

B

From: Bellar, Kristin B.

Sent: Friday, July 13, 2007 3:28 PM

To: 'patterson.leslie@epa.gov'; 'rzesnik.dana@epa.gov'

Cc: 'krueger.thomas@epa.gov'; King, Ronald A.

Subject: Former Environmental Disposal Systems, Inc. Facility - 28470 Citrin Dr., Romulus, Michigan

Ms. Patterson and Ms. Rzesnik,

Attached please find correspondence relating to the above-mentioned site relating to the authority of RDD to request approval for repairs to the wells at the site. Should you have any questions, please do not hesitate to contact me.

Thank you,

Kristin Beals Bellar

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July 13, 2007

BY ELECTRONIC AND FIRST CLASS MAIL

Leslie Patterson
Underground Injection Control Branch
Region 5, U.S. EPA, WU-16J
77. W. Jackson Blvd.
Chicago, IL 60604

Dana Rzeznik
Underground Injection Control Branch
Region 5, U.S. EPA, WU-16J
77. W. Jackson Blvd.
Chicago, IL 60604

Re: *Former Environmental Disposal System, Inc. Facility – 28470 Citrin Drive,
Romulus, Michigan – Request for Approval of Workover for Wells 1-12 and 2-12;
Permits MI-163-1W-C008 and MI-163-1W-C007*

Dear Addressees:

As you are aware, Clark Hill PLC represents the Police and Fire Retirement System for the City of Detroit (the "Board"), RDD Operations, LLC and RDD Investment Corp. for matters relating to the above-mentioned Facility.

Pursuant to the Acknowledgment and Assignment Agreement dated November 7, 2006 (the "Agreement"), RDD has been designated as the assignee of Environmental Disposal Systems, Inc.'s ("EDS") interests in and ownership of the above-mentioned facility. Notably, sections 4.c., d. and g. of the Agreement provide the Board (or its designee in this case) with the right to exercise all of the rights and powers of EDS with respect to the facility.

Based on this authority vested in the Board and its designee, RDD Operations, LLC, and pursuant to section 5 of part II-B of the EDS permits, RDD requests approval to implement the pressure control procedure set forth by Petrotek, which is attached to this correspondence, for the purpose of making necessary repairs to the wells.

CLARK HILL_{PLC}

Leslie Patterson
Dana Rzeznik
July 13, 2007
Page 2

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

Sincerely,

CLARK HILL PLC

Kristin B. Bellar

Kristin B. Bellar

Attachment

cc: Thomas Krueger, EPA



Petrotek Engineering Corporation 10288 West Chatfield Avenue, Suite 201 Littleton, Colorado 80127 USA (303) 290-9414 FAX (303) 290-8580

June 25, 2007

Mr. Ron King
Clark Hill, PLC
212 East Grand River Avenue
Lansing, MI 48906-4328

**RE: Class I Deepwell Pressure Control Procedure
RDD Operating, LLC Romulus, Michigan Facility**

VIA E-MAIL

Dear Mr. King:

As discussed in our conversation today, per your request I have been in contact with representatives of both the MDEQ and the USEPA with regard to our recommendation that the two Class I injection wells at the former EDS facility be displaced with a brine of sufficient density to force static fluid level below the ground level in the wells. In oilfield terms, this pressure control procedure is called "killing" a well.

Petrotek proposes that RDD kill each well by bullheading approximately 100 bbl of 10 lb/gallon sodium chloride brine into each tubing string. This operation will involve the delivery of brine in a tanker truck, rigging up a contract pumping unit to the delivery tank and the wellhead, and then pumping the kill fluid directly down the well bore and forcing the current contents of the well bore into the reservoir. This is a simple, low-risk and effective means of building up a sufficient hydrostatic head in a well bore to eliminate positive pressure at the surface.

The 10 lb/gallon brine recommended for this operation will need to be purchased from a bulk chemical supplier or from a local mineral production well facility. An untreated bulk sodium chloride brine with a density of 1.2 is recommended. Typically water will comprise approximately 74% of the solution, with sodium chloride comprising the majority of the dissolved solids (approximately 250,000 ppm). Up to several thousand ppm each of calcium, magnesium, carbonate and sulfate also be present.

Attached is a step-by-step procedure proposed for conducting the kill operations.

Please feel free to contact me at your earliest convenience with any further questions or instructions regarding this matter.

