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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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ENVIR. APPEALS BOARD

In re:)
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Environmental Disposal Systems, Inc.) Appeal No. UIC 07-03
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)
UIC Permit Nos. MI-163-1W-C007 and)
MI-163-1W-C008)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 5
RESPONSE TO PETITION FOR REVIEW

On November 21, 2007, the Police and Fire Retirement System of the City of Detroit; RDD Investment Corp.; and RDD Operations, LLC (collectively "RDD") filed a petition with the Environmental Appeals Board ("Board") pursuant to 40 C.F.R. § 124.5(b) seeking review of an October 22, 2007, decision by the United States Environmental Protection Agency, Region 5 ("U.S. EPA") to terminate two Underground Injection Control ("UIC") permits issued to Environmental Disposal Systems, Inc. ("EDS"). For the reasons explained below, the U.S. EPA recommends that the Board deny RDD's Petition for Review.

I. SUMMARY

RDD's appeal challenges the U.S. EPA's decision to terminate EDS's UIC permits. RDD contends that the U.S. EPA's decision to terminate was based on: (1) "clearly erroneous" findings of fact or conclusions of law; or (2) an inappropriate exercise of discretion where important policy questions are involved, which the Board, in its discretion, should review.

40 C.F.R. §144.40(a)(1) clearly provides that the U.S. EPA may terminate a permit during its term if the permittee does not comply with *any* condition of the permit. RDD does not dispute that EDS violated several conditions of its permits, and then abandoned its interest in the permitted facility. The U.S. EPA appropriately decided to terminate the permits based on (1) facts supported by the administrative record; (2) the plain language of the regulations which authorizes permit termination for failure to meet permit conditions; and (3) review of comments received from RDD and others. The U.S. EPA appropriately exercised its broad regulatory discretion, after considering and responding to public comments on its proposed action, and made a rational decision supported by the record. Because RDD's petition does not raise any significant factual or legal issues and does not raise any important policy questions, there is no basis for the Board to review the U.S. EPA's termination decision under 40 C.F.R. § 124.5(b).

II. STATEMENT OF FACTS

On September 6, 2005, the U.S. EPA issued UIC permits to EDS under the Safe Drinking Water Act to operate two Class I commercial hazardous waste injection wells in Romulus, Michigan. [Exhibit A (U.S. EPA Fact Sheet), p.1; Exhibit B (U.S. EPA inspection report dated Jan. 8, 2007), p. 1.] EDS began operations at the facility in December, 2005. [Exhibit B, p. 1.]

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. The U.S. EPA conducted an inspection on November 2 and 3,

2006, and identified numerous violations of the conditions of the federal UIC permits.

[Exhibit A, p.1; Exhibit C (Letter from MDEQ to Douglas Wicklund regarding well leak, dated Oct. 25, 2006); Exhibit D (U.S. EPA inspection report dated Nov. 15, 2006).]

Without notice to the U.S. EPA, on November 7, 2006, EDS signed a deed transferring ownership of the facility to RDD and an agreement purporting to assign RDD “all rights, title and interest” in the permits. As of that date, EDS abandoned all interest in, and operations at, the wells. [Exhibit A, p.1; Exhibit E (Letter from Ronald King to Leslie Patterson transmitting documents transferring EDS property to RDD, dated Jan. 22, 2007.)]

On November 20, 2006, based on its earlier inspection, the U.S. EPA issued EDS a Notice of Noncompliance and a Request for Information. [Exhibit F (Notice of Noncompliance from U.S. EPA to Douglas Wicklund of EDS dated Nov. 20, 2006); Exhibit G (Request for Information from U.S. EPA to Douglas Wicklund of EDS dated Nov. 20, 2006.)]

The U.S. EPA was not informed of RDD’s role as the new owner and operator, of the facility or of EDS’s departure, until it received correspondence from RDD dated November 28, 2006, partially responding to information requests directed to EDS. [Exhibit H (U.S. EPA Response to Comments), p. 4; Exhibit I (Letter from Paul Wonsack of RDD informing U.S. EPA and MDEQ about computer malfunction, dated Nov. 28, 2006.)]

The U.S. EPA conducted a second inspection confirming the violations on December 14-15, 2006. On January 12, 2007, the U.S. EPA issued a written request for

information to EDS 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 never responded to the information request, although RDD (the primary investor in EDS) provided some of the information requested and began addressing the operational issues identified in the inspections. [Exhibit A, pp. 1-2; Exhibit B; Exhibit J (Request for Information from U.S. EPA to Douglas Wicklund, dated Jan. 12, 2007); Exhibit H, pp. 3-4.]

On February 28, 2007, RDD and Environmental Geo-Technologies (“EGT”) applied to the U.S. EPA, seeking to transfer EDS’s federal UIC permits for the Romulus facility to EGT. [See Exhibit 21 to Public Comments of RDD -- included as Exhibit 21 to Petition for Review.] RDD and EGT later provided supplemental information requested by the U.S. EPA. [See, e.g., Exhibits 26-28 to Public Comments of RDD -- included as Exhibits 26-28 to Petition for Review.]

Meanwhile, after several months of consideration, on April 12, 2007, the U.S. EPA issued a Notice of Intent to Terminate EDS’s UIC permits based on EDS’s numerous UIC permit violations, and a fact sheet providing further information about the basis for the proposed decision. (A number of those violations were caused or aggravated by EDS’s abandonment of the operation.) [Exhibit K (Letter to EDS transmitting notice to terminate the UIC permits); Exhibit A, pp. 2-5.] On the same day, the U.S. EPA issued a letter to EGT and RDD informing them that it would temporarily defer consideration of the permit transfer request. The U.S. EPA explained that it was deferring consideration of the permit transfer request because, if finalized, the proposed permit

termination “would render [the] permit transfer request moot.” [Exhibit 33 to Public Comments of RDD – included as Exhibit 33 to Petition for Review.]

The U.S. EPA’s Notice of Intent to Terminate the permits established a public comment period extending through June 22, 2007. The U.S. EPA also held a public hearing on the proposed permit termination on May 23, 2007. Roughly 100 persons attended, including representatives of RDD and EGT. [Exhibit L (Public hearing transcript); Exhibit H, p. 1.] At the public hearing and in written comments, RDD and EGT argued that the permit should not be terminated because RDD had corrected many of the violations at the facility and because EGT proposed to take over and operate the facility. All other comments supported termination of the permits. [Exhibit L, pp. 12-64; Exhibit H, pp. 1-9.]

