



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

NOV 20 2019

By Electronic Mail

REPLY TO THE ATTENTION OF

Ms. Eurika Durr, Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1201 Constitution Avenue, NW  
WJC East Building, Room 3334  
Washington, DC 20004

C-14J

Re: Muskegon Development Company – UIC Class II Well Permit No. MI-035-2R-0034 –  
UIC Appeal No. 19-02 – EPA Region 5's Reply To Petitioner's Response To Order To Show  
Cause Why Petition Should Not Be Dismissed For Lack of Jurisdiction

Dear Ms. Durr:

Please find enclosed for e-filing, in the docket of the above-referenced case, the following EPA  
Region 5's Reply To Petitioner's Response To Order To Show Cause Why Petition Should Not  
Be Dismissed For Lack of Jurisdiction by the Attorney of Record in this case.

Please feel free to contact me with any questions or comments.

Respectfully Submitted

A handwritten signature in blue ink, appearing to read "Thomas P. Turner".

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Enclosure

cc:

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

\_\_\_\_\_  
In re: )  
          ) )  
Muskegon Development Company )  
Mount Pleasant, Michigan )  
Holcomb 1-22 Facility )  
          ) )  
Underground Injection Control )  
Permit No.: MI-035-2R-0034 )  
\_\_\_\_\_ )

UIC Appeal No. 19-02

**EPA REGION 5'S REPLY TO PETITIONER'S RESPONSE TO ORDER TO SHOW  
CAUSE WHY PETITION SHOULD NOT BE DISMISSED FOR LACK OF  
JURISDICTION**

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**STATEMENT OF COMPLIANCE WITH WORD LIMITATION**

This Reply complies with the 14,000-word limitation found at 40 C.F.R. § 124.19(d)(3).  
*See* 40 C.F.R. § 124.19(d)(1)(iv).

## **I. INTRODUCTION**

The U.S. Environmental Protection Agency (“EPA”), Region 5 (“Region”), hereby responds to the Petitioner’s November 13, 2019 Response (“Petitioner’s Response”) to the Environmental Appeals Board’s (“Board’s”) November 4, 2019 Order to Show Cause Why Petition Should Not Be Dismissed For Lack of Jurisdiction (“Order”). In this Order, the Board found, “It is not apparent from [Petitioner’s] filing what decision he is appealing or the basis for the Board’s jurisdiction over his Petition for Review. [Petitioner] does not reference any of the part 124 regulatory provisions or any other authority to support the Board’s jurisdiction over his Petition for Review. He also does not attach the “Revised RTC on draft” document that he cites in his filing, nor does he reference or attach any new permit decision made by the Region after the Board’s remand.” Order at 2. The Board ordered Petitioner to show cause why his Petition for Review should not be dismissed for lack of jurisdiction, and allowed the Region an opportunity to file a Reply to Petitioner’s Response, if it so chose, by November 21, 2019. This filing constitutes the Region’s Reply to this Order. The Region intends to file a substantive response to the Petition for Review by November 25, 2019 (within the 30 days provided under 40 CFR § 124.19(b)), unless directed otherwise by the Board.

## **II. ARGUMENT**

The Board should dismiss the Petition for Review for lack of jurisdiction because Petitioner’s Response failed to “reference or attach” any new permit decision made by the Region, despite the Board’s clear direction to do so. *See* Order at 2. The Petitioner’s Response does not attach or clearly explain that he is challenging EPA Region 5’s September 26, 2019 Permit (“Reissued Permit”), which was issued by the Region in response to the Board’s order remanding the Region’s July 2018 permit. *See generally In re Muskegon Development Co.*, 17

E.A.D. 740 (EAB 2019). While the Petitioner's Response includes references to the "Permit," it does not specify whether this is the July 2018 permit that was remanded by the Board or the reissued September 26, 2019 permit. The Response attaches and references only the revised Response to Comment (RTC) that supported the Reissued Permit, but does not attach or clearly reference the Reissued Permit itself. Accordingly, the Board should find that Petitioner has failed to demonstrate that the Board has jurisdiction to review the Reissued Permit.

EPA further notes that Petitioner's Response largely addresses issues outside the scope of the Board's Order, which was specifically limited to jurisdiction. *See* Order at 2 ("the Board orders Mr. Addison to show cause why his petition should not be dismissed for lack of jurisdiction."). In his Response to this Order, Petitioner raises a number of arguments relating to the substantive merits of his Petition for Review, rather than to the narrow jurisdictional response required by the Board's Order. *See, e.g.*, Petitioner's Response at 9 (alleging that EPA has relied on "biased use of science" and "misinterpretation of statistics"); Petitioner's Response at 12 (alleging "fundamental failures at EPA to fulfill its mission," "low odds of EPA ever inspecting this well"). Accordingly, EPA requests that the Board strike all such portions of the Petitioner's November 13, 2019 Response not specifically related to the narrow jurisdictional response required by the Board's Order.

Respectfully submitted,



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Of counsel:

Pooja Parikh, Esq.  
U.S. Environmental Protection Agency  
Office of General Counsel  
Washington, D.C.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing “EPA Region 5’s Reply to Petitioner’s Response To Order To Show Cause Why Petition Should Not Be Dismissed For Lack Of Jurisdiction” in the matter of Muskegon Development Company Class II Well Permit No. MI-035-2R-0034, UIC Appeal No. 19-02, were sent electronically to the following persons, on the date below:

Ms. Eurika Durr, Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
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DATED: November 20, 2019



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cc:

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