Sincerely,

Via Email

Petrotek Engineering Corporation
Ken Cooper, PE

cc: Paul Wonsack – RDD Operating
Rick Lyle – Petrotek

RDD PRESSURE CONTROL PROCEDURES
CLASS I WELL #1-12, #2-12

1. Record wellhead tubing and annulus pressures. Confirm annulus pressure of at least 350 psi.
2. Rig-up pump and brine transport. Verify brine delivery of 10 lb/gal brine.
3. Verify all flowline valves are closed. Disconnect flowline upstream of wellhead valve to enable temporary flowline connection to positive pressure side of pump. Tie in pump to wellhead. Manage any fluid recovered from flowline work as hazardous waste.
4. Pump approximately 100 bbls, 10 lb/gal brine, or brine necessary to fully displace tubing and kill wellhead pressure if positive pressure exists. Pump at initial maximum surface injection pressure of 150 psi and/or flow rate of no more than 5 bbl/min.

Assume reservoir pressure 1840 psi at 4000' BGL (#1-20)
both wells have 4 1/2" RB2000 TFP, ID approx 3.99"

#1-12 Packer at 4066' MD, 8 3/4" OH 4080'-4645' MD
Tubing Displacement: 4080' (0.6528g/ft) = 2663 gal = 63 bbl
Total Displacement: 4080' (0.6528g/ft) + 565' (3.1237 g/ft) = 4428 gal = 105 bbl

#2-12 Packer at 3965' MD, 8 3/4" OH 3983'-4550' MD
Tubing Displacement: 3983' (0.6528g/ft) = 2600 gal = 62 bbl
Total Displacement: 3983' (0.6528g/ft) + 567' (3.1237 g/ft) = 4371 gal = 104 bbl

5. During brine displacement allow well to revert to gravity feed if possible.
6. Record maximum pump pressure, duration of pumping activity, and final volume pumped into well.
7. After pumping has stopped, verify that tubing pressure at surface is 0 psi.
8. Verify that well will not backflow.
9. Close wellhead flowline valves, disconnect temporary flowline at injection pump and repeat process at second well.
10. Rig down and move out pulling unit. Release support equipment.
11. Generate report summarizing field activities including pressures, rates and volumes for submittal to US EPA and MDEQ. Incorporate data into plan for additional investigation of wellhead equipment conditions.

C

-----Original Message-----

From: Redding.Mary@epamail.epa.gov [mailto:Redding.Mary@epamail.epa.gov]

Sent: Tuesday, July 17, 2007 1:32 PM

To: Bellar, Kristin B.

Subject: rrd operations, llc

(See attached file: rrd.lt.doc)

July 17, 2007

Ms. Kristin B. Bellar
Clark Hill PLC
212 East Grand River Avenue
Lansing, Michigan 48906

WU-16J

Dear Ms. Bellar;

Thank you for your July 13, 2007, letter on behalf of RDD Operations, LLC (RDD) requesting the approval of pressure control procedures at the Environmental Disposal Systems, Inc. (EDS) facility in Romulus, Michigan.

The procedures as described by Mr. Ken Cooper of Petrotek Engineering Corporation in the attachment to your letter are hereby approved. The United States Environmental Protection Agency (U.S. EPA) interprets your letter as saying that RDD has authorization to act on behalf of the permittee, EDS, in proposing and performing this activity under the permits. Please advise me immediately if that is not the case.

We also request that, within seven days of the completion of these procedures, RDD submit to our office a report of the work performed and results obtained from the pressure control procedure.

If you have any questions regarding this letter, please contact Dana Rzeznik of my staff at (312) 353-6492 or by e-mail to rzeznik.dana@epa.gov.

Sincerely,

Rebecca L. Harvey, Chief,
Underground Injection Control Branch

cc: Ray Vurginovich, Michigan Department Environmental Quality
Steve Buda, Michigan Department Environmental Quality
Rhonda Blayer, Michigan Department Environmental Quality
Dolores Montgomery, Michigan Department Environmental Quality

Bcc: Thomas Krueger
Dana Rzeznik
Leslie Patterson
Lisa Perenchio

D

**REQUEST TO EXTEND AND/OR RE-OPEN THE COMMENT PERIOD FOR THE
ENVIRONMENTAL PROTECTION AGENCY'S APRIL 12, 2007 NOTICE OF INTENT
TO TERMINATE UIC PERMITS MI-163-1W-C007 AND MI-163-1W-C008**

SEPTEMBER 11, 2007

The Police and Fire Retirement System of the City of Detroit ("PFRS"), and its wholly owned subsidiaries, RDD Investment Corp., and RDD Operations, LLC (referred to collectively as "RDD"), by and through their attorneys, Clark Hill PLC, submit the following request to extend and/or re-open the comment period on Environmental Protection Agency's ("EPA") Notice of Intent to Terminate UIC permits MI-163-1W-C007 and MI-163-1W-C008, pursuant to 40 CFR 124.14.

