



RECEIVED
U.S. E.P.A.

207 SEP 13 PM 2:06

FACSIMILE MESSAGE

ENVIR. APPEALS BOARD

IMPORTANT CONFIDENTIALITY NOTICE

The documents included in this facsimile transmission from the law firm of Reinhart Boerner Van Deuren S.C. contain information that may be confidential or legally privileged. These documents are intended only for the use of the individuals or entities named on this transmission cover sheet. If you or your firm are not the intended recipient and have received this transmission mistakenly, you are hereby notified that reading, copying, disclosing or distributing these documents, or taking any action based on the information contained within them, is strictly prohibited, and that the documents should be returned to this firm immediately. If you have received this facsimile in error, please notify us by calling 262-951-4500 immediately so that we can arrange to retrieve the transmitted documents at no cost to you.

Memory Tag: 2# 386

PLEASE DELIVER THE FOLLOWING TO:

Name:	Mr. Benjamin P. Alexander	Facsimile No.	513-564-7098
Company:	United States Court of Appeals for the Sixth Circuit	Phone No.	513-564-7021

Name:	Clerk of the Board	Facsimile No.	202-233-0121
Company:	United States Environmental Protection Agency	Phone No.	

Name:	Mr. Stephen L. Johnson	Facsimile No.	202-501-1450
Company:	U.S. Environmental Protection Agency	Phone No.	

Name:	Mr. Thomas Krueger, Esq.	Facsimile No.	312-886-7160
Company:	U.S. Environmental Protection Agency, Region 5	Phone No.	

Name:	Mr. Ronald King	Facsimile No.	517-318-3099
Company:	Clark Hill PLC	Phone No.	517-318-3043

FROM: Carolyn A. Sullivan
DATE: September 13, 2007

REQUESTED BY: Jamie M. Pantan
EXTENSION: 4545

ATTORNEY NO. 00387
CLIENT NO. 090999
MATTER NO. 0009

Total number of pages sent, including this page 20

IF ANY PROBLEMS OCCUR WITH THIS TRANSMISSION OR IF YOU HAVE NOT RECEIVED ALL THE PAGES, PLEASE CALL OUR FACSIMILE OPERATOR AT 262-951-4500.

COMMENTS:

RECEIVED
U.S. E.P.A.

reinhardt.com

2007 SEP 13 PM 2:04

ENVIR. APPEALS BOARD



September 13, 2007

Carolyn A. Sullivan, Esq.
Direct Dial: 262-951-4536
csullivan@reinhardt.com

SENT BY FACSIMILE

Mr. Benjamin P. Alexander
Case Manager
United States Court of Appeals for the
Sixth Circuit
100 East Fifth Street, Room 540
Potter Stewart U.S. Courthouse
Cincinnati, Ohio 45202-3988

Dear Mr. Alexander:

Re: Case No. 07-4041, *Environmental Geo-Technologies, LLC v. United States Environmental Protection Agency, et al.*

On behalf of Environmental Geo-Technologies, LLC ("EGT"), I enclose a copy of the Declaration of Ronald A. King and Exhibit A thereto (the "Declaration"), which was omitted from Exhibit D to Petitioner Environmental Geo-Technologies, LLC's Emergency Motion and Legal Argument for Immediate Stay of Environmental Protection Agency Orders and Permit Termination Proceeding Pending Review, which we filed by Federal Express yesterday.

I am also faxing the enclosure to opposing counsel, Attorney Thomas J. Krueger, U.S. Environmental Protection Agency, Region 5, as well as U.S. Environmental Protection Agency Administrator Stephen L. Johnson and the U.S. Environmental Protection Agency Environmental Appeals Board (Clerk of the Board). And, I am faxing a copy to Attorney Ronald A. King, counsel for proposed intervenors the Police and Fire Retirement System of the City of Detroit, RDD Investment Corp., and RDD Operations, LLC.

P.O. Box 2265, Waukesha, WI 53187-2265 • W233 N2080 Ridgeview Parkway, Waukesha, WI 53188
Telephone: 262-951-4900 • Facsimile: 262-951-4690 • Toll Free: 800-928-5529

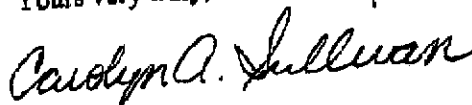
Milwaukee, WI • Telephone: 414-298-1000 • Toll Free: 800-955-0215
Madison, WI • Telephone: 608-229-2200 • Toll Free: 800-728-6239

Mr. Benjamin P. Alexander
September 13, 2007
Page 2

I will follow up on this facsimile submittal as soon as I receive the original declaration. I will then file the original and three copies of the Declaration and serve hard copies on the above-referenced parties, all by Federal Express.