On October 22, 2007, after considering and preparing a written response to the public comments, the U.S. EPA issued its final decision to terminate EDS’s permits. [Exhibit M (Notice of Permit Termination).] The U.S. EPA noted that although RDD had since taken steps to repair and maintain the facility, EDS’s violations were the result of:

(1) the permittee running into significant financial and operational problems at the facility within less than 10 months of operation which led to cutting corners and ignoring regulatory requirements; and (2) the permittee deciding to abandon all interest in the facility and in its permit obligations without any notice to U.S. EPA. This level of disregard for its regulatory obligations warrants severe sanctions against the permittee. In light of these circumstances, U.S. EPA concluded that particularly careful and extensive scrutiny should accompany any decision to reopen the facility under a new owner/operator. Such scrutiny appropriately can be given to any new applications to acquire permits to reopen the facility in the future.

This is a uniquely troubling case because the permittee abandoned all interest in the facility without informing U.S. EPA and with no intention of remaining in place to address compliance issues.

[Exhibit H, pp. 5-6.]

III. STANDARD OF REVIEW

Under its regulations, the Board must decline review of the U.S. EPA's permitting decision unless it finds that the U.S. EPA's decision was based on a "clearly erroneous" finding of fact or conclusion of law, or "[a]n exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review." 40 C.F.R. § 124.19(a). The preamble to 40 C.F.R. § 124.19 states that "this power of review should only be sparingly exercised" and that "most permit conditions should be finally determined at the Regional level."¹ 45 Fed. Reg. 33,412 (1980). See In re Rohm and Haas Company, 9 E.A.D. 499, 503-04 (EAB 2000); In re Federated Oil & Gas of Traverse City, Michigan, 6 E.A.D 722, 725 (EAB 1997). The petitioner bears the burden of proving that review is warranted. 40 C.F.R. § 124.19(a). See also In re Federated Oil & Gas of Traverse City, Michigan, 6 E.A.D at 725; In re Rohm and Haas Company, 9 E.A.D. at 504.

¹ The U.S. EPA's regulations apply both to the U.S. EPA and to States with approved UIC programs, and Parts 124 and 144 frequently use the generic term "Director" to describe the U.S. EPA Regional Administrator or the State agency director with specific UIC program oversight in any one state. See 40 C.F.R. §§ 124.2, 144.3 ("Definitions" (*Director*)). Because the U.S. EPA retains UIC oversight in the State of Michigan, where appropriate the summary of the relevant regulatory text replaces the word "Director" with the term "U.S. EPA." Moreover, the Regional Administrator's authority to deny, transfer, modify, revoke, reissue and terminate UIC permits has been duly delegated to the Director, Water Division, U.S. EPA Region 5 under Regional Delegation 9-24 (February 1987), as authorized by U.S. EPA Headquarters Delegation 9-24. (June 8, 1984).

The regulations also provide that in order to preserve an issue for appeal before the Board, the petitioner must first demonstrate that the issue was raised during the comment period as required by 40 C.F.R. §124.13(a) and 124.19(a). See In re Dominion Energy Brayton Point, LLC, 12 E.A.D. 490, 509-10 (EAB 2006). Whether or not a petitioner raised an issue during the comment period is a threshold question that the Board considers prior to granting review. Id. at 509 n. 29.

IV. ARGUMENT

A. The U.S. EPA's Decision to Terminate the Permits Is Supported by the Record and the Regulations.

40 C.F.R. §144.40 clearly provides that the U.S. EPA may terminate a permit during its term *for noncompliance by the permittee with any condition of the permit*. Indeed, in a previous Board decision concerning the initial permitting of this facility, the Board specifically noted that the permits can be terminated for noncompliance with permit conditions, assuring regulatory accountability. In re Environmental Disposal Systems, Inc., 12 E.A.D. 254, 283 (EAB 2005).

1. The Facts of Record Support Termination of the Permits.

The Fact Sheet accompanying the U.S. EPA's Notice of Intent to Terminate the permits outlined the essential, undisputed facts establishing EDS's permit violations:

- Section I.E.7. of both permits² required EDS to furnish any information the U.S. EPA requested "to determine whether cause

² Permits MI-163-1W-C007 and MI-163-1W-C008 are essentially identical. The former governs well # 1-12 and the latter governs well #2-12. [Exhibit N (Permit MI-163-1W-C007); Exhibit O (Permit MI-163-1W-C008).] In citations to the relevant portion of the permits, they will therefore be referred to jointly.

exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit” and to furnish “upon request within a time specified, copies of records required to be kept by this permit.” [Permits, p. 5.]

The 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. The request included provision of copies of records required to be kept by the permit. [Exhibit J, pp 1-2; Exhibit A, p. 2.] EDS’s response was due March 4, 2007, but EDS never responded. [Exhibit A, p.2; RDD Brief at 16.] RDD has not disputed these facts. In fact, in a January 30, 2007, letter to the U.S. EPA, RDD indicated that some of the requested records (continuous monitoring chart recordings, electronic records for continuous monitoring of low rate and injectate pH, dates and hours worked by deep well operators) did not exist. [Exhibit P (Letter from RDD to Leslie Patterson re response to NOV, dated Jan. 30, 2007), pp. 2-3.]

- Section I.E.8. of both permits required EDS to provide U.S. EPA inspectors with access to any records that must be kept under the conditions of the permits and Section I.E.9. of both permits required EDS to retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation. [Permits, pp. 5-7.]

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. [Exhibit A, p.2; Exhibit B, pp. 4-5, 7.] RDD has not disputed these facts. In fact, in a January 30, 2007, letter to the U.S. EPA, RDD indicated that some of the requested records (continuous

monitoring chart recordings, electronic records for continuous monitoring of low rate and injectate pH) did not exist. [Exhibit P, pp. 2-3.]

- Section I.E.9. of both permits provides that EDS must 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 the permit for a period of at least five years. [Permits, pp.6-7.]

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. [Exhibit A, p. 3; Exhibit B, pp. 4-5.] RDD has not disputed these facts. As previously noted above, RDD acknowledged that some of the required records (continuous monitoring chart recordings, electronic records for continuous monitoring of low rate and injectate pH) did not exist. [Exhibit P, pp. 2-3.]

- Section I.I.1. of both permits required EDS to adjust the cost estimate of closure and post-closure for inflation within 30 calendar days after each anniversary of its first estimate. [Permits, pp. 13-14.]