INTRODUCTION AND STATEMENT OF FACTS

The PFRS is a pension plan and trust established by the Charter and Municipal Code of the City of Detroit. The Board of Trustees of the PFRS oversees the pension funds of the police and fire departments of the City of Detroit which secure retirement and disability benefits for all City of Detroit Police and Fire personnel. From 1993 to 2006, the PFRS loaned, as an investment, approximately \$40,000,000.00 to Environmental Disposal Systems, Inc. ("EDS"), Romulus Deep Disposal Limited Partnership ("Romulus") and Remus Joint Venture ("RJV") for construction and completion of a commercial Class I Hazardous Waste underground injection well and hazardous waste treatment and storage facility which is located at 28470 Citrin Drive in Romulus, Michigan (the "Facility"). EDS received final regulatory approval for operation of the Facility on or about December 27, 2005. Among the regulatory approvals was the issuance by the EPA of the Underground Injection Control ("UIC") permits related to operation of the two deep injection wells at the Facility (the "Permits").

From approximately early 2006 until October 2006, EDS operated pursuant to all of the duly issued and applicable licenses and the Permits. In October of 2006, EDS, Romulus and RJV defaulted on their various obligations to the PFRS under the loan agreements between the parties. At that time, in light of EDS' deteriorating financial condition, the PFRS began making

arrangements for the orderly transfer of the Facility from EDS to a yet to be determined successor owner or operator. On October 23, 2006 and October 26, 2006, staff of the Michigan Department of Environmental Quality ("MDEQ") noted leaks from the well heads of the two deep injection wells at the Facility. In light of the possible significance of this discovery and EDS' inability to continue to adequately operate the Facility and/or meaningfully respond to the observed leaks, the PFRS, through its newly created designee, RDD, on or about November 7, 2006, effectively replaced EDS as operator of the Facility and took physical possession and control of the Facility. As part of this transfer of operations of the Facility, EDS assigned to RDD all of its rights and interests in the Project and the various licenses and permits, including the UIC permits. (Exhibit A, Acknowledgment and Assignment Agreement). This expedited transfer of the Facility was not the preferred course of action of the PFRS. However, under the circumstances, this was the action the PFRS believed was required to secure the safety and integrity of the Facility.

Since early November of 2006, RDD has expended considerable energy and resources addressing compliance issues arising under the Permits at the Facility resulting from EDS' operations. Additionally, the PFRS and RDD have identified a well-capitalized and qualified entity to assume ownership and operation of the Facility, Environmental Geo-Technologies, LLC ("EGT"). On February 28, 2007, RDD and EGT, with the cooperation of EDS, submitted a formal UIC permit transfer request to EPA pursuant to 40 CFR §144.41, requesting transfer of the UIC permits at issue in this matter from RDD/EDS to EGT. On April 12, 2007, RDD and EGT received notice from the EPA that, while it had received the transfer request and the supplemental information requested in order to process the transfer request, the EPA had decided not to act on the transfer request. (Exhibit B, April 12, 2007 Correspondence to RDD and EGT

from the EPA). On that same day, with no prior notice or indication and without affirmatively acting on the pending transfer request, EPA issued its Notice of Intent to Terminate the UIC permits for the Facility. (Exhibit C, Notice of Intent to Terminate and Fact Sheet). The apparent basis for EPA's decision to terminate the Permits is the alleged historical noncompliance of EDS with various conditions of the Permits which arose in 2006. Most of the purported compliance issues cited by the EPA are related to correctable reporting and record-keeping issues.

A public hearing was held on the Notice of Intent to Terminate the UIC Permits on May 23, 2007. Public comments were accepted until June 22, 2007. The EPA received comments from, among others, the PFRS and RDD and EGT. (Exhibit D, Public Comment of the PFRS and RDD, without exhibits). The PFRS and RDD's comment requested that the EPA, as an alternative to termination of the EDS/RDD UIC Permits, approve a minor modification of the permits to acknowledge EGT as the new permittee or, as a last alternative, modify or revoke and reissue the permits at issue to EGT, pursuant to 40 CFR §124.5, §144.39 and/or §144.41. RDD's basis for requesting that the EPA take such actions was and is the reality of RDD's legal and equitable interest in the Facility and the Permits, by virtue of EDS' assignment of the Permits to RDD in November of 2006. RDD, as the equitable holder of the Permits and as the legal owner of the Facility, requested that the EPA fully consider RDD's role and its interests in making its final decision on the Notice of Intent to Terminate the Permits. The EPA has not yet issued a final decision on this matter.

REQUEST TO RE-OPEN THE COMMENT PERIOD

Pursuant to 40 CFR 124.14(a)(1), the Regional Administrator of the EPA may order the public comment period reopened if doing so could "expedite the decisionmaking process." Further, according to 40 CFR 124.14(b):

If any data[,] information or arguments submitted during the public comment period, including information or arguments required under Sec. 124.13, appear to raise substantial new questions concerning a permit, the Regional Administrator may take one or more of the following actions:

- (1) Prepare a new draft permit, appropriately modified, under Sec. 124.6;
- (2) Prepare a revised statement of basis under Sec. 124.7, a fact sheet or revised fact sheet under Sec. 124.8 and reopen the comment period under Sec. 124.14; or
- (3) Reopen or extend the comment period under Sec. 124.10 to give interested persons an opportunity to comment on the information or arguments submitted.

