 2018

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| |) | |

CERTIFICATE OF SERVICE

I hereby certify that the original of this **MOTION FOR CONSOLIDATION, CLARIFICATION AND EXTENSION OF TIME** in the matter **JORDAN DEVELOPMENT COMPANY, LLC OF TRAVERSE CITY, MICHIGAN, GROVE #13-11 SWD, PERMIT NO. MI-051-2D-0031, GLADWIN COUNTY, MICHIGAN, UIC Appeal Nos. 18-06, 18-07, 18-08 and 18-09**, was filed electronically with the Board.

Further, I hereby certify that one copy of this **MOTION FOR CONSOLIDATION, CLARIFICATION AND EXTENSION OF TIME** in the matter **JORDAN DEVELOPMENT COMPANY, LLC OF TRAVERSE CITY, MICHIGAN, GROVE #13-11 SWD, PERMIT NO. MI-051-2D-0031, GLADWIN COUNTY, MICHIGAN, UIC Appeal Nos. 18-06, 18-07, 18-08 and 18-09**, was sent to the Petitioners and Permittee, via certified mail, to the following addresses:

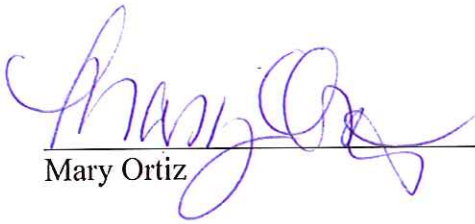
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December 11, 2018

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