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MAYER • BROWN

Mayer Brown LLP
1909 K Street, N.W.
Washington, D.C. 20006-1101

Main Tel (202) 263-3000
Main Fax (202) 263-3300
www.mayerbrown.com

Roger W. Patrick
Direct Tel (202) 263-3343
Direct Fax (202) 263-5343
rpatrick@mayerbrown.com

2008 MAR 21 PM 4:15
ENV. APPEALS BOARD

March 21, 2008

BY HAND DELIVERY

U.S. Environmental Protection Agency
Eurika Durr
Clerk of the Board, Environmental Appeals Board
1341 G Street, N.W., Sixth Floor
Washington, D.C. 20005

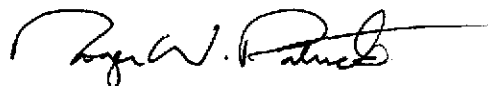
Re: In Re: Beeland Group, LLC, Beeland Disposal
Well #1, UIC Permit Number: MI-099-11-0001

Dear Ms. Durr:

Enclosed please find an original and five copies of Permittee Beeland Group, LLC's Motion to Intervene, or in the Alternative, Request to Respond to Petitions for Review Nos. UIC 08-01, 08-02, and 08-03, and Permittee Beeland Group, LLC's Request for Extension of Time to Respond to Petitions for Review Nos. UIC 08-01, 08-02, and 08-03.

If you have any questions, please do not hesitate to call Susan Brice at (312) 701-8424.

Very truly yours,



Roger W. Patrick

Enclosures

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

In Re:)	Appeal Nos. UIC 08-01, 08-02, 08-03
)	
BEELAND GROUP, LLC)	
BEELAND DISPOSAL WELL #1)	
)	
UIC PERMIT NUMBER: MI-099-11-0001)	
)	

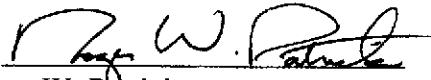
NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed, by hand-delivery, Permittee Beeland Group, LLC's Motion to Intervene, or in the Alternative, Request to Respond to Petitions for Review Nos. UIC 08-01, 08-02, and 08-03, and Permittee Beeland Group, LLC's Request for Extension of Time to Respond to Petitions for Review Nos. UIC 08-01, 08-02, and 08-03, copies of which have been served via overnight delivery service upon each of the representatives identified in the attached service list.

Dated: March 21, 2008

Respectfully submitted,

Mayer Brown LLP

By: 
Roger W. Patrick

Mayer Brown LLP
By: Roger W. Patrick
Attorney for Permittee, Beeland Group
1909 K Street, N.W.
Washington, D.C. 20006-1101
Phone: (202) 263-3000
Fax: (202) 263-5343

By: Susan E. Brice
Gregory L. Berlowitz
Attorneys for Permittee, Beeland Group
71 S. Wacker Drive
Chicago, IL 60606
Phone: (312) 782-0600
Fax: (312) 701-7711

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

In Re:)
)
BEELAND GROUP, LLC)
BEELAND DISPOSAL WELL #1)
)
UIC PERMIT NUMBER: MI-099-11-0001)
_____)

Appeal Nos. UIC 08-01, 08-02, 08-03

**Permittee Beeland Group, LLC's
Motion to Intervene, or in the
Alternative Request to Respond to
Petitions for Review Nos. UIC 08-01, 08-
02, and 08-03**

TOPP LAW PLC
By: Susan Hlywa Topp (P46230)
Attorneys for Petitioners
P.O. Box 1977
Gaylord, MI 49734-5977
T: (989) 731-4014
Fax: (989) 731-5804

Mayer Brown LLP
By: Roger W. Patrick
Attorney for Permittee, Beeland Group
1909 K Street, N.W.
Washington, D.C. 20006-1101
Phone: (202) 263-3000
Fax: (202) 263-5343

By: Susan E. Brice
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Attorneys for Permittee, Beeland Group
71 S. Wacker Drive
Chicago, IL 60606
Phone: (312) 782-0600
Fax: (312) 701-7711