Thank you.

Yours very truly,



Carolyn A. Sullivan

WAUKFSEH55239CAS:CA5

Enc.

cc Clerk of the Board, U.S. Environmental Protection Agency Environmental Appeals Board (w/enc., by facsimile)
Mr. Stephen L. Johnson, U.S. Environmental Protection Agency (w/enc., by facsimile)
Thomas J. Krueger, Esq., U.S. Environmental Protection Agency, Region 5 (w/enc., by facsimile)
Mr. Dimitrios Papas (w/enc.)
Henry J. Breanan, III, Esq. (w/enc.)
Gary A. Peters, Esq. (w/enc.)
Francis X. Lyons, Esq. (w/enc.)
Mr. Richard Powals (w/enc.)
Ronald A. King, Esq. (w/enc., by facsimile)

RECEIVED
U.S. E.P.A.

UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT

2007 SEP 13 PM 2:06

ENVIR. APPEALS BOARD

ENVIRONMENTAL GEO-TECHNOLOGIES,
LLC,

Case No. 07-4041

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY APPEALS BOARD; STEPHEN L.
JOHNSON, ADMINISTRATOR, UNITED
STATES ENVIRONMENTAL PROTECTION
AGENCY,

DECLARATION OF RONALD A. KING

Respondents.

DECLARATION OF RONALD A. KING

STATE OF MICHIGAN)
)
COUNTY OF INGHAM)

ss.

I, Ronald A. King, being duly sworn, deposes and states as follows:

1. I am an attorney with the law firm of Clark Hill PLC, and am admitted to practice before the Sixth Circuit Court of Appeals.
2. I am an attorney for the Police and Fire Retirement System of the City of Detroit ("PFRS") and its wholly owned subsidiaries RDD Investment Corp. and RDD Operations, LLC (collectively, "RDD").
3. I am familiar with Underground Injection Control Permits # MI-163-1W-C007 and MI-163-1W-C008 (the "Permits") that the United States Environmental Protection Agency ("EPA") issued to Environmental Disposal Systems, Inc. ("EDS") for the facility located at 28470 Citrin Drive in Romulus, Michigan (the "Facility"). I am familiar with the operation of the Facility and the communications between PFRS and RDD and the EPA from October of

2006 through the present; the February 28, 2007 request to transfer the Permits submitted to the EPA by EDS, Environmental Geo-Technologies, LLC ("LGT") and RDD, and the EPA's April 12, 2007 Notice of Intent to Terminate the Permits and the subsequent related proceedings.

4. On or about June 20, 2007, I prepared a chronology of relevant facts relating to the Permits, the Facility, and the PFRS and RDD's involvement with same covering the period from approximately October of 2006 through June of 2007, which was submitted as part of the June 20, 2007 Public Comment of the PFRS and RDD submitted in response to the EPA's Notice of Intent to Terminate the Permits.

5. I prepared the chronology of relevant facts upon a review of relevant documents and familiarity with the facts and circumstances relating to the Facility and the Permits from approximately October of 2006 through June of 2007.

6. Attached hereto as Exhibit A is a true and accurate excerpt from the chronology of relevant facts.

7. The excerpt attached as Exhibit A represents my understanding of the events chronicled based on my review of relevant documents and records, and based on my familiarity with and understanding of the facts and circumstances relating to the Permits and the Facility from about October of 2006 through June of 2007.

FURTHER DEPONENT SAYETH NOT.

R. A. King
Ronald A. King

9-12-07
Date

Subscribed and sworn to before me
this day of: 12th, September 2007.

Kenneth M. Thomas
Kenneth Thomas, Notary Public
County of Ingham, State of Michigan
My Commission Expires: 9-25-2008.
Acting in Ingham County, MI.

KENNETH M. THOMAS
Notary Public, Ingham County, MI
My Commission Expires 09-25-2008

EXHIBIT A

Excerpt reproduced from the June 20, 2007 Public Comment of the Police and Fire Retirement System of the City of Detroit, RDD Investment Corp. and RDD Operations, LLC to the Environmental Protection Agency's April 12, 2007 Notice of Intent to Terminate Underground Injection Control Permits MI-163-JW-C007 AND MI-163-JW-C008.

33. On or about November 1, 2006, representatives of the PFRS met with the owner of EDS to negotiate terms of a transfer of ownership/operation of the Facility. In the absence of a court order or agreement with EDS, the PFRS or its designees had no legal right to entry at the Facility and no right to interfere with EDS' business relationships or expectancies.