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. [Exhibit A, p. 3; Exhibit Q (Notice of Intent to File letter sent to EDS by U.S. EPA on Feb. 22, 2007), p.2.] RDD has not disputed these facts.

- Section II.B.4. of both permits required EDS to have a trained operator on site at all times during operation of the well. [Permits, p. 20.]

On October 22-23, 2006, EDS injected materials overnight with no trained deep well operator on site. [Exhibit A, p. 3; Exhibit B, p. 6; Exhibit D, p.9.] RDD has not disputed these facts.³

- Section II.B.4. of both permits required EDS to test the warning system and shut-off system at least once every twelve months. [Permits, p. 20.]

The 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. [Exhibit A, p.4; Exhibit Q, p.2.] RDD has not disputed these facts.

- Section II.C.4. of both permits required EDS to monitor pressure buildup in the injection interval every 12 months. [Permits, p. 21.]

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, or submit testing procedures to the U.S. EPA for approval, within 12 months after the U.S. EPA issued the permits. [Exhibit A, p.4; Exhibit Q, p.2.] RDD has not disputed these facts.

- Sections II.D., III.A and III.E of both permits required EDS to submit: (a) quarterly reports including results of the injection fluid analyses, results of continuous corrosion monitoring, and quarterly analyses of ground water monitoring wells; and (b) annual reports including detailed results and certifications of the injection fluid analyses, results

³ In its petition, for the first time, RDD refers to EDS's failure to have trained operators on site during injection as an "alleged" violation. It offers no information, however, refuting the facts establishing the permit violations. In fact, in its public comments RDD appeared to acknowledge the violations. [Exhibit R (Public Comments of RDD), p.37.] To the extent RDD now seeks to contest the underlying facts of EDS's violations, it cannot do so because it failed to raise the issue during the public comment period. "[I]n order for an issue to be raised on appeal it must have been raised with a reasonable degree of specificity and clarity during the comment period." In re Dominion Energy Brayton Point, LLC, 12 E.A.D. at 10, quoting In re Westborough, 10 E.A.D. 297, 304 (EAB 2002).

of pressure fall-off testing, and other groundwater monitoring results.
[Permits, pp. 22-24, A-1.]

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. [Exhibit A, pp. 4-5; Exhibit B, p. 4; Exhibit Q, p.2.] RDD has not disputed these facts.

In sum, there is simply no dispute by RDD that the permittee – EDS – violated numerous conditions of the permits, that EDS did not correct any of its permit violations, and that the U.S. EPA decided to terminate the permits for EDS's noncompliance.

Rather than dispute these facts, RDD argues that the U.S. EPA's decision was based on a "clearly erroneous" finding of fact because the Fact Sheet issued at the start of the comment period: (1) did not describe RDD's efforts to correct some of EDS's permit violations; and (2) included statements providing context on why EDS's monitoring and recordkeeping omissions were significant. (RDD Brief at 31-38.)

RDD's complaints ignore the fact that the U.S. EPA's findings, and the basis for its decision to terminate the permits, extend well beyond its initial Fact Sheet. To the extent RDD felt there were inaccuracies or omissions in the Fact Sheet, it was able to submit comments on those documents and urge the U.S. EPA not to terminate the permits. RDD took full advantage of the opportunity provided in the public comment period to address the characterization of the violations and facility conditions in the

U.S. EPA's Fact Sheet and Notice of Intent to Terminate. (RDD's comments, including 40 attachments, comprise a stack of paper roughly 5-1/2 inches thick. EGT's comments and attachments add roughly the same volume of material.)⁴

RDD's efforts to correct some of EDS's violations, and to thereby reduce the potential for environmental harm caused by EDS's violations, are therefore part of the factual record in this case. They are discussed and considered in the U.S. EPA's Response to Comments, and it is clear that the U.S. EPA considered RDD's actions and the current status of the facility in making its final decision to terminate the permits. [See Exhibit H, pp. 3-4 (acknowledging RDD's efforts to correct some, but not all, of EDS's violations).] RDD also contends that statements in the U.S. EPA's initial Fact Sheet placing the importance of EDS's violations in context were clearly mistaken. In particular, RDD cites statements that: (1) EDS's failure to cooperate in maintaining and providing required information "severely handicaps U.S. EPA's ability to carry out its regulatory responsibilities." [Exhibit A, pp.2-3]; and (2) EDS's failure to perform annual pressure testing prevented the U.S. EPA from anticipating potential conduits for injected waste to migrate. [Exhibit A, p.4.] RDD points out that RDD had corrected many of these failures by the time the U.S. EPA issued the Fact Sheet.

⁴ While in its comments and in its petition, RDD included long "Statement of Facts" sections, many of those statements are legal conclusions rather than facts, and many are not supported by the record or not relevant. In making its decision to terminate the permits, the U.S. EPA addressed the substance of the points made in RDD's "Statement of Facts" to the extent they related to comments on the proposed permit termination. The U.S. EPA did not, and was not required to, make detailed corrections or clarifications to RDD's factual background section in responding to RDD's comments and does not concede the accuracy of RDD's statements. See In re NE Hub Partners, L.P., 7 E.A.D. 561, 582-83 (EAB 1998). Appendix A to this Response identifies some examples of

As the Response to Comments reinforced, however, while RDD's efforts may have mitigated some (but not all) of the problems caused by EDS, they do not undo the significant violations and operational problems of the permittee -- EDS. [Exhibit H, p.4.]

As the Board has consistently held, failure to monitor and report as required deprives the Agency of information that is necessary to ensure the safety of the public and the environment. Even if subsequently resumed, the failure to comply with the regulatory requirements can cause significant harm to the applicable regulatory scheme and may be grounds for imposition of significant sanctions. See, e.g., In re Advanced Electronics, 10 E.A.D. 385, 401 (EAB 2002); In re Woodcrest Mfg., Inc., 7 E.A.D. 757, 781 (EAB 1998), aff'd. sub nom. Woodcrest Manufacturing, Inc. v. U.S. EPA, 114 F. Supp. 2d 775 (N.D. Ind. 1999).

Thus, the U.S. EPA's Fact Sheet statements were correct. More importantly, however, the factual record was further clarified by the public comments and by the U.S. EPA's response to them. The U.S. EPA's decision to terminate the permits, therefore, is based on a clear and accurate factual record.

2. The Applicable Law Supports Termination of the Permits.

Despite the unambiguous language of 40 C.F.R. §144.40 stating that the U.S. EPA may terminate a permit during its term for noncompliance by the permittee with any condition of the permit, RDD argues that the U.S. EPA based its decision to terminate the permits on a clearly erroneous conclusion of law. RDD bases its argument solely on RDD's efforts to correct EDS's permit violations. (RDD's Brief at 38-40.)