Charles H. Koop (P27290)
Prosecuting Attorney for Antrim Co.
Co-Counsel for Petitioners
205 East Cayuga Street
Bellaire, MI 49615
T: (231) 533-6860
Fax: (231) 533-5718

Zimmerman, Kuhn, Darling, Boyd, Quandt and
Phelps, PLC
By: Joseph E. Quandt (P49639)
Gina A. Bozzer (P62688)
Co-Counsel for Permittee, Beeland Group
412 South Union Street
Traverse City, Michigan 49685
Phone: (231) 947-7900
Fax: (231) 947-7321

**Permittee Beeland Group, LLC's Motion to Intervene/Request to Respond to Petitions for
Review Nos. UIC 08-01, 08-02, and 08-03**

The Permittee, Beeland Group, LLC, by and through its attorneys, Mayer Brown LLP, and Zimmerman, Kuhn, Darling, Boyd, Quandt and Phelps, PLC, respectfully requests leave to intervene in the proceedings as a Party-Respondent or, in the alternative, to respond to the Petitions for Review filed in the above-captioned action.

- 1) In 2007, Beeland Group, LLC, of Jackson, Michigan (“Beeland”) applied to the United States Environmental Protection Agency (EPA) for a permit to construct and operate a new Class I injection well in Antrim County, Michigan, for the disposal of non-hazardous liquid waste.
- 2) Beeland received a final permit from the EPA effective March 12th, 2008, permit number MI-009-11-0001.
- 3) On February 29th, 2008, March 9th, 2008, and March 10th, 2008, the Environmental Appeals Board (the “EAB” or “Board”) received three petitions in response to the issuance of the final permit to Beeland. One petition was filed by Allen and Tricia Freize, Friends of the Jordan (UIC 08-01), one filed by attorneys Susan Hlywa Topp and Charles H. Koop on behalf of Star Township, Antrim County, and Friends of the Jordan River (UIC 08-02), and one filed by Dr. John W. Richter, President, Friends of the Jordan River Watershed (UIC 08-03).
- 4) The EAB issued notification to Robert Kaplan, Regional Counsel for EPA Region 5 dated March 12th, 2008 regarding receipt of the petitions and set forth dates by which the EPA is to respond to the Petitioner’s contentions. The notification is attached hereto as Exhibit “A”.

- 5) The EAB Practice Manual, § III.D.1 provides that the Board will generally allow the permit applicant to respond to a petition filed by a third party petitioner if the permit applicant has filed a request to respond.
- 6) In accordance with the EAB Practice Manual § III.D.4, Beeland seeks to intervene as a Party-Respondent in the proceeding because (1) as permittee, it has a significant interest relating to the petition; (2) any final order may as a practical matter impair Beeland's ability to protect its interest in the permit; and (3) Beeland's interest is not adequately represented by existing parties. 40 CFR § 22.11. *See In re: USGEN New England, Inc., Brayton Point Station*, NPDES Appeal No. 03-12, 2004 WL 418019 (EAB, Feb. 20, 2004); *see also, e.g. In re Phelps Dodge Corp.*, NPDES Appeal No. 01-07, slip op. at 15 (EAB, May 21, 2002), 10 E.A.D. (permittee's motion to intervene and file a response to the petition granted); *In re Aurora Energy, L.L.C.*, NPDES Appeal No. 03-11, at 1 (EAB, Oct. 21, 2003) (permittee's motion for leave to intervene granted); *In re Haw. Elec. Light Co.* ("HELCO"), PSD Appeal Nos. 01-24 through 01-29, at 1 (EAB, Oct. 18, 2001) (permittee's motion to intervene and file a response to petitions for review granted).
- 7) Beeland's significant interest in the petition is self-evident. As the permittee, it is the party more significantly impacted by any EAB action than any other party. Beeland has expended vast resources and extensive time in its undertaking of this project and in its application for a permit. Any action regarding the issuance of the permit has a direct and significant impact on its day to day business operations and environmental responsibilities.
- 8) Absent the granting of intervention, a final order by the EAB will, as a very practical matter, impair Beeland's ability to protect its interests in that if the Board rejects the


permit, Beeland will be unable to construct and operate the proposed underground injection well. *See Sierra Club v. U.S. E.P.A.*, 995 F.2d 1478, 1480-81, 83 (9th Cir. 1993) (“[T]he lawsuit would affect the use of real property owned by the intervenor by requiring the defendant to change the terms of permits it issues to the would-be intervenor, which permits regulate the use of that real property. These interests are squarely in the class of interests traditionally protected by law.”)

