

CLARK HILL
PLC
ATTORNEYS AT LAW

212 East Grand River Avenue
Lansing, Michigan 48906
Tel. (517) 318-3100 ■ Fax (517) 318-3099
www.clarkhill.com

Kristin B. Bellar
Phone: (517) 318-3043
E-Mail: kbellar@clarkhill.com

February 17, 2009

VIA OVERNIGHT MAIL

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

Re: *In re: Environmental Disposal Systems, Inc.*
Underground Injection Control Permits MI-163-1W-C007 and MI-163-1W-C008

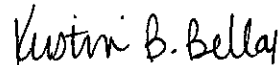
Dear Clerk:

Enclosed for filing, please find an original Joint Status Report and an original Proof of Service in the above-referenced matter.

Should you have any questions or require additional information, please do not hesitate to contact this office.

Sincerely,

CLARK HILL PLC



Kristin B. Bellar

Enclosures

cc: Client
Thomas Krueger, EPA
Mindy G. Nigoff, EPA

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

JOINT STATUS REPORT

The Police and Fire Retirement System of the City of Detroit, RDD Investment Corp. and RDD Operations, LLC (collectively "Petitioners"), and the Environmental Protection Agency ("EPA"), by their undersigned attorneys, respectfully submit this Joint Status Report to the Environmental Appeal Board ("EAB").

On July 18, 2008, the EAB denied Petitioners' November 21, 2007 Petition for Review of the EPA's October 22, 2007 Notice of Decision to Terminate Underground Injection Control Permits MI-163-1W-C007 and MI-163-1W-C008 (the "UIC Permits") issued for an underground injection control facility located in Romulus, Michigan (the "Facility"). The Petitioner submitted a Motion for Reconsideration and Motion for Stay of the EAB's Order Denying Review on July 31, 2008. On August 18, 2008, the EPA filed a response to Petitioners' Motions, stating that it did 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 to permit review of the application for new underground injection control permits filed by Environmental Geo-Technologies, LLC ("EGT") on December 7, 2007. On August 20, 2008, Petitioners submitted a Notice of Concurrence with the proposed six-month stay of the instant proceedings. On August 25, 2008, the EAB denied Petitioners' Motion for Reconsideration, but granted a six-month stay of the termination of the UIC Permits, and requested that the parties submit a report regarding

the status of the permit application review and discussing whether continuation of the stay is appropriate by February 18, 2009.

Region 5 of the EPA continues to review EGT's permit application. A decision on the permit application is forthcoming, but EPA was unable to complete its review prior to the February 18, 2009 expiration of the stay of the instant proceedings. EPA expects a decision on the permit application in the near future. Petitioners and the EPA agree that an extension of the stay is appropriate to allow the EPA to complete its review of the permit application and issue a decision that may affect these proceedings.¹ The parties agree that an extension of the stay will preserve the EAB's and the parties' resources and promote efficiency in resolving the instant proceedings.

For the reasons stated above, Petitioners respectfully request that the EAB enter an order providing for an additional four-month stay of these proceedings, during which time the EAB's July 18, 2008 decision is stayed.² The EPA does not oppose this request. The parties will keep the EAB apprised of any action affecting the instant proceedings. On or before the expiration of the four-month extension of stay, the parties will provide the EAB with a joint status report advising the EAB of the status of the permit application review and decision.

Therefore, Petitioners respectfully request, and the EPA does not oppose this request, that the EAB enter an order providing that the stay entered on August 25, 2008 through February 18, 2009 is extended for a four-month period, beginning from the date of service of the order;

¹ In the event that the EPA issues a draft permit for EGT's underground injection control permits, an additional extension of the stay may be necessary to comply with public participation and other requirements prior to issuance of a final decision.

² "For the purposes of judicial review, a final agency action occurs only after the Environmental Appeals Board issues notice to the parties that review has been denied. The Board's *EDS Decision* shall not constitute such notice while the effective date of the decision remains stayed." (EAB August 25, 2008 Order, pp. 8-9, fn. 4) (internal citation and quotation omitted).

Respectfully submitted,

CLARK HILL PLC

By: Kristin B. Bellar
Joseph E. Turner (P44135)
Ronald A. King (P45008)
Kristin B. Bellar (P69619)
212 East Grand River Avenue
Lansing, Michigan 48906
Attorneys for the Petitioners

Date: February 17, 2009

ENVIRONMENTAL PROTECTION AGENCY,
REGION 5

By: Thomas Krueger ^{w/permission} Kristin Bellar
Thomas J. Krueger
Associate Regional Counsel
US EPA, Region 5
77 W. Jackson Blvd.
Chicago, Illinois 60604-3590

Date: February 17, 2009

Respectfully submitted,

CLARK HILL PLC


By:

Joseph E. Turner (P44135)
Ronald A. King (P45008)
Kristin B. Bellar (P69619)
212 East Grand River Avenue
Lansing, Michigan 48906
Attorneys for the Petitioners

Date: February 17, 2009

ENVIRONMENTAL PROTECTION AGENCY,
REGION 5

By:



Thomas J. Krueger
Associate Regional Counsel
US EPA, Region 5
77 W. Jackson Blvd.
Chicago, Illinois 60604-3590

Date: February 17, 2009

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

PROOF OF SERVICE

STATE OF MICHIGAN }
 } ss
COUNTY OF INGHAM }

I, Kristin B. Bellar, being duly sworn, depose and say that on August 20, 2008, I served the original *Joint Status Report*, 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

Kristin B. Bellar

Kristin B. Bellar

Subscribed and sworn to me
this 17th day of February, 2009

Lori S. Smith

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