34. At or about the same time, the PFRS directed the formation of RDD Investment Corp. and RDD Operations, LLC ("RDD"), as its designees to take an assignment of EDS' interest in the permits and licenses of the Facility, and to assume control over the Facility.

35. In correspondence to EDS dated November 2, 2006, the MDEQ cited numerous permits and license compliance issues and suspended EDS' license to operate the hazardous waste storage and treatment facility. (Exhibit 7, November 2, 2006 Correspondence from MDEQ to EDS).

36. On November 2 and 3, 2006, the EPA staff conducted an inspection of the Facility.

37. On or about November 7, 2006, EDS executed a Quit Claim deed transferring ownership of the real property to RDD, an Acknowledgment and Assignment Agreement, assigning the assets of the Facility to RDD and conferring on RDD various rights with respect to the licenses and permits, and an Assignment of Permits. EDS also surrendered physical possession of the Facility. (Exhibit 8, Transfer Documents, submitted by RDD under cover of letter to EPA).

38. Given the considerable uncertainty at the time regarding the extent of EDS' liabilities and the condition of the Facility, the Acknowledgment and Assignment Agreement expressly

stated that RDD was not assuming any liabilities of EDS. However, the Agreement did provide that RDD could act on behalf of EDS with respect to the licenses and permits.

39. At the time RDD took possession of the Facility, RDD did not have the required staff and/or qualifications necessary to seek formal regulatory approval of the transfer of the licenses and permits from EDS directly to RDD. Additionally, RDD never intended to operate the Facility. Rather, RDD's role was to secure the Facility, address regulatory concerns and assist in identifying a qualified owner and operator for the Facility.

40. RDD immediately took steps to retain key employees of EDS for purposes of providing sufficient staff to secure the Facility.

41. In early November 2006, RDD moved to immediately address the pressing regulatory concerns of the EPA and the MDEQ as set forth in the various correspondences from October and November 2006.

42. RDD secured the Facility and abated any potential environmental contamination or public health risk by immediately making the necessary repairs of the well heads, implementing cleanup procedures related to the October 23, 2006, brine water leak at well 2-12, making appropriate staffing changes, retaining twenty-four hour security service for the Facility, installing the required monitoring technologies, and formulating a plan to address any compliance issues resulting from EDS' past operation of the Facility.

43. Throughout the month of November, the PFRS and RDD began working to provide the MDEQ and the EPA with all information requested from EDS which RDD could locate and/or had in its possession or control.

44. At the time of the transfer of control of the Facility from EDS to RDD in November of 2006, most of the insurance policies for the Facility were in arrears and/or near expiration. In

order to avoid any lapses in coverage, RDD paid all outstanding premiums and took steps to have all of the policies reissued in its name.

45. Concurrent with the on-site work at the Facility, the PFRS and RDD began searching for a qualified, fully capitalized owner and/or operator to replace EDS. RDD's role was to function as an interim manager of the Facility until such time as a qualified owner and/or operator could be identified.

46. On or about November 16, 2006, the PFRS and RDD identified Environmental GEO Technologists, LLC ("EGT") as a candidate to operate the Facility. RDD and the PFRS performed due diligence on the credentials and financial condition of EGT and its officers and staff, and chose EGT because of the expertise of its staff and its financial capabilities to operate the Facility in full compliance with federal and state regulations, permits and licenses.

47. In late November and early December of 2006, RDD and EGT began negotiations for the transfer of the Facility and the eventual transfer of EDS' licenses and permits to EGT.

48. RDD and EGT also addressed specific staffing concerns related to maintaining compliance with the various permits and licenses for the Facility.

49. While RDD assumed operational control of the Facility in early November 2006, RDD did not assume any of the liability and/or obligations of EDS. Instead, RDD endeavored to address each and every issue raised by EPA or MDEQ, without necessarily doing so directly on behalf of EDS.

50. EDS, having been removed from the Project, did not submit a response to the October and November 2006 MDEQ letters within the time frame set forth by the MDEQ, nor did it provide any of the information requested by the MDEQ to bring the Facility back into regulatory compliance.

51. In fact, shortly after removal from the Facility, EDS closed its office in Birmingham, Michigan and further communication with EDS became very sporadic.

52. On November 20, 2006, the EPA submitted a Notice of Noncompliance and a Request for Information to EDS, as a result of issues identified during EPA staff inspections of the Facility. (Exhibit 9, EPA Notice of Noncompliance and Request for Information). The EPA cited EDS for administrative and staffing violations of its LTC permits, and required EDS to submit a compliance schedule within ten days of its receipt of the Notice, which would set forth the dates by which EDS would complete required staff training, update staff training records and calibrate all gauges that measured certain operations of the Facility.

