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ENVIR. APPEALS BOARD

MAYER • BROWN

Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637

Main Tel (312) 782-0600
Main Fax (312) 701-7711
www.mayerbrown.com

Gregory L. Berlowitz
Direct Tel (312) 701-8491
Direct Fax (312) 706-8730
gberlowitz@mayerbrown.com

August 22, 2008

BY OVERNIGHT DELIVERY

US Environmental Protection Agency
Eurika Durr
Clerk of the Board, Environmental Appeals Board
1341 G Street, NW, Sixth Floor
Washington, DC 20005

Re: In Re: Beeland Group, LLC, Beeland Disposal
Well #1, Appeal No. 08-02

Dear Ms. Durr:

Enclosed please find an original and six copies of Intervenor/Respondent Beeland Group LLC's Brief Opposing FJR's Motion for Leave to File Reply Brief and Response.

Please return one file stamped copy to me in the enclosed self addressed postage paid envelope.

Thank you for your assistance.

Sincerely,



Gregory L. Berlowitz

cc: Service List

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

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ENVIR. APPEALS BOARD

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

Appeal No. UIC 08-02

**Intervenor/Respondent Beeland Group LLC's Brief Opposing
FJR's Motion for Leave to File Reply Brief and Response**

Permittee and Intervenor-Respondent Beeland Group, LLC ("Beeland"), by and through its attorneys, Mayer Brown LLP and Zimmerman, Kuhn, Darling, Boyd, Quandt and Phelps, PLC, opposes the Motion for Leave to File Reply Brief filed by Star Township, Antrim County, and Friends of the Jordan River (collectively, "Petitioners"). In support of its opposition, Beeland states as follows.

Background

Petitioners filed their Petition for Review, Petition No. 08-02, on March 9, 2008. Both U.S. Environmental Protection Agency ("EPA), Region 5 ("Region") and Respondent/Intervenor Beeland Group, LLC ("Beeland") filed briefs opposing the Petition. On May 23, 2008, the Board held that a determination as to Petition 08-02 would be made at a later date. *See In re Beeland Group, LLC*, UIC Appeal Nos. 08-01 and 08-03, slip op. at 3 (EAB, May 23, 2008) (Order Denying Review). In a subsequent Order Establishing Briefing Schedule, the Board ordered EPA and Beeland to file briefs responding to the merits of Petition 08-02. *See In re Beeland Group, LLC*, UIC Appeal No. 08-02 (EAB, May 23, 2008) (Order Establishing Briefing

Schedule). EPA filed its brief responding to the petition on June 13, 2008, and Beeland filed its response brief on June 20, 2008. Petitioners now seek leave to reply to Beeland's response.¹

Argument

Petitioners' motion seeking leave to reply should be denied by the Board. Petitioners' motion does not meet the standard for granting the privilege of reply.

The Environmental Appeals Board Practice Manual ("Practice Manual") allows for a reply brief when two criteria are met: (1) the reply is to the permitting authority's response, and (2) such reply is necessary. Neither criteria has been met here.

First, Petitioners seek to reply to *Beeland's* response, not the permitting authority's response. The *Practice Manual* does not provide for a reply brief to the response of the permittee. Second, Petitioners have not argued that their reply brief is *necessary*. Instead, they state only that it is limited and provides clarification. Petitioners do not attempt to show that this alleged clarification is necessary, or even helpful.

Regardless, any argument of necessity would be belied by the proposed reply. Not one of Petitioners' points is germane to the core arguments raised by Beeland:

- Petitioners fail to meet the threshold requirements for review.
- Petitioners' challenge to EPA's technical decisions is misdirected. EPA's permit only allows drilling and testing of the well, with injection prohibited until Beeland satisfies a number of requirements. Petitioners cannot challenge EPA's final technical determinations when EPA has not made such determinations.
- Petitioners challenge decisions that rely on the Region's technical expertise and experience, failing to acknowledge the Board's deference to the Region on such issues.

¹ Despite the fact that the cover letter to the Board conveying Petitioners' Motion for Leave, Motion and Reply indicates that Beeland's counsel was sent copies of the Motion and Reply, Beeland's lead counsel never received them.

- Policy issues, including environmental justice concerns, raised by Petitioners do not warrant review. All evidence indicates that the Region followed the proper guidance and considered relevant information, including the community's income level.
- Petitioners' efforts to reframe its arguments and raise new arguments in its reply brief are improper. Petitioners may not attempt to save their Petition through a reply brief.

Instead, Petitioners have raised only tangential issues. Accordingly, Beeland stands by its existing filings, which explain why the Petition for Review should be denied, and requests that Petitioners' current motion be denied.


Conclusion

For these reasons, Beeland asks that the Board deny Petitioners' Motion for Leave to File Reply Brief. To the extent this Board grants the motion, Beeland asks that this Board consider this Response in its decision on whether to grant the Petition for Review.

Respectfully Submitted:

Dated: August 22, 2008

Mayer Brown LLP



By: Susan E. Brice
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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Intervenor/Respondent Beeland Group LLC's Brief Opposing FJR's Motion for Leave to File Reply Brief and Response** were served by United States First Class Mail on the following persons, this 22nd day of August, 2008:

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

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

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

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

I have also filed the foregoing **Intervenor/Respondent Beeland Group LLC's Brief Opposing FJR's Motion for Leave to File Reply Brief and Response** and this **Certificate of Service** with the Clerk of the Environmental Appeals Board, by overnight delivery service, on this 22nd day of August, 2008 to:

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



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

Dated: August 22, 2008