

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

ENVIRONMENTAL APPEALS BOARD

In re: Environmental Disposal Systems, Inc.

UIC Appeal No. 07-03

Underground Injection Control Permits
MI-163-1W-C007 and MI-163-1W-C008

**NOTICE OF CONCURRENCE WITH THE ENVIRONMENTAL PROTECTION
AGENCY'S RESPONSE TO PETITIONERS' MOTION FOR STAY**

By: Joseph E. Turner (MI P44135)
Ronald A. King (MI P45088)
Kristin B. Bellar (MI P69619)
Clark Hill PLC
212 East Grand River Avenue
Lansing, Michigan 48906
Attorneys for Petitioners

The Police and Fire Retirement System of the City of Detroit, RDD Investment Corp. and RDD Operations, LLC (collectively "Petitioners"), by and through their attorneys, Clark Hill PLC, respectfully submit this Notice of Concurrence with the United States Environmental Protection Agency's ("EPA") August 18, 2008 Response to Petitioners' Motion for Stay of the Environmental Appeal Board ("EAB") July 18, 2008 Order Denying Review.

On July 30, 2008, Petitioners requested a stay of the EAB's July 18, 2008 Order Denying Review. Petitioners brought their motion pursuant to 5 U.S.C. § 705, 40 CFR 124.19(g) and Federal Rule of Appellate Procedure 18 for a stay pending Petitioners' appeal of the EAB Order Denying Review and the EPA termination of the Underground Injection Control ("UIC") Permits at issue in this case to the Sixth Circuit Court of Appeals, pursuant to 42 U.S.C. § 300j-7. The EPA, in its August 18, 2008 Response to Petitioners' Motion for Stay, stated that it does not oppose either staying the effective date of the EAB's July 18, 2008 decision or suspending the UIC Permit termination proceedings for a six-month period.

Petitioners file this Notice of Concurrence to advise the EAB that they concur in the EPA's suggested six-month suspension of proceedings or stay of the effective date of the EAB's July 18, 2008 decision.¹ Petitioners request that the EAB enter an order providing for a six-month suspension of these proceedings, during which time the EAB's July 18, 2008 decision is stayed, and no "final agency action" will occur within the meaning of 42 U.S.C. § 300j-7(a) such that Petitioners' 45-day time period after a final agency action in which an appeal must be filed with the Sixth Circuit Court of Appeals will not be triggered.

Wherefore, for the reasons stated above, and in concurrence with the EPA, Petitioners respectfully request that the EAB enter an order providing that:

¹ To the extent that it would assist the EAB if the EPA and Petitioners stipulated to the terms and conditions of the stay, Petitioners are fully willing to negotiate such a stipulation with the EPA.

A. The instant proceedings are suspended for a six-month period and/or the effectiveness of the July 18, 2008 Order Denying Review is stayed for a six month period, beginning from the date of service of the order; and

B. No final agency action has occurred triggering the 45-day appeal period under 42 U.S.C. § 300j-7(a).

Respectfully submitted,

CLARK HILL PLC

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Date: August 20, 2008

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PROOF OF SERVICE

STATE OF MICHIGAN }
 } ss
COUNTY OF INGHAM }

I, Deborah M. Barclay, being duly sworn, depose and say that on August 20, 2008, I served the original Petitioners' *Notice of Concurrence with the Environmental Protection Agency's Response to Petitioners' Motion For Stay*, along with this *Proof of Service* upon:

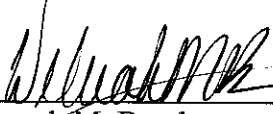
U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

via overnight mail, and electronically filed same with the Environmental Appeals Board at www.epa.gov/eab.

Service of same was also accomplished by placing same in a United States mail depository, enclosed in envelopes bearing postage fully prepaid and addressed properly upon:


Thomas J. Krueger, Associate Regional Counsel
United States Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

Mindy G. Nigoff
Office of General Counsel
United States Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, D.C. 60604-3590



Deborah M. Barclay

Subscribed and sworn to me
this 20th day of August, 2008.



Lori S. Smith, Notary Public
Eaton County, State of Michigan.
Acting in Ingham County, Michigan.
My Commission Expires: 08/30/2013.