53. The MDEQ issued a Second Letter of Warning and Notice of Noncompliance to EDS dated November 28, 2006, which required EDS to provide information regarding the causes of the past violations, and explain how it planned to resolve each violation that resulted in the suspension of the operations. (Exhibit 10, November 28, 2006 Correspondence from MDEQ to EDS).

54. On November 28, 2006, RDD sent a letter to the EPA and the MDEQ stating that, due to a computer malfunction, RDD would be unable to submit the monthly Operating Reports and monthly Mineral Well Injection Reports for October and November of 2006 as requested of EDS. RDD retained a consultant in an effort to retrieve the lost data. (Exhibit 11, November 28, 2006 Correspondence to MDEQ and EPA regarding computer failure).

55. On December 7, 2006, RDD met with staff of the MDEQ in Lansing, Michigan to discuss the status of operations, the role of RDD and the MDEQ's Notice of Noncompliance and Warning Letters. (Exhibit 12, Email Correspondence between MDEQ and counsel for RDD)

56. On December 14, 2006, RDD provided the EPA and the MDEQ with a detailed Interim Response to the various regulatory correspondence, addressing all issues raised in the Letters of Warning and Notice of Noncompliance to the best of its ability. This response included detailed incident reports describing the circumstances and response efforts related to the leaks observed on October 23, 2006 and October 26, 2006. (Exhibit 13, December 14, 2006 Interim Response of RDD). Not knowing the full extent of EDS' outstanding liabilities, RDD was careful not to "step in the shoes of EDS" and provide this submittal directly on behalf of EDS. However, RDD made certain to address all of the regulatory compliance issues which had been directed to EDS in the various correspondences.

57. RDD's Interim Response also provided detailed reports of the remedial actions taken to date, and, with respect to unresolved issues, set forth the steps being taken to develop and implement an appropriate plan of response. RDD affirmatively communicated to MDEQ and EPA that RDD remained committed to securing the safe and compliant operation of the Facility and would meet all of the regulatory obligations imposed by the various licenses and permits.

58. On December 14 and 15, 2006, the EPA conducted additional inspections of the Facility.

59. On December 27, 2006 RDD submitted calibration settings for the chart recorders to the EPA. (Exhibit 14, December 27, 2006 Electronic Mail from RDD to EPA).

60. During the months of December 2006 and January 2007, RDD was in contact with representatives of MDEQ and the EPA, keeping the agencies apprised of developments and completion of certain actions, and responding to requests for information.

61. On January 3 and 4, 2007, Baker Atlas performed EPA-required mechanical integrity testing of the wells at the direction of EPA to RDD, and pursuant to a work plan submitted by

RDD and approved by the EPA. This was the first of many instances where the EPA worked directly with RDD, and through their communications and conduct, acknowledged RDD's role as a "de facto" permittee of the UIC permits.

62. On January 8, 2007, RDD submitted another Interim Status Report and a Notice of Proposed Operating License Transfer to the MDEQ, pursuant to Michigan Administrative Rules 299.9519 and 299.9522. (Exhibit 15, January 8, 2007 Interim Status Report and Notice) Included in the Status Report was a summary of recent work performed at the Facility to address the issues identified by the MDEQ in their correspondence of October and November of 2006, including, detail of the repair work to wells 1-12 and 2-12 in response to the issues noted by the MDEQ during the October inspections.

63. On January 12, 2007, EPA requested additional information from EDS to determine whether cause existed to revoke and re-issue, modify or terminate the UIC permits. (Exhibit 16, January 12, 2007 Request for Information from EPA to EDS). The EPA required EDS to submit its records of injection pressure, calibration, monitoring of flow rate and injectate pH, a legend of the continuous monitoring charts, information regarding the hours worked by the well operators, and the causes of the failure of the automatic warning system.

64. In early January, RDD performed the EPA-required mechanical integrity testing, as stated above, and removed and properly disposed of roll-off boxes of hazardous waste left on-site from EDS' operations, developed and implemented a soil remediation plan, developed and implemented a well pump monitoring system, performed monitoring and testing of the wells, and extensively cleaned the Facility. (Exhibit 17, January 4, 2007 Electronic Mail from RDD to EPA enclosing temperature log data and January 12, 2007 Facsimile to EPA enclosing results of mechanical integrity testing).