Statements of Fact that are either unsupported by the record or are actually legal

RDD is essentially asking the Board to insert an “opportunity to cure” the violations into the regulatory standard even though no such provision is provided in the regulations or caselaw. Neither the regulations nor the permits state that termination is limited to current or ongoing violations. Similarly, the regulations do not draw any distinctions or set any limitations on the types of permit violations that may trigger permit termination. As the Board has recognized, “a violation of *any* permit condition is a potential ground for ... an action to terminate the permit.” In re Envotech, L.P., 6 E.A.D. 260, 274 n.19 (EAB 1996) (emphasis in original).

In addition to ignoring the plain language of the regulations, inventing an “opportunity to cure” would undermine the U.S. EPA’s enforcement program. Permittees could then avoid the consequences of their actions merely by returning to compliance before the Agency could complete termination proceedings. This approach also ignores the fundamental regulatory expectation that the permittee should always return to compliance as quickly as possible.

Therefore, the U.S. EPA’s legal conclusion that the plain language of the regulations authorizes permit termination is a sound and accurate reading of the applicable law.

B. The U.S. EPA’s Exercise of Discretion to Terminate the Permits Was Appropriate and Does Not Present Any Policy Issues Requiring Review by the Board.

RDD also argues that the Board should review the U.S. EPA’s exercise of its broad discretion to terminate the EDS permits. Specifically, RDD criticizes: (1) the facts that the U.S. EPA chose to emphasize in making its decision (RDD Brief at 40-44);

conclusions.

(2) the U.S. EPA's decision not to reopen the public comment period to allow further comment on RDD's actions at the facility (RDD Brief at 44-47); (3) the U.S. EPA's actions in working with RDD on its desire to transfer the permits to a new owner/operator while the U.S. EPA was also considering termination of those permits (RDD Brief at 47-50); and (4) the U.S. EPA's decision to defer further consideration of permit transfer after the U.S. EPA proposed instead to terminate those permits. (RDD Brief at 50-54.)

It is well established that in evaluating the Region's exercise of its discretion, the Board defers to the Region's position – and denies review -- if the Region gave due consideration to the comments it received and adopted an approach that is logical and supportable. In re NE Hub Partners, L.P., 7 E.A.D. at 568. As explained in more detail below, the U.S. EPA considered and responded to those points to the extent RDD raised them in the public comment period, and provided a clear and logical explanation for its decision to proceed with termination of the EDS permits.

1. The U.S. EPA Considered the Relevant Facts and Provided the Rationale for Its Decision.

The U.S. EPA's Response to Comments explained why it exercised its clear authority under the regulations when after less than ten months of operation, EDS violated multiple conditions of the permit and then unilaterally abandoned all interest in the facility:

Most troublingly, as outlined in RDD's comments, those violations were the result of: (1) the permittee running into significant financial and operational problems at the facility within less than 10 months of operation which led to cutting corners and ignoring regulatory requirements; and (2) the permittee deciding to abandon all interest in the facility and in its permit obligations without any notice to U.S. EPA. This level of disregard for its regulatory obligations warrants severe sanctions

against the permittee. In light of these circumstances, U.S. EPA concluded that particularly careful and extensive scrutiny should accompany any decision to reopen the facility under a new owner/operator. Such scrutiny appropriately can be given to any new applications to acquire permits to reopen the facility in the future.

The level of irresponsible behavior exhibited by the permittee distinguishes this matter from other cases where U.S. EPA has addressed regulatory violations through penalty actions rather than through permit termination. In those other cases where permit violations did not lead to termination, the permittees remained in place -- accountable and responsive to regulatory compliance issues and continuing to operate under the permit. This is a uniquely troubling case because the permittee abandoned all interest in the facility without informing U.S. EPA and with no intention of remaining in place to address compliance issues.

[Exhibit H, pp. 5-6]

After obtaining permits and authorization to inject, EDS operated the facility for less than 10 months before encountering major financial and operational problems. At that point, on November 7, 2006, EDS abandoned all interest in the facility and in its permit obligations. EDS purported to transfer its interest in the permits to RDD without following any of the permit transfer requirements in 40 C.F.R. § 144.38. U.S. EPA was not even formally informed of these developments until it received correspondence from RDD on November 28, 2006, partially responding to information requests directed to EDS. [Exhibit H, p. 4.]

In fact, RDD was aware of the depth of EDS's difficulties and its desire to abandon its responsibilities under the permits well before RDD elected to inform the U.S. EPA (after the fact) that it had assumed ownership and operational control. RDD admits that by October 19, 2006, it intended to remove EDS from control of the facility and it recognized that transfer of operations to a new entity would require prior regulatory approval. (RDD Brief at 6.) To that end, RDD negotiated an "Assignment of Permits" from EDS in an agreement entered on November 7, 2006. That agreement: (1) assigned to RDD "all rights, title and interest" in EDS's permits; and (2) required EDS to

cooperate with RDD “to facilitate and effectuate the transfer of the Permits and to seek approval of the assignments and transfers by the appropriate governmental entities”; and (3) provided EDS’s consent to RDD’s communication with those governmental entities to effectuate the transfer of the Permits.” [Exhibit E.] On that same day, RDD also obtained ownership of the facility property through a quit claim deed. [Id.]

The regulations are clear that permits may not be transferred without prior approval from the U.S. EPA. See 40 C.F.R. § 144.38. Prior approval of permit and ownership transfers is more than just a mere technicality. It is the permit that assures enforceability of all regulatory requirements and the direct accountability of the owner/operator.

However, neither EDS nor RDD made any contact with the U.S. EPA to initiate this regulatory process prior to the purported transfer of the permits on November 7, 2006. The first contact to even inform the U.S. EPA of RDD’s *existence* did not come until a letter from RDD sent three weeks after the fact. (RDD Brief at 13.) Even at that point, RDD did not seek to modify the permit to identify it as the new owner or operator of the facility. Indeed, RDD admits that it has no interest in, and no qualifications for, operating the facility. (RDD Brief at 11.)

It is undisputed that the permittee -- EDS -- deserted the facility and never did anything to correct the violations cited as the basis for termination. (See RDD Brief at 12-13, 16.) RDD nonetheless asserts that its later efforts to correct many of EDS’s violations should negate the harm to the regulatory scheme and the Agency’s ability to oversee the facility’s operation caused by EDS’s initial failure to comply, and then by

EDS's total abdication of responsibility.

