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July 17, 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

RECEIVED  
U.S. E.P.A.  
2008 JUL 18 AM 9:51  
ENVIR. APPEALS BOARD

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

Dear Clerk:

Enclosed please find five copies of Petitioners Star Township, Antrim County, and Friends of the Jordan River's Motion for Leave to File Reply Brief, Petitioners' Reply to Beeland's Response to Merits of the Petition and Certificate of Service.

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

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

In re: )  
Beeland Group, LLC )  
UIC Permit No. MI-009-11-0001 )

UIC Appeal Nos. 08-02

ENV. APPEALS BOARD

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U.S. EPA.

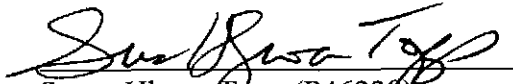
**MOTION FOR LEAVE TO FILE REPLY BRIEF**

Petitioners Star Township, Antrim County, and Friends of the Jordan River moves for leave to file a reply to the briefs submitted in the above-captioned matter. Petitioners filed their Petition for Review on March 9, 2008. Respondent United States Environmental Agency ("EPA") filed its Response on June 13, 2008 to which Petitioners requested leave to file a Reply Brief on June 27, 2008. Respondent Beeland Group, LLC ("Beeland") filed its Response on June 19, 2008. Petitioners now request leave to file a Reply to Beeland's response.

In support of its motion, Petitioners state that its succinct Reply is limited in scope to the issues raised in the Petition and Beeland's Response. It clarifies a number of issues addressed in Beeland's Response and would provide this Board with additional briefing as requested in the May 23, 2008 Order Establishing Briefing Schedule.

Respectively submitted,

**Topp Law, PLC**

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

Dated: July 17, 2008

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

In re:	)	
Beeland Group, LLC	)	
UIC Permit No. MI-009-11-0001	)	UIC Appeal Nos. 08-02

**Petitioners' Reply to Beeland's Response to Merits of the Petition**

Beeland's renewed attack on the sufficiency of the Petition is a rehash of the arguments raised in its initial Response. These have been rebuked at length in Petitioners' Reply to Beeland's Response to Petition, Petitioners' Response to Beeland's Surreply, and Petitioners' Reply to the Region's Response to Petition.

Beeland is now also arguing that Petitioners are attempting to raise new issues in its Reply brief. In fact, Petitioners directly responded to the arguments raised in Beeland's Response to the Petition. *In re: Keene Wastewater*, 2008 WL 782613 at \*9-10. The Board should therefore consider those issues as addressed in Petitioner's Reply.

As part of its attack, Beeland points to what it views as discrepancies between the Petition and Reply. For instance, the Petition states that the "EPA's responses to the above enumerated comments 'assume' that the Bell Shale will be a confining layer without any evidence that this is the case." *Petition* at 9. It also states there has been no documentation or data to support that the shale will protect the USDW at that location. The Reply states that only regional data was considered. Beeland attacks these statements as inconsistent; in fact, the Region only studied data from surrounding wells and did not offer documentation or data to

support a finding that the shale in the location of the proposed well will act as a confining layer. The Petition and Reply are perfectly consistent.

Beeland next attempts to dismiss the “sufficiency” and “adequacy” distinction between the present case and *In Re Envotech L.P.*, 6 E.A.D. 260 (EAB 1996). In *Envotech* the petitioners challenged the sufficiency of the Region’s evidence. Petitioners have challenged the adequacy. The distinction is clear: in *Envotech*, data was submitted to support the Region’s conclusion where, in the present case, no data was submitted.

Beeland then splits hairs with an attack on a comment from the Tip of the Mitt Watershed Council stating that the permit application was not based on a “true representative sampling” and that “sufficient sampling prior to injection should be required.” Beeland claims this is insufficient as the commenter should have said “prior to issuing the permit.” Beeland’s attempt to misconstrue the comment as insufficient for review completely overlooks the commenter’s complaint that “[t]his permit application is based on minimal samples that are characterized as a representation of fluid to be injected.” In response, Beeland ignored the commenter’s complaint of the samples being non-representative of the injectate, and instead explained that the sample it did take was non-hazardous.

Next, Beeland claims that the Petition and Reply are inconsistent in how they define “corrosive.” Yet, the Petition states that the injectate is corrosive and hazardous due to both high pH and high concentrations of organic carbon. It does not reference the RCRA, as Beeland contends. The Reply reiterates the Petition’s stance that the corrosive nature of the injectate makes it hazardous. See *Petition* at 16; *Reply* at 19. Again, these positions are consistent.

Regarding the Petition’s alleged violations of the SDWA and NEPA, the Petition clearly states that there was “no documentation to support” the Region’s conclusions, and that the

Region failed to analyze the surrounding factual circumstances. In other words, the Region's decision was not derived from any factual basis. Beeland's claim that this issue was not argued prior to the Reply is therefore without merit.

For these reasons, the board should reject Beeland's arguments and give Petitioners' Reply its full consideration.

Respectively submitted,

**Topp Law, PLC**

A handwritten signature in black ink, 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: July 17, 2008

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

In Re:

UIC Appeal Nos. 08-02

Beeland Group, LLC

UIC Permit No. M1-009-11-0001

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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 Motion for Leave to File Reply Brief and Petitioners' Reply to Beeland's Response to Merits of the Petition were sent to the following persons in the manner indicated:

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Dated: July 17, 2008

  
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Mary K. Curran