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May 13, 2008

***Via UPS Next Day Air***

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

**In Re: Beeland Group, LLC, Beeland Disposal  
Well #1, UIC Permit Number MI-099-11-0001  
UIC Appeals Nos. 08-01, 08-02, 08-03**

RECEIVED  
U.S. E.P.A.  
2008 MAY 14 AM 10:11  
ENVIR. APPEALS BOARD

Dear Clerk:

Enclosed please find Petitioners Star Township, Antrim County, and Friends of the Jordan River's Response to Surreply of Intervenor/ Respondent Beeland Group LLC for Review Nos. 08-01, 08-02, and 08-03.

Thank you for your attention to this matter.

Very truly yours,

**TOPP LAW PLC**

  
Susan Hlywa Topp

SHT/mc

Enclosures

cc w/encl.:

Stuart P. Hersch  
Charles H. Koop  
Roger W. Patrick  
Susan E. Brice & Gregory L. Berlowitz  
Joseph E. Quandt & Gina A. Gozzer  
Allen & Trisha Feize

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

ENVIR. APPEALS BOARD

In Re: UIC Appeal Nos. 08-01, 08-02, 08-03

Beeland Group, LLC

UIC Permit No. M1-009-11-0001

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**Petitioners Star Township, Antrim County, and Friends of the Jordan River's Response to Surreply of Intervenor/Respondent Beeland Group LLC for Review Nos. 08-01, 08-02, and 08-03**

Petitioners Star Township, Antrim County, and Friends of the Jordan River (FOJR), by and through the law firm of Topp Law PLC, request that the Environmental Appeals Board (EAB) deny Intervenor/Respondent Beeland Group LLC's (Beeland) motion for leave to file an Instanter Surreply.

On May 6, 2008, Intervenor/Respondent Beeland Group LLC motioned for leave to file an instanter surreply to the reply of FOJR. The sole grounds for this motion is that the Petitioners' reply addresses "an issue raised for the first time by the Petitioners in their reply briefs." *Beeland's Motion for Leave*, p. 1. Leave should be denied, as Petitioners did raise these issues in their initial Petition.

Beeland correctly states that this Board has previously granted leave to file surreplies where such a filing was necessary. *See In re: District of Columbia Water and Sewer Authority*, NPDES Appeal Nos. 05-02, 07-10, 07-11, 07-12, slip op. at 1-2 (EAB, Aug. 3, 2007). Because surreplies are not addressed in the EAB Manual, the Board utilizes the reply standard for considering surreplies. *Id.* at 1. This standard requires a showing that the reply is necessary. *See EBA Practice Manual* § III.D.5. Further, timeliness of the reply is a factor in the Board's consideration. *Id.*

In the present case, Beeland contends that Petitioners failed to raise the fact that the UIC permit is part of a larger CERCLA removal action in their Petition. However, in the Petition it is contended that the EPA Responses to Comments, including *Bay Harbor, Comment 15; Monitoring and Legal Issues, Comment 18* on CERCLA, were unsupported or erroneous. *Petition*, p 18. Additionally, CERCLA issues were raised numerous times throughout the public

comment period. For example, Star Township specifically stated that the activities allowed under the permit would violate CERCLA. See *Exhibit B to Petition*, which includes the Covenant to Sue issued under CERCLA. Further, the EPA specifically responded to public comments on CERCLA in the EPA's response to public comments. For example, see *Responses to Public Comment: Bay Harbor, Comment 15; Monitoring and Legal Issues; Comment 12, Comment 17*.

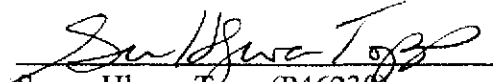
The Petition also states that Beeland failed to submit sufficient data on the quality of the injectate fluids, existing reservoir conditions and the effect of the injectate on the surrounding material and fluids. See *Petition*, p 12-13, A thru R. These items, in combination with the other arguments in the Petition, challenge the effectiveness and reliability of the proposed disposal well in light of the other available alternative remedies. Petitioners challenge the potential entry of contamination into groundwater and surface water, and that human exposure to the contamination will not be precluded. Petitioners also state that the transport of the leachate, disposal and the injection via the well will result in an unreasonable risk of harm when alternatives are available. All of these issues are CERCLA considerations. Petitioners specifically challenge the EPA's responses to these issues as erroneous.

The more detailed argument in Petitioners' reply regarding CERCLA was not a newly raised issue, but rather a direct reply to Beeland's responses. Thus, Beeland had an opportunity to respond to these issues in its initial response and has failed to demonstrate why a surreply to Petitioners' reply is now necessary. For this same reason, Beeland cannot demonstrate that the surreply is timely, since it had ample opportunity to address these issues in its Response to the initial Petition.

For these reasons, Petitioners ask that this Board deny Beeland's motion.

Respectively submitted,

**Topp Law, PLC**

A handwritten signature in cursive script, appearing to read "Susan Hlywa Topp", written over a horizontal line.

Susan Hlywa Topp (P46230)  
Attorney for Petitioners, Star Twp.,  
Antrim Co. & Friends of the Jordan

Dated: May 13, 2008

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

In Re:

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

Beeland Group, LLC

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of Petitioners Star Township, Antrim County, and Friends of the Jordan River's Response to Surreply of Intervenor/ Respondent Beeland Group LLC for Review Nos. 08-01, 08-02, and 08-03 were sent to the following persons in the manner indicated:

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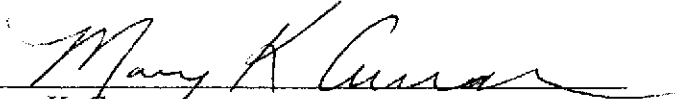
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Dated: May 13, 2008

  
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Mary K. Curran