RDD takes the U.S. EPA to task for "consider[ing] the actions and prior history of the former owner of the Facility, while discounting the technical and physical security and compliance of the Facility." (RDD Brief at 41.) Remarkably, as support it cites the Agency's prior statement that in deciding whether to issue a permit in the first place, the background and past compliance history of EDS's owner should not be considered because those issues do not impact any technical or operational requirements of the wells. (Id.) RDD now asserts that the U.S. EPA should similarly discount the past compliance history of EDS's owner *under the very permit that EPA relies on to assure the technical and operational requirements of the wells are met.*

RDD's argument twists the language and purpose of the permitting regulations beyond recognition. It is true that prior compliance history at *other* facilities is not a factor to be considered under the U.S. EPA's rules when deciding whether to issue a permit. This is because once the permit is in place, the permittee is required to comply with the permit provisions or face sanctions. See, e.g., In re Federated Oil & Gas of Traverse City, Michigan, 6 E.A.D at 731; In re Envotech, L.P., 6 E.A.D. at 274; In re Environmental Disposal Systems, Inc., 12 E.A.D. at 283. Monitoring and addressing the facility's compliance history once it issues a permit is the U.S. EPA's primary mechanism for assuring that the technical and operational requirements of the wells will be met.

While RDD's subsequent actions may have addressed the threats to the technical and physical security of the facility caused by EDS's violations, the regulations wisely do not require that the U.S. EPA wait for violations to cause environmental damage before it

can terminate a permit.⁵ Indeed, the authority to terminate a permit under 40 C.F.R. §144.40(a)(1) for violations is separate from the authority under 40 C.F.R. §144.40(a)(3) to terminate a permit to prevent endangerment to human health and the environment. This distinction recognizes that, as it did here, the U.S. EPA can and generally should act before the technical and physical security of the wells is impacted.

In making its decision on whether to terminate the permits, the U.S. EPA considered RDD's actions and its attempts to remedy many of EDS's violations. While RDD would like the U.S. EPA to have placed more emphasis on RDD's remedial efforts and less emphasis on EDS's violations and abdication of responsibility, RDD cannot credibly assert that its efforts were ignored.

As the U.S. EPA explained in the Response to Comments:

Later efforts at damage control do not eliminate concerns that those violations and EDS's abandonment of the facility create serious doubts about the viability of the facility.

Terminating the permits ensures that the merits of the facility will be fully re-evaluated through a new permitting proceeding before the facility could reopen. This is consistent with the general guiding principle of the UIC program – that underground injection of hazardous wastes is prohibited until it can be shown that the injection will not endanger drinking water sources or public health. See 40 C.F.R. § 144.1(d). Terminating the EDS permits for EDS's irresponsible and unprecedented behavior demonstrates U.S. EPA's seriousness of purpose in upholding that principle. [Exhibit H, p.3.]

Finally, RDD argues for the first time that the U.S. EPA's decision may have

⁵ Indeed, RDD seems to recognize that EDS's operations raised significant environmental concerns, stating that "[p]etitioners, out of a concern for the public health and safety and the environment, ... demanded voluntary relinquishment of control of the facility from EDS." (RDD Brief at 49.)

resulted “more from political pressure than from a serious consideration of all relevant facts.” (RDD Brief at 42-44.) This allegation is based solely on public statements issued by Congressman Dingell: (1) opposing the initial permitting of the EDS wells; and (2) applauding the U.S. EPA for terminating the permits. (RDD Brief, Exhibit I.) However, there is simply no evidence whatsoever that the U.S. EPA’s decision was based on any “political pressure” applied during the termination proceeding. Moreover, RDD never raised this allegation during the public comment period, even though virtually all of the public statements pre-date the U.S. EPA’s Notice of Intent to Terminate. Because RDD failed to raise this reasonably ascertainable issue during the comment period, it is inappropriate for review by the Board. See 40 C.F.R. §§ 124.13(a) and 124.19(a); In re Dominion Energy Brayton Point, LLC, 12 E.A.D. at 509-10.⁶

RDD’s allegation of political pressure to terminate the permit is also disingenuous because RDD is well aware that Congressman John Conyers, Jr. wrote a letter on its behalf, after the comment period closed but before the U.S. EPA’s final decision, urging the U.S. EPA to consider transferring the permits rather than terminating them. [Exhibit S (Letter from Congressman John Conyers, Jr. to U.S. EPA received July 17, 2007).⁷]

The standard for establishing bias and overcoming the presumption of honesty and

⁶ In purporting to outline the “relevant” facts that the U.S. EPA should have considered, RDD adds a number of “findings of fact” that were never made part of the record during the public comment period. Those items – 15, 16, 20, 33, 37, 39, 40, 48, 52, 58, 65, 71, 73, 94, 111, 118-130 – are also not appropriate for consideration by the Board and should be stricken from the record on appeal.

⁷ Like the documents issued by Congressman Dingell, this document is not, and should not be, part of the Administrative Record for the U.S. EPA’s termination decision. It is referenced and attached here merely to refute the RDD’s untimely and unfounded allegation of political expediency.

integrity attaching to the actions of government decisionmakers is very high. In re Dominion Energy Brayton Point, LLC, 12 E.A.D. at 532. RDD's unfounded and untimely speculation does not warrant review.

2. The U.S. EPA Provided an Appropriate Opportunity for Public Comment on Its Notice of Intent to Terminate.

RDD contends that the U.S. EPA's public comment period was inadequate because the Notice of Intent to Terminate did not describe RDD's efforts to return the facility to compliance after EDS's multiple violations were identified.⁸ It therefore contends that the public was not provided with an opportunity to raise all reasonably ascertainable issues and arguments in support of their positions as provided in 40 C.F.R. § 124.13.

40 C.F.R. §124.14(b) lays out the standard for reopening the comment period:

If any data information or arguments submitted during the public comment period, * * * appear to raise *substantial new questions* concerning a permit, the Regional Administrator *may* take one or more [actions resulting in a reopening of the comment period].

40 C.F.R. § 124.14(b) (emphasis added).

The critical elements of this regulatory provision are that new questions must be "substantial" and that the Regional Administrator "may" take action. The Board has long

⁸ RDD's allegation (RDD Brief at 45-46) that the U.S. EPA's Fact Sheet "misrepresented" to potential commentors that EDS's violations had not been corrected is unfounded. The Fact Sheet did not address current compliance status one way or the other because the original, undisputed violations provided the basis for the proposed decision to terminate the permits. [Exhibit A.] In any event, as described in Section IV.A.1. above, RDD concedes that, even now, not all of the violations have been corrected.

acknowledged the deferential nature of this standard. See, e.g., In re Dominion Energy Brayton Point, LLC, 12 E.A.D. at 695; In re NE Hub Partners, L.P., 7 E.A.D. at 584-853.