Additionally, “[c]ommenters may request longer comment periods and they shall be granted under § 124.10 to the extent they appear necessary.” 40 CFR 124.14(a)(4).

Pursuant to 40 CFR 124.14(a)(4) and (b)(3), the PFRS and RDD request that the EPA extend and/or re-open the comment period to give interested persons an opportunity to comment on the new information and arguments submitted during the public comment period, in order to allow for a thorough and efficient consideration of all relevant facts.

A. The EPA should re-open the comment period to allow for a full and fair opportunity for public comments relating to RDD’s actions and interests in the Permits as the equitable and legal owner of the Permits.

As stated above, the EPA issued its Notice of Intent to Terminate the Permits on April 12, 2007. The primary stated basis for EPA’s intent to terminate the UIC permits as set forth in the April 12, 2007 Notice of Intent to Terminate Permit and the supporting Fact Sheet is EPA’s position that EDS did not comply with certain reporting and recordkeeping obligations required under the Permits and applicable federal regulations and/or failed to respond to various EPA requests for information. Importantly, however, the Notice of Intent to Terminate the Permits did not address in any manner the substantial significance of RDD’s legal and equitable interests

in the Permits and the Facility. While it may be true that EDS, on its own behalf, did not specifically provide responses as alleged by EPA, RDD, as the assignee of the permits and licenses for the Facility, provided a substantive response to each inquiry or permit requirement, as detailed in its June 20, 2007 public comment. EPA's Notice of Intent to Terminate the Permits artificially avoids consideration of the actual and thoroughly documented efforts of RDD in responding to the EPA's requests for information by narrowly propounding a technical legal position, namely, that EDS is the permittee for all purposes until EPA approves a transfer or takes other action with respect to the permit. This position incorrectly permits the EPA to review EDS' conduct in a vacuum, and to ignore the reality of the unique and difficult circumstances surrounding transfer of the Facility's operations to RDD and the subsequent efforts of RDD at the Facility. The EPA's Notice of Intent to Terminate the Permits ignored the then well-known and documented fact that EDS assigned its rights in the permits to RDD in November of 2006 and that RDD has otherwise complied with all conditions of the Permits and has substantially responded to all inquiries and requests for information sent by EPA to EDS.

After the EPA issued its Notice of Intent to Terminate the Permits, public comments were invited in accordance with 40 CFR 124.11. The EPA received a number of comments prior to the expiration of the comment period on June 22, 2007, the vast majority of which only addressed termination of the Permits in light of the very limited facts set forth in the EPA's Notice of Intent to Terminate the Permits and the supporting fact sheet. (Exhibit E, Public Comments). Pursuant to 40 CFR 124.13, during the public comment period, all persons who believed that any condition of the Notice of Intent to Terminate the Permits was inappropriate were required to raise all "reasonably ascertainable issues and arguments" in support of their positions. As the Notice of Intent to Terminate the Permits was not based on, and did not address, RDD's actions

and interests as related to the Permits and the Facility, the public was not given an opportunity to fully and fairly comment on and address all of the relevant facts surrounding the EPA's decision to terminate the Permits. Therefore, the public was not provided an opportunity to raise all reasonably ascertainable issues and arguments in support of their positions as required by 40 CFR 124.13. Therefore, RDD requests that the Administrator extend and/or re-open the comment period to allow further public comments to address the significance of RDD's role as the legal and equitable owner of the Facility and the Permits at issue, and the new information and arguments submitted to the EPA that raise substantial new questions regarding the decision to terminate the Permits.

B. The EPA should re-open the comment period due to new information and arguments submitted during and after the comment period relating to RDD's role and actions and interests in the Permits as the equitable and legal owner of the Permits.

Aside from the fact that the EPA's Notice of Intent to Terminate the Permits inappropriately omitted substantial relevant information relating to RDD's interests in the Facility and the Permits, both during and after the close of the comment period, new information and arguments were submitted to the EPA that raised substantial new questions concerning the permits at issue. Namely, the information and arguments submitted demonstrate that RDD has both an equitable and legal interest in the UIC permits, and that RDD has fully complied with all conditions of the UIC permits, including the provisions that EPA alleged were violated in its Notice of Intent to Terminate the Permits.

Importantly, the EPA itself has taken actions after the close of the comment period that raise substantial new questions regarding the Permits at issue. The EPA has recently taken affirmative actions indicating that it considers RDD the equitable and legal owner of the Permits, and has actively communicated with and engaged RDD as if it were the permittee.

