

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

In re:)	
)	
FutureGen Industrial Alliance, Inc.)	UIC Appeal Nos.: 14-68, 14-69, 14-70 &
)	14-71
Permit Nos.: IL-137-6A-001)	
IL-137-6A-002)	
IL-137-6A-003)	
IL-137-6A-004)	

EPA REGION 5 RESPONSE TO PETITIONERS' MOTION FOR STAY OF PERMITS
PENDING APPEAL

The United States Environmental Protection Agency ("EPA"), Region 5 ("Region 5"), respectfully files its Response to Petitioners' Motion for Stay of Permits Pending Appeal ("Petitioners' Motion") submitted by the Andrew H. Leinberger Family Trust and DJL Farm LLC, and William and Sharon Critchelow (collectively referred to as "Petitioners"). Region 5 objects to Petitioners' Motion for the following reasons.

Region 5 believes that Petitioners' request for a stay of the four Class VI permits issued to FutureGen Industrial Alliance, Inc. ("FutureGen") is premature as no appeal has been filed in this matter.

Even assuming that this matter is ripe for decision, Petitioners have not satisfied the legal standard to demonstrate that justice requires staying the four Class VI permits in this matter. Specifically, Petitioners' Motion does not establish any likelihood of success on the merits if an

appeal is filed, especially in light of the Environmental Appeals Board's thorough and well-reasoned Order Denying Review decided April 28, 2015.

In addition, Petitioners' Motion fails to show irreparable harm to either the Petitioners or to the public interest. Even assuming FutureGen were to commence construction (a fact that Petitioners' Motion has not established), no injection and no potential impact on any underground source of drinking water will occur for some time as FutureGen has not yet sought or obtained approval to operate the wells as required by 40 C.F.R. §146.82(c).

If the Environmental Appeals Board wishes further briefing, Region 5 can provide a more detailed response. However, at this time, Region 5 sees no reason for the Board to exercise further jurisdiction or to establish a new stay of the four Class VI permits now that final Agency action has occurred under 40 C.F.R. §124.19(l).

Region 5 respectfully requests that the Board deny Petitioners' Motion in this matter.

Respectfully submitted,



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Dated: May 28, 2015

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CERTIFICATE OF SERVICE

I hereby certify that the original of this EPA Region 5 Response to Petitioners' Motion for Stay Pending Appeal in the matter of FutureGen Industrial Alliance, Inc. of Jacksonville, Illinois, Permit Nos. IL-137-6A-001 through IL-137-6A-004, UIC Appeal Nos. 14-68 through 14-71, and all associated attachments, were filed electronically, via the EAB eFiling System, with the Board.

Further, I certify that one copy of the EPA Region 5 Response to Petitioners' Motion for Stay Pending Appeal in the matter of FutureGen Industrial Alliance, Inc. of Jacksonville, Illinois, Permit Nos. IL-137-6A-001 through IL-137-6A-004, UIC Appeal Nos. 14-68 through 14-71, was sent to the Petitioner and Permit Applicant

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