There is little doubt that RDD's (and EGT's) public comments included extensive documentation about their roles at the facility and their efforts to return the facility to compliance. Their comments also provided extensive explanation of their view of the relevance and significance of that information, and advocated at length that the permits be transferred rather than terminated. That material is part of the administrative record for this decision and was carefully considered by the U.S. EPA, as shown in the Response to Comments.

Thus, RDD's objection is based on the potential impact that further information about its activities at the facility might have on other commentors. This assumes both that: (1) until RDD and EGT raised the issues in their comments other parties were not aware of RDD's role and actions; and (2) such information might have generated comments that would somehow go significantly beyond those submitted.

In denying RDD's request to reopen the comment period, the U.S. EPA explained why reopening the record would not have been productive:

U.S. EPA does not believe this is necessary to expedite or improve the decisionmaking process. These issues were also raised at the public hearing. A number of comments both at that hearing and in writing indicate awareness of both RDD's ongoing role at the facility and its desire to transfer the permits rather than have them terminated. Those comments nonetheless support termination of the permits, both because of EDS's past violations and because of overall skepticism about operation of the wells by any entity. It therefore appears unlikely that soliciting further comment on the information submitted by RDD and EGT would add to the quality or comprehensiveness of the record or the decisionmaking process. [Exhibit H, p. 10.]

As the U.S. EPA noted, while the comments submitted by RDD and EGT added additional documentation, detail and legal argument, the basic premises of their comments were already known to many other commentors and were addressed by other commentors. This is confirmed by the fact that when RDD and EGT raised these issues at the public hearing, where roughly 100 people were present, it did not have any impact on the view of those commentors present to speak in support of permit termination.

[Exhibit L, pp. 25, 27-29, 49-52, 63-64; Exhibit T (selected written public comments).]

RDD and EGT filed hundreds of pages of comments and documents in opposition to permit termination, fully representing that side of the argument. It is almost inevitable that public comments on any permitting issue will raise some facts or issues not specifically included in the Agency's initial record supporting its draft decision. The regulations and caselaw generally assume, however, that this new information will not rise to the level requiring consideration by all members of the public before it is considered by EPA. To hold otherwise would make the public comment period an endless loop. See In re Dominion Energy Brayton Point, LLC, 12 E.A.D. at 695-96.

RDD has not demonstrated that its comments raised any new questions so substantial as to compel further consideration by other commentors. The facts it raised about its role and actions at the facility, and its desire to transfer rather than terminate the permits, were already well known during the comment period. The potential implications of those facts were explored at length in RDD's and EGT's comments, presenting a full and complete record for the U.S. EPA's review. The U.S. EPA therefore reasonably concluded that no further public comment was necessary.

3. U.S. EPA's Actions and Conduct Concerning RDD Do Not Present Any Policy Issues Requiring Review.

RDD claims that it was unfair to terminate the permits based on EDS's violations because RDD had been coordinating with the U.S. EPA to meet current regulatory requirements at the facility in hopes of being able to obtain a transfer of the permits. (RDD Brief at 47-48.) RDD asserts that the U.S. EPA treated it as a "de facto" permittee that had stepped in to replace EDS, so that the U.S. EPA should consider RDD's actions in addressing EDS's violations.

As described in further detail in Section IV.B.1, above, the U.S. EPA *did* consider RDD's actions before deciding to terminate the permits. RDD's complaint is rather that the U.S. EPA didn't give them enough weight.

Moreover, RDD's complaint ignores the fact that once RDD assumed ownership of the facility, it was *legally required* to work with the U.S. EPA to comply with regulatory requirements under 40 C.F.R. §§ 144 and 146 that apply to all facility owners. This is true even though RDD never followed the regulatory requirement to modify the permits to correct the name of the current owner as required by 40 C.F.R §144.38.⁹

⁹ RDD's recitation of actions it has continued to take to keep the facility in compliance with UIC regulations and the permits (RDD Brief at 26-29, 48) is irrelevant, as RDD is required by law to perform most, if not all, of those actions in its role as facility owner. These new "facts" 118-130 were not raised in RDD's public comments, are not a part of the administrative record, and are not even supported by any exhibits attached to RDD's Brief. They therefore may not be raised to the Board and should be stricken from the record here because they were not raised during the comment period as required by 40 C.F.R. §124.13(a) and 124.19(a). Whether or not a petitioner raised an issue during the comment period is a threshold question that the Board considers prior to granting review. See In re Dominion Energy Brayton Point, LLC, 12 E.A.D. at 509 n. 29.

In its Response to Comments, the U.S. EPA explained that it was acting appropriately in its dealings with RDD:

U.S. EPA staff did not, and could not, make any commitments to RDD that the permits would be transferred. RDD was, however, on notice that the information requested from EDS on January 12, 2007, was to determine whether cause existed to terminate the permits held by EDS.

U.S. EPA worked with RDD on compliance issues and on permit transfer issues so that the permit transfer process could proceed if U.S. EPA decided not to propose permit termination or if it decided not to terminate the permits after considering public comments. U.S. EPA also worked with RDD on compliance issues because as the current owner of the facility, RDD had an obligation to comply with various laws and regulations concerning facility operation, see for example 40 C.F.R. § 144, Subparts B, D and F, 40 C.F.R. § 146, Subpart G. [Exhibit H, p. 5.]

While RDD may have spent considerable time and resources trying to return the facility to regulatory compliance, it assumed most, if not all, of that obligation once it took title to the facility. As the U.S. EPA noted in its Response to Comments:

The potential for adverse regulatory actions, including termination, is a risk that RDD's investors knowingly took when they invested in a highly regulated business. The regulations are clear that "issuance of a permit does not convey any property rights of any sort, or any exclusive privilege." 40 C.F.R. § 144.35(b). [Exhibit H, p. 4.]

By working with the facility owner, RDD, on compliance issues the U.S. EPA was merely fulfilling its regulatory responsibilities and did not consider RDD a "de facto" permittee. This activity does not give rise to any policy issues warranting review.