On or about June 18, 2007, RDD reported to the EPA that wellhead 1-12 had a small leak or drip. On June 21, 2007, the EPA took samples of the liquid that was "weeping" from the wellhead. On or before June 25, 2007, Petrotek Engineering Corporation contacted the EPA with regard to its recommendation that brine should be pumped into both well bores for wells 1-12 and 2-12 to force static fluid level below the ground level in the wells, a procedure known as "well-killing."¹ In response to this communication from Petrotek, on July 10, 2007, the EPA asked RDD, as the recognized permittee and party in interest, to provide them with a written request for approval of the well-killing procedure on behalf of either EDS or RDD. The EPA further requested that if the approval was to be requested by RDD, that it provide its basis for requesting approval on behalf or in the stead of EDS. The EPA's request was apparently based on its recognition of RDD as the equitable permittee for all practical purposes.

On July 13, 2007, RDD submitted a written request for the EPA's approval of the well-killing procedure, on behalf of RDD as the assignee of all of EDS' rights and interests in the Permits and the Facility. (Exhibit F, July 13, 2007 Correspondence to EPA). On July 17, 2007, the EPA approved RDD's request to perform the well-killing procedure. (Exhibit G, July 17, 2007 Correspondence to RDD). The EPA's express approval of RDD's operations and actions relating to the wells and the Permits appears to raise substantial new questions as to the decision to terminate the Permits. If the EPA has recognized that RDD is authorized to act as the permittee with respect to the Permits at issue, then the actions and communications of RDD as they relate to the wells and the Permits must be considered as part of any EPA decision to take action relating to such Permits.

¹ The well-killing procedure was done to make necessary inspections and repairs to the wellheads to insure the safety of the wells and facility operation, pursuant to the conditions of the Permits.

A troubling aspect of EPA's omission of the relevant factors relating to RDD in its Notice of Intent to Terminate the Permits is that the EPA repeatedly and continuously communicated directly with RDD regarding specific issues and matters related to the UIC permits and permit compliance, treating RDD, in all respects, as the "de facto" permittee. This course of conduct has, as discussed herein, continued after the close of the comment period. On the one hand, the EPA worked continuously, directly and cooperatively with RDD on discharging permit specific requirements and obligations and, then, on the other hand, EPA issued a notice of intent to terminate the very same permits because EDS did not perform the work EPA coordinated with RDD. Failure to allow for public comment on RDD's actions and the EPA's responses amounts to a decision that is not based on all relevant factors and is thus arbitrary and capricious.

Further, and consistent with the EPA's previous communications with RDD, the EPA has continued to behave toward RDD as if it considers RDD to be the permittee. On August 2, 2007, subsequent to EPA's approval of RDD's request to perform well-killing procedure, representatives of the EPA visited the Facility to view the implementation of the procedure. While onsite, EPA representatives affirmatively communicated with RDD staff as if RDD were the permittee by asking questions of and accepting information from RDD staff, including but not limited to the former Interim Facility Manager.

Finally, the EPA has very recently received and purportedly accepted information from RDD relating to staffing changes at the Facility. Pursuant to Permit Condition I(E)(6), the permittee is required to properly operate the Facility, which includes the employment of properly trained operators and staff. As the Interim Facility Manager for RDD resigned effective July 23, 2007, RDD provided the EPA with the names and qualifications of the new Interim Facility

Manager, Emergency Response Coordinator and Backup Emergency Response Coordinator on July 20, 2007 and July 25, 2007. (Exhibit H, July 20, 2007 and July 25, 2007 Correspondence to the EPA). The EPA did not object to the receipt of this information. By failing to object to the receipt of this information (as with the innumerable other communications from RDD since November of 2006), the EPA has implicitly accepted RDD's actions and role as equitable permittee, as the legal owner of the Facility and the Permits.

Such new information, as detailed above, including the EPA's actions subsequent to the close of the comment period, raises substantial new questions regarding the propriety of the EPA's decision to terminate the Permits based solely on EDS' alleged violations of the Permits, while ignoring fully RDD's actions and role as it relates to the Permits. Therefore, the Administrator should extend and/or re-open the comment period to provide for full consideration of these substantial new questions.

C. The EPA should re-open the comment period to allow for full and fair consideration of all relevant factors relating to the Permits at issue to avoid an arbitrary and capricious decision.