- 9) It is incontrovertible that the interests of the EPA as regulators, and of Beeland, the permittee, are different. *See Natural Resources Defense Council v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977) (finding that EPA did not adequately represent interests of regulated industry; intervenors' interests in protecting their industries was more narrowly focused than EPA's interest in implementing the law); *Sierra Club v. Glickman*, 82 F.3d 106, 110 (5th Cir. 1996) (stating that “[t]he government must represent the broad public interest, not just the economic concerns of [one] industry” (quotation omitted)).
- 10) The petitions filed were all filed by third party petitioners.

WHEREFORE, Beeland, as the Permittee, respectfully requests that its Motion to Intervene as a Party Respondent, including filing responsive pleadings and otherwise participating in the proceedings, be granted or, in the alternative, that its Request to Respond be granted. Beeland has filed a Motion for Extension of Time contemporaneously with the filing of this Motion.

Dated: March 21, 2008

Mayer Brown LLP


By: Susan E. Brice
Roger W. Patrick

Gregory L. Berlowitz
Attorneys for Permittee, Beeland Group
71 S. Wacker Drive
Chicago, IL 60606
Phone: (312) 782-0600
Fax: (312) 701-7711

Zimmerman, Kuhn, Darling, Boyd,
Quandt and Phelps, PLC
Joseph E. Quandt (P49639)
Gina A. Bozzer (P62688)
Co-Counsel for Permittee, Beeland Group
412 South Union Street
Traverse City, Michigan 49685
Phone: (231) 947-7900
Fax: (231) 947-7321

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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In Re:)
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BEELAND GROUP, LLC)
BEELAND DISPOSAL WELL #1)
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UIC PERMIT NUMBER: MI-099-11-0001)
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Appeal Nos. UIC 08-01, 08-02, 08-03

Permittee Beeland Group, LLC's
Request for Extension of Time to
Respond to Petitions for Review Nos.
UIC 08-01, 08-02, and 08-03

TOPP LAW PLC
By: Susan Hlywa Topp (P46230)
Attorneys for Petitioners
P.O. Box 1977
Gaylord, MI 49734-5977
T: (989) 731-4014
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Fax: (202) 263-5343

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Prosecuting Attorney for Antrim Co.
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Permittee Beeland Group, LLC's Motion for Extension of Time
to Respond to Petitions for Review Nos. UIC 08-01, 08-02, and 08-03

The Permittee, Beeland Group, LLC, by and through its attorneys, Mayer Brown LLP, and Zimmerman, Kuhn, Darling, Boyd, Quandt and Phelps, PLC, respectfully requests an extension of time to respond to the Petitions for Review filed in the above-captioned action.

- 1) In 2007, Beeland Group, LLC, of Jackson, Michigan (“Beeland”) applied to the United States Environmental Protection Agency (EPA) for a permit to construct and operate a new Class I injection well in Antrim County, Michigan, for the disposal of non-hazardous liquid waste.
- 2) Beeland received a final permit from the EPA effective March 12th, 2008, permit number MI-009-11-0001.
- 3) On February 29th, 2008, March 9th, 2008, and March 10th, 2008, the Environmental Appeals Board (the “EAB” or “Board”) received three petitions in response to the issuance of the final permit to Beeland. One petition was filed by Allen and Tricia Freize, Friends of the Jordan (UIC 08-01), one filed by attorneys Susan Hlywa Topp and Charles H. Koop on behalf of Star Township, Antrim County, and Friends of the Jordan River (UIC 08-02), and one filed by Dr. John W. Richter, President, Friends of the Jordan River Watershed (UIC 08-03).
- 4) The EAB issued notification to Robert Kaplan, Regional Counsel for EPA Region 5 dated March 12th, 2008 regarding receipt of the petitions and set forth dates by which the EPA is to respond to the Petitioner’s contentions. The notification is attached hereto as Exhibit “A”.
- 5) Beeland received copies of all the Petitions through the EAB website on March 19, 2008.