4. The U.S. EPA Appropriately Exercised Its Discretion to Delay Consideration of the Permit Transfer Request.

RDD also argues that the U.S. EPA abused its discretion in deciding to defer consideration of a request to transfer the EDS permits to EGT after the Agency proposed

to terminate the permits at issue. (RDD Brief at 50-54.) RDD is essentially asking the Board to second guess U.S. EPA's allocation of its limited resources and establishment of priorities for review.

Reviewing authorities grant administrative agencies considerable discretion in establishing their resource allocation and priorities. "An agency has broad discretion to choose how best to marshal its limited resources and personnel to carry out its delegated responsibilities." Massachusetts v. Environmental Protection Agency, __ U.S. __, 127 S. Ct. 1438, 1459 (2007). The U.S. EPA's decision to temporarily defer consideration of the permit transfer request was a reasonable accommodation to limited Agency resources and did not raise any important policy considerations requiring review by this Board.

Once the U.S. EPA made the decision – after significant internal evaluation -- to propose termination of the permits, it no longer made logical sense to process transfer of those permits. At the time the U.S. EPA issued its Notice of Intent to Terminate EDS's permits, RDD and EGT were still submitting further information to the Agency in support of their pending request to transfer those permits. Thus, while the U.S. EPA had already developed, compiled and indexed a full record in support of its decision to issue a notice of proposed permit termination, the factual record relating to the permit transfer request was still incomplete. Faced with a choice of which administrative action to pursue, the U.S. EPA reasonably chose the option for which it had the most complete record – the proposed permit termination.

As the U.S. EPA explained in its Response to Comments:

U.S. EPA's decision to put EGT's permit transfer request on hold while it considered whether to terminate those permits is an appropriate exercise of U.S. EPA's discretion to allocate its limited resources. U.S. EPA decided

to approach the proceedings in this logical order because: (1) there would be no need to further consider the permit transfer request if the underlying permits were terminated; and (2) the permit termination proceeding would give EGT and RDD full opportunity to present arguments opposing permit termination and supporting permit transfer. [Exhibit H, p. 7.]

RDD and EGT had, and took full advantage of, the opportunity to advocate for permit transfer during the public comment period. Had the U.S. EPA decided, based on consideration of public comments, not to terminate the permits, it would have reopened its consideration of the permit transfer request. The U.S. EPA's approach was taken to help conserve the Agency's resources because there would be no need to further consider the permit transfer request if the permits were terminated.¹⁰

In light of its allocation of resources and priorities and its decision to terminate the permits the U.S. EPA has not performed a detailed review of the permit transfer request. But it is not clear that the request is complete "[i]n all material respects" and ready for approval as RDD asserts. (RDD Brief at 50.) For example, the Letter of Credit provided by RDD is not issued by an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency as required by 40 C.F.R. § 144.63(d)(1). In addition, the names and qualifications of the operators in the permit transfer request have since been changed.

Finally, the U.S. EPA's decision to defer consideration of the permit transfer request does not prevent RDD or EGT from moving forward. As the U.S. EPA noted in its Response to Comments, if RDD and/or EGT wish to avoid the delay and uncertainty created by the permit termination process, they are always free to submit a new permit

application:

EGT or any other party can submit a new application for a permit to operate the wells at any time under 40 C.F.R. § 144.31. As RDD's comments note, termination of the permits requires RDD and EGT to submit a new permit application. It does not predetermine that the facility must close. U.S. EPA also notes that materials RDD and EGT have prepared in pursuing a transfer of the permits may be also be useful if they choose to pursue a new permit. [Exhibit H, p.8.]

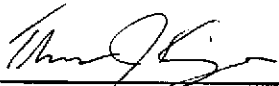
The U.S. EPA's allocation of its limited resources and establishment of priorities for review: (1) has not prevented a potential new owner/operator from obtaining permits; and (2) provided RDD with a full opportunity to present its case for permit transfer. RDD has not presented any reason for the Board to second guess the U.S. EPA's exercise of its broad discretion to set its priorities.

V. CONCLUSION

The U.S. EPA appropriately exercised its broad discretion to terminate EDS's permits, after giving due consideration to the comments received from RDD and others, and made a rational decision supported by the record. RDD has not established any basis for review of the U.S. EPA's decision to terminate EDS's permits under 40 C.F.R. § 124.5(b). There were no clear errors of fact or law, and no exercise of discretion or important policy consideration that warrants review. The U.S. EPA therefore respectfully requests that the Board deny RDD's petition for review.

¹⁰ Moreover, if the U.S. EPA had proceeded with the permit transfer, only to later decide that the underlying permits should be terminated, U.S. EPA, RDD and EGT would all have expended considerable additional time and resources to no effect.

Respectfully submitted,



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Dated: January 15, 2007

List of Appendices

- A. Examples of RDD "Statements of Fact" that are either unsupported by the record or are actually legal conclusions.

List of Exhibits

- A. U.S. EPA Fact Sheet
- B. U.S. EPA inspection report dated Jan. 8, 2007
- C. Letter from MDEQ to Douglas Wicklund regarding well leak, dated Oct. 25, 2006
- D. U.S. EPA inspection report dated Nov. 15, 2006
- E. Letter from Ronald King to Leslie Patterson transmitting documents transferring EDS property to RDD, dated Jan. 22, 2007
- F. Notice of Noncompliance from U.S. EPA to Douglas Wicklund of EDS dated Nov. 20, 2006
- G. Request for Information from U.S. EPA to Douglas Wicklund of EDS dated Nov. 20, 2006
- H. U.S. EPA Response to Comments
- I. Letter from Paul Wonsack of RDD informing U.S. EPA and MDEQ about computer malfunction, dated Nov. 28, 2006
- J. Request for Information from U.S. EPA to Douglas Wicklund, dated Jan. 12, 2007
- K. Letter to EDS transmitting notice to terminate the UIC permits
- L. Public hearing transcript
- M. Notice of Permit Termination
- N. Permit MI-163-1W-C007
- O. Permit MI-163-1W-C008
- P. Letter from RDD to Leslie Patterson re response to NOV, dated Jan. 30, 2007
- Q. Notice of Intent to File letter sent to EDS by U.S. EPA on Feb. 22, 2007
- R. Public Comments of RDD
- S. Letter from Congressman John Conyers, Jr. to U.S. EPA received July 17, 2007
- T. Selected written public comments

CERTIFICATE OF SERVICE

I hereby certify that I delivered a copy of the foregoing United States Environmental Protection Agency, Region 5 Response to Petition for Review and the foregoing Certified Index of Administrative Record to the persons designated below, on the date below, by postage prepaid first class mail addressed to:

Joseph E. Turner
Ronald A. King
Kristin B. Bellar
Clark Hill PLC
212 East Grand River Avenue
Lansing, Michigan 48906

I have also filed the foregoing United States Environmental Protection Agency, Region 5 Response to Petition for Review, the foregoing Certified Index of Administrative Record, and this Certificate of Service with the Clerk of the Environmental Appeals Board, on the date below, by Federal Express, in an envelope addressed 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

Dated this 15th day of January, 2008.