The final determination of the EPA with respect to termination of the UIC permits for the Facility must be supported by the agency record after consideration of all relevant factors. The Safe Drinking Water Act, 42 U.S.C. §300f, *et seq.*, pursuant to which the EPA has promulgated regulations for the UIC Program, provides for judicial review of any final agency action by the Administrator of the EPA. 42 U.S.C. §300j-7(a)(2). A final decision of an administrative agency will be held unlawful and set aside where the agency's decision is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706; *Southwestern Pa. Growth Alliance v. Browner*, 121 F.3d 106, 111 (3d Cir. 1997); *W.R. Grace & Co. v. United States EPA*, 261 F.3d 330, 338 (3d Cir. 2001). In applying the arbitrary and capricious standard, the court determines whether the EPA "considered the relevant factors and

articulated a rational connection between the facts and the choice made." *Southwestern Pa. Growth Alliance*, 121 F.3d at 111. The court will overturn or remand an agency decision to the EPA if "the record before the agency does not support the agency action, if the agency has not considered all relevant factors, or if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it." *C.K. v. N.J. Dep't of Health & Human Servs.*, 92 F.3d 171, 182 (3d Cir. 1996), quoting *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985) (emphasis added).

As the basis provided for the EPA's decision to terminate the Permits does not consider RDD's highly relevant and significant role and actions relating to the Permits at issue, it is impossible for the EPA to make a decision based on all relevant factors in the record before it. The EPA is required to consider RDD's actions and its legal and equitable interests in the Facility and the Permits, and is required to elicit and respond to comments from the public on its decision to terminate the Permits. As the public has not been provided a full opportunity to comment on all relevant facts, and as recent information received and actions taken by the EPA raise substantial new questions relating to the Permits at issue, the Administrator should extend and/or re-open the comment period to allow full public participation in its decision by consideration of the very relevant and significant role of RDD as it relates to the Permits.

CONCLUSION

For these reasons, the PFRS and RDD respectfully request that:

- A. The Regional Administrator exercise her discretion in this matter and, based on the information provided and consideration of the relevant factors, extend and/or re-open the public comment period to allow for additional public comments for a period of sixty (60) days for the purpose of addressing the significance of RDD's actions and equitable and

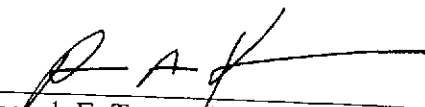
legal interests relating to the Permits at issue, including but not limited to, the facts and information submitted in the PFRS and RDD's public comment and this request to re-open the public comment period and the subsequent factual circumstances relating to RDD as the equitable and legal owner of the Permits; and

- B. The Regional Administrator accept and include in the administrative record this Request to Extend and/or Re-Open the Public Comment Period as a supplemental comment on the EPA's Notice of Intent to Terminate Permits.

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 PFRS and RDD

Date: September 11, 2007

E



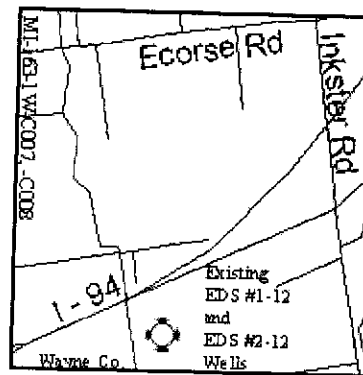
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

UNDERGROUND INJECTION CONTROL (UIC) PROGRAM
PERMITS #MI-163-1W-C007 and #MI-163-1W-C008
FACT SHEET

Environmental Disposal Systems, Inc.,
Class I Commercial Hazardous Wells #1-12 and #2-12 in Wayne County, Michigan

Introduction

The United States Environmental Protection Agency (U.S. EPA) has tentatively decided to terminate the permits issued to Environmental Disposal Systems, Inc., (EDS) of Birmingham, Michigan to operate two Class I commercial injection wells located on Citrin Drive in Romulus, Wayne County, Michigan for the disposal of hazardous liquid waste. U.S. EPA's notice of intent to terminate is provided pursuant to 40 C.F.R. §§ 144.40 and 124.5(d)(1).



Facility Background and Operation

Under permits issued by U.S. EPA on September 6, 2005, EDS has used these Class I commercial hazardous waste injection wells for the disposal of hazardous waste waters from a variety of sources. These waste waters have included dilute acids, spent solvents, and landfill leachates, as well as a variety of non-hazardous wastes. The construction of the wells was completed in March of 2002 and meets the regulatory criteria of 40 Code of Federal Regulations (CFR) § 146.12. On March 16, 2004, U.S. EPA granted EDS an exemption from the Resource Conservation and Recovery Act (RCRA) land disposal restrictions for injection of hazardous wastes. On [date] U.S. EPA provided written authorization for EDS to inject waste into the wells, based in part on a determination that EDS has obtained all necessary federal and state permits to operate the wells. The permits extended for a ten (10) year period, unless terminated.

On October 23, 2006, while witnessing a mechanical integrity test, a Michigan Department of Environmental Quality (MDEQ) inspector noticed a leak in the surface piping of one of the wells. On October 25, 2006, MDEQ required the facility to shut down due to the leak. U.S. EPA conducted an inspection on November 2 and 3, 2006, and identified numerous violations of the conditions of the permits. U.S. EPA conducted a second inspection on December 14-15, 2006.