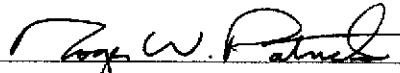
- 6) The Petitions contain more than 40 pages of detailed legal assertions and technical data regarding Beeland's permit..
- 7) In the March 12, 2008 letter to Robert Kaplan, the EAB granted the EPA until March 27, 2008 to file a response to a request for summary disposition, addressing whether the EPA believed the petition was appropriate for summary disposition because the Board does not have jurisdiction to consider the petition, the appeal is untimely, Petitioners lack standing to file an appeal, or none of the issues raised in the petition were preserved for review.
- 8) In addition, in the March 12, 2008 letter to Robert Kaplan, the EAB granted the EPA until April 11, 2008 to file a response to the merits of the petition, including relevant portions of the administrative record.
- 9) Contemporaneously with this motion for extension, Beeland has filed a Motion to Intervene or, in the alternative, a Request to Respond to the Petition.
- 10) Because of the extensive nature of the response required by the Petition, and the necessity of reviewing the transcripts and detailed record of the pre-permit proceedings, Beeland respectfully requests an extension of time until April 11, 2008 to respond to the Petitioner's request for summary disposition, in order to fully address the issues of jurisdiction, timeliness, standing, and preservation of issues for review that the EPA was asked to address by March 27, 2008 in the March 12, 2008 letter.
- 11) Consistent with the March 12, 2008 letter, Beeland requests that if the Board determines that summary disposition is not appropriate, that it has 15 days to respond to the merits of the petition after the Board's Order.

WHEREFORE, Beeland, as the Permittee and proposed Party-Respondent, respectfully requests that its Motion for Extension of Time be granted to April 11, 2008 to respond to the EAB's

request for summary disposition, and, if the Board determines that summary disposition is not appropriate, 15 days from the Board's Order to respond to the merits of the Petition.

Dated: March 21, 2008

Mayer Brown LLP


By: Susan E. Brice
Roger W. Patrick
Gregory L. Berlowitz
Attorneys for Permittee, Beeland Group
71 S. Wacker Drive
Chicago, IL 60606
Phone: (312) 782-0600
Fax: (312) 701-7711

Zimmerman, Kuhn, Darling, Boyd,
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Joseph E. Quandt (P49639)
Gina A. Bozzer (P62688)
Co-Counsel for Permittee, Beeland Group
412 South Union Street
Traverse City, Michigan 49685
Phone: (231) 947-7900
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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Permittee Beeland Group, LLC's Motion to Intervene, or in the Alternative, Request to Respond to Petitions for Review Nos. UIC 08-01, 08-02, and 08-03, and Permittee Beeland Group, LLC's Request for Extension of Time to Respond to Petitions for Review Nos. UIC 08-01, 08-02, and 08-03 were served on the following counsel via Overnight Delivery Service on March 21, 2008:

TOPP LAW PLC
By: Susan Hlywa Topp (P46230)
Attorneys for Petitioners
P.O. Box 1977
Gaylord, MI 49734-5977


Zimmerman, Kuhn, Darling, Boyd,
Quandt and Phelps, PLC
By: Joseph E. Quandt (P49639)
Gina A. Bozzer (P62688)
Co-Counsel for Permittee, Beeland Group
412 South Union Street
Traverse City, Michigan 49685

Charles H. Koop (P27290)
Prosecuting Attorney for Antrim Co.
Co-Counsel for Petitioners
205 East Cayuga Street
Bellaire, MI 49615

Stuart P. Hersh
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3507

Dr. John W. Richter, President
Friends of the Jordan River Watershed, Inc.
P.O. Box 412
East Jordan, MI 49727

Allen and Trisha Freize
P.O. Box 108
Alba, MI 49611



Roger W. Patrick