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Associate Regional Counsel
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U.S. Environmental Protection Agency, Region 5

**U.S. EPA Region 5 Underground Injection Control Branch
Environmental Disposal Systems, Inc.
Final Termination Decision for Permits MI-163-1W-C007 and -C008**

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Administrative Record Index

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3. UIC permit MI-163-1W-0006
4. Letter from Jo Lynn Traub to Douglas Wicklund re Conditional Authorization to Inject dated Oct. 18, 2004
5. Letter from Jo Lynn Traub to Douglas Wicklund re Confirmation of Authorization to Inject dated Sept. 8, 2005
6. Federal Register Notice granting EDS exemption from land ban restrictions dated March 16, 2004
7. Second Amendment to Standby Trust Agreement for Additional Wells
8. Surety Bond Rider
9. Post closure plan and cost submitted by EDS to U.S. EPA, dated Jan. 21, 2003
10. E-mail note from Dana Rzeznik to Paul McConnell of EDS, dated May 4, 2004 itemizing EDS's financial assurance available
11. EDS inspection report prepared by Charles Brown, dated June 8, 2006
12. Quarterly report submitted by EDS to U.S. EPA, dated July 28, 2006
13. Letter from MDEQ to Douglas Wicklund describing deficiencies at the facility, dated Oct. 20, 2006
14. Statement from Charles Brown re leaks at well #2-12 on Oct. 23, 2006
15. EDS monitoring report for October 23, 2006
16. Letter from MDEQ to Douglas Wicklund regarding well leak, dated Oct. 25, 2006
17. Letter from MDEQ to Douglas Wicklund regarding well leak, dated Oct. 27, 2006
18. Letter from MDEQ to Douglas Wicklund containing Letter of Warning, dated Nov. 2, 2006
19. E-mail letter from Ronda Blayer of MDEQ to Dana Rzeznik re compliance issues at the Romulus facility, dated Nov. 9, 2006
20. U.S. EPA inspection report dated Nov. 15, 2006
21. Notice of Noncompliance from U.S. EPA to Douglas Wicklund of EDS dated Nov. 20, 2006
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23. Letter from Paul Wonsack of RDD informing U.S. EPA and MDEQ about computer malfunction, dated Nov. 28, 2006
24. Letter from MDEQ to Douglas Wicklund containing Second Letter of Warning and Notice of Noncompliance, dated Nov. 28, 2006
25. Fax letter from RDD to Leslie Paterson, dated Dec. 7, 2006 in response to Notice of Noncompliance
26. Letter from Ronald King to Ronda Blayer of the MDEQ and Leslie Patterson

submitting various documents, dated Dec. 14, 2006

27. U.S. EPA inspection report dated Jan 8, 2007
28. Letter from Ronald King to Ronda Blayer of MDEQ providing status report, dated Jan. 8, 2007
29. Fax from Neil Silver to Steve Chester of the MDEQ, dated Jan. 9, 2007 containing correspondence and copies EDS's assignments of property and permits
30. Request for Information from U.S. EPA to Douglas Wicklund, dated Jan.12, 2007
31. Letter from Ronald King to Leslie Patterson transmitting documents transferring EDS property to RDD, dated Jan 22, 2007
32. Letter from Rep. Dingell to Mary Gade re EDS facility, dated Jan. 23, 2007
33. NOV from MDEQ to EDS, dated Jan. 26, 2007
34. Letter from RDD to Leslie Patterson re response to NOV, dated Jan. 30, 2007
35. Letter from Mary Gade to Rep. Dingell re status of EDS facility, dated Feb. 8, 2007
36. E-mail note from Leslie Patterson to Ronald King re compliance issues dated Feb. 15, 2007
37. Memorandum from Jo Lynn Traub to Mary Gade re options for EDS facility, dated Feb. 15, 2007
38. Notice of Intent to File letter sent to EDS by U.S. EPA on Feb. 22, 2007 and returned
39. Notice of Intent to File letter sent to EDS by U.S. EPA on Feb. 22, 2007, accepted, green card present
40. Letter from Neil Silver to U.S. EPA re permit revocation, dated March 8, 2007
41. Letter from Robert Ficano to Rebecca Harvey re permit revocation, dated March 16, 2007
42. Penalty Complaint against EDS filed on March 22, 2007
43. Letter from George Bruchmann of MDEQ to Ronald King regarding the status of violations at the Romulus facility dated March 27, 2007
44. Letter from Neil Silver to U.S. EPA requesting to participate in proceeding, dated March 28, 2007
45. Note to file from Leslie Patterson and Dana Rzeznik describing records not in the U.S. EPA's possession, dated April 10, 2007
46. Calendar entry for Robert Kaplan showing conference call with EDS representatives on April 10, 2007
47. E-mail note from Leslie Patterson to Erik Olson documenting April 10, 2007, conference call with EDS representatives, dated April 11, 2007
48. Fact sheet
49. Information Sheet for the Public Hearing
50. Press Release for draft decision to terminate
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53. Letter to EDS transmitting notice to terminate the UIC permits
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56. Response to Comments
57. Letter to EDS transmitting the final decision
58. Letter to the public informing of the final decision
59. Comments received during the public comment period (with attachments)
60. EDS Penalty Complaint Press Release
61. EDS Penalty Complaint public notice
62. Letter from RDD (9/11/07) with a request to extend and/or reopen the public comment period.

Permit Writer's Administrative Record Certified Statement
UIC Permits #MI-163-1W-C007 and #MI-163-1W-C008

I, Dana Rzeznik, permit writer for the Underground Injection Control Branch, Region 5, U.S.EPA certify that the administrative record for this final permit termination decision is complete on October 18, 2007. The administrative record includes, to the best of my knowledge, all documents required under 40 C.F.R. § 124.18. The above Administrative Record Index references all documents in the administrative record for this final permit termination decision.

Dana Rzeznik

Dana Rzeznik, Permit Writer, Underground Injection
Control Branch, U.S. EPA Region 5

10/18/07
Date