On November 7, 2006, without notice to U.S. EPA, EDS signed agreements transferring ownership of the facility. As of that date, EDS abandoned all interest in, and operations at, the wells.

Intent to Terminate a Permit:

In accordance with the provisions of the Safe Drinking Water Act, as amended (42 U.S.C. § 300f *et seq.*, commonly known as the SDWA) and its implementing regulations, the U.S. EPA proposes to terminate EDS's permits for the injection wells. As provided in 40 C.F.R. § 44.40(a) and in condition I.B.1 of the permits, U.S. EPA intends to terminate the permits due to EDS's noncompliance with numerous provisions of the permits. The violations include noncompliance with the following conditions (which appear in both permits):

- 1) I.E.7. Duty to Provide Information - The permittee shall furnish to the Director, within a time specified, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request within a time specified, copies of records required to be kept by this permit.

U.S. EPA issued a written request for information to EDS on January 12, 2007, in order to determine, among other things, whether cause exists for modifying, revoking and reissuing, or terminating the permits, or to determine compliance with the permits. EDS's response was due by March 4, 2007, but EDS has not responded. EDS's lack of cooperation severely handicaps U.S. EPA's ability to carry out its regulatory responsibilities.

- 2) I.E.8. Inspection and Entry - The permittee shall allow the Director or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

I.E.9. Records

- (a) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation and copies of all reports required by this permit for a period of at least five years from the date of the sample, measurement or report.

At the time of the U.S. EPA inspection on November 2-3, 2006, a U.S. EPA inspector asked to review calibration and continuous monitoring records for the wells. EDS did not provide the requested records to the U.S. EPA inspector. EDS's lack of cooperation severely handicaps U.S. EPA's ability to carry out its regulatory responsibilities.

3) I.E.9. Records

- (a) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation and copies of all reports required by this permit for a period of at least five years from the date of the sample, measurement or report.

During the U.S. EPA inspection on December 14-15, 2006, U.S. EPA inspectors were provided with some continuous monitoring records for Well #1-12 and Well #2-12. Several weeks of continuous monitoring records were not provided to the U.S. EPA inspectors and were not retained by EDS. This lack of cooperation severely handicaps U.S. EPA's ability to carry out its regulatory responsibilities.

- 4) I.I.1. Financial Responsibility - The permittee shall maintain financial responsibility and resources to comply with closure and post-closure requirements of this permit, in a manner consistent with 40 C.F.R. §§ 144.52 (a)(7), 144.60 through 144.70, and 146.73. A copy of the approved financial assurance mechanism for closure costs is in Part III(B) of this permit. The permittee shall update this mechanism to include post-closure costs before injection commences.

- (b) Pursuant to 40 C.F.R. §§ 144.62(b) and 146.73, the permittee must adjust the cost estimate of closure and post-closure for inflation within 30 calendar days after each anniversary of the first estimate. The permittee shall follow the method described in 40 C.F.R. §144.62(b) or other method approved by the Director.

EDS provided the first cost estimate for closure on May 5, 2004, and the first cost estimate for post closure on January 21, 2003. The adjusted cost estimates were due on June 4, 2005, and February 20, 2004, respectively. EDS did not adjust either cost estimate. EDS's failure to adjust the cost estimates for closure and post-closure for inflation compromises the assurance that funds will be available for the proper plugging, abandonment, and post-closure care of the wells.

- 5) II.B.4. Warning and Shut-off System - The permittee shall install an automatic warning and automatic shut-off system prior to the commencement of injection...

A trained operator must be on site at all times during operation of the well.

On October 22-23, 2006, EDS injected overnight with no trained deep well operator on site. This conduct circumvents the safety precautions that are required by the permits.

- 6) II.B.4. Warning and Shut-off System - The permittee shall install an automatic warning and automatic shut-off system prior to the commencement of injection...

The permittee must test the warning system and shut-off system prior to receiving authorization to inject, and at least once every twelfth month after the last approved demonstration. These tests must involve subjecting the system to simulated failure conditions and must be witnessed by the Director or his or her representative.

U.S. EPA inspectors observed a successful demonstration of the automatic warning and shut-off system on June 30, 2004. The next demonstration was on June 8, 2006. EDS did not test the system within 12 months of the June 30, 2004 demonstration. This conduct circumvents the safety precautions that are required by the permits.

- 7) II.C.4. Ambient Monitoring - At least every twelfth month, the permittee shall, pursuant to 40 C.F.R. §146.68(e), monitor the pressure buildup in the injection interval, including, at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve. The permittee shall submit plans for this testing at least 30 days before the testing is planned, and is prohibited from performing the testing unless the Director has given written approval.

The first 12-month period after the issuance of the permits ended on September 5, 2006. EDS did not conduct an ambient reservoir pressure test, nor submit testing procedures to U.S. EPA for approval, within 12 months of the issuance of the permits. EDS's failure to test for reservoir pressure prevents U.S. EPA from anticipating the initiation or propagation of fractures in the confining formations that, if present, may act as conduits for waste to migrate to and contaminate an underground source of drinking water.

8) II.D. REPORTING REQUIREMENTS (and III.A and III.E)

The permittee shall submit all required reports to the Director at the following address no later than the end of the month following the reporting period. Monitoring reports under Part II(D)(1), (2), and (3) are not required until the initial authorization to inject has been granted or otherwise required by the Director:

United States Environmental Protection Agency
Region 5, WU-16J
77 West Jackson Blvd.
Chicago, Illinois 60604-3590
ATTN: UIC Branch, DI Section

2. Quarterly Reports - The permittee shall report the following at least every quarter. Quarterly reporting periods shall begin on the first day of January, April, July, and October of each year:
 - (a) Results of the injection fluid analyses specified in Parts III(A) and (E) of this permit, if applicable. In reporting fluid analyses, the permittee shall identify the waste components of the waste stream by their common name, chemical name, structure and concentration, or as approved by the Director. Laboratory reports shall be submitted with the first monthly monitoring report following the close of the quarterly reporting period;
 - (b) The results of the continuous corrosion monitoring as stipulated in Part II(C)(5) of this permit;
 - (c) Any quarterly analyses of ground water monitoring wells at this facility; and
 - (d) Any other monitoring required on a quarterly basis.

3. Annual Reports - The permittee shall report the following at least every twelfth month from the effective date of this permit:
 - (a) Results of the injection fluid analyses specified in Part III(A) and (E) of this permit, and the approved Waste Analysis Plan as recorded in the permit file for this permit. In reporting fluid analyses, the permittee shall identify the waste components of the waste stream by their common name, chemical name, structure and concentration, or as approved by the Director. This report must include statements showing that the permittee has met the requirements of Part I(E)(10), Part II(B)(2), and Part II(C)(3) of this permit.
 - (b) Results of pressure fall-off testing required by 40 C.F.R. §146.68(e) and of other annual requirements of the Groundwater Monitoring Plan which is a part of the permit file for this permit.

EDS was late in submitting a quarterly report for the quarter ending March 31, 2006 and did not submit a quarterly report for the quarter ending September 30, 2006. In addition, EDS did not submit an annual report for the period of September 6, 2005, through September 5, 2006, which was due October 6, 2006. EDS's lack of cooperation severely handicaps U.S. EPA's ability to carry out its regulatory functions.

Public Comments

Copies of the notice of intent to terminate and administrative record for this permit action are available for public review between 9 a.m. and 4 p.m. at the address listed below. It is recommended that you telephone the permit writer, Dana Rzeznik, at (312) 353-6492 before visiting the Region 5 office:

U.S. Environmental Protection Agency (WU-16J)
UIC Branch (Attn: Dana Rzeznik)
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

The public comment period for the notice of intent to terminate permits runs from April 23, 2007 to June 8, 2007. A public meeting and a hearing have been scheduled for May 23, 2007 at the Crowne Plaza Hotel 8000 Merriman Road, Romulus, Michigan. The informational meeting will take place from 6 pm until 7 pm and will be followed by the public hearing from 7 pm until 9 pm. You may make your comments during the public hearing or directly to Ms. Rzeznik during the comment period.

Part C of the SDWA specifically mandates regulation of the underground injection of fluids through wells to assure that the quality of the underground sources of drinking water is protected. Section 1422 of the SDWA requires the U.S. EPA to administer underground injection control (UIC) programs in the states which do not have approved UIC programs. Michigan has not acquired primacy over the UIC program for Class I injection wells, therefore U.S. EPA is administering the permit program pursuant to 40 CFR §147.1151.

In accordance with 40 CFR §124.19, any person who files comment on the notice of intent to terminate permits or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the final decision on termination of the permits.

Such a petition must include a statement of the reasons supporting review of the decision, including a demonstration that the issue(s) being raised for review were raised during the public comment period (including the public hearing) to the extent required by these regulations. The petition should, when appropriate, show that each condition being appealed is based upon either, (1) a finding of fact or conclusion of law which is clearly erroneous, or (2) an exercise of discretion or an important policy consideration which the Board should, in its discretion review.

CLARK HILL PLC
212 E GRAND RIVER
LANSING MI 48906

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Please fax this form **along with any changes** of your company's information to: 201-636-6064 OR 800-220-8155 .
This form can also be emailed or eCopied to SOLUTIONSEACONTRACTS@SOLUTIONS.CANON.COM .

If you have any questions, please contact us by calling Erlinda P Aviles at 201/636-6819 Thank you.

CLARK HILL PLC

Phone: 517-318-3031 Fax: 5173183099

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