65. On January 26, 2007, the MDEQ issued a Notice of Violation to EDS as licensee and permit holder, and to RDD as owner of the Facility and land upon which the Facility is located. (Exhibit 18, Notice of Violation). The Notice of Violation required certain actions to be taken before the MDEQ would approve transfer of either the Part 111 license or the Part 625 permit, including submission to the MDEQ of written verification of the approval of the transfer of the EPA UIC permits.

66. RDD scheduled a meeting with the MDEQ to discuss the implementation of the actions required by the January 26, 2007 Notice of Violation, and began compiling the information requested by the MDEQ for submission.

67. Concurrent with its efforts to respond to MDEQ, RDD hand delivered to EPA staff a response to all of the information requested in its January 12, 2007 Request for Information at a meeting in Chicago, Illinois on January 31, 2007. (Exhibit 19, January 30, 2007 Response to Request for Information to the EPA).

68. Included in this response was detailed information regarding the causes of the November 2, 2006 leak, all injection pressure, calibration and monitoring records requested and available (to the extent that EDS maintained these records), a legend of the continuous monitoring charts, and an initial response regarding the cause of the failure of the automatic warning system. The only information RDD was unable to provide in response to EPA's January 12, 2007 Request for Information was information regarding the hours worked by the well operators, as such records were maintained by EDS and were not turned over to RDD at the time of transfer.

69. At the January 31, 2007 meeting, RDD and a representative of EGT discussed the status of the Facility with EPA staff, the status of the transfer of the licenses and permits, and the efforts of RDD in addressing EPA's concerns.

70. At the same meeting, RDD communicated to the EPA that it was in the process of developing plans for transfer of the permits/licenses to EGT.

71. RDD affirmatively stated its intention to supplement its response as it received additional information, and also confirmed that it was aware of the order to suspend operations, and that it would continue to ensure that the Facility was not operated until authorization from the was received from EPA and MDEQ.

72. Also at the meeting, the EPA indicated that it was generally satisfied with RDD's progress in ensuring Facility compliance, and that a transfer application would likely be favorably received. This meeting, in which EPA affirmatively acknowledged the actions of RDD, is another instance in which the EPA acknowledged the status of RDD as the "de facto" permittee of the wells.

73. In reliance, in part, on the positive feedback received during the January 31, 2007 meeting, RDD and EGT continued with their efforts to maintain compliance with permit requirements and to move forward with the formal request for transfer of the UNC permits.

74. In correspondence to the Honorable John D. Dingell dated February 8, 2007, EPA Region 5 Administrator, Mary A. Gade, acknowledged that RDD had provided recent calibration records for the pH meter and copies of the majority of requested circle charts. Ms. Gade acknowledged that both wells demonstrated internal mechanical integrity during testing in October of 2006.

75. On or about February 8, 2007, the PFRS finalized its agreement to transfer the Facility and assets to EGT.

76. On February 15, 2007, RDD and EGT met with the MDEQ (in person) and the EPA (by phone) to discuss the January 26, 2007 Notice of Violation issued by the MDEQ and to address and update EPA and MDEQ on the status of the various licenses and permits under each agencies' jurisdiction.

77. On or about February 15, 2007, RDD began communications with EDS, seeking its assistance in executing the UIC Transfer Agreement required by 40 CFR §144.41 for a minor modification of the permits.

78. Concurrent with its meeting and communication with EPA and the MDEQ, PFRS, RDD and EGT were completing the appropriate documentation for formally requesting a transfer of the UIC permits from EDS to EGT, including, but not limited to, preparing and obtaining insurance coverage and a closure bond for the Facility, and preparing a demonstration of financial responsibility.

79. On February 12 and 13, 2007, RDD submitted a replacement Letter of Credit to the MDEQ and an insurance policy summary for purposes of demonstrating financial responsibility for the Facility. (Exhibit 20, Letter of Credit and Insurance Policy Summary).

80. On February 28, 2007, RDD, EGT and EDS submitted their UIC permit transfer request to the EPA, pursuant to 40 CFR §144.41. (Exhibit 21, Transfer Application Package).

81. At the time of this submission, RDD was in continuous contact with counsel for EDS in order to complete the execution of the UIC Transfer Agreement.

82. As of March 7, 2007, RDD had completed a number of critical tasks for purposes of finalizing the request for transfer of the Part 111 Hazardous Waste Management Facility

Operating License, the Part 625 Mineral Wells Permits, and the EPA UIC permits, including, but not limited to:

- RDD coordinated with the Michigan Attorney General's office to finalize the form of the Part 111 transfer request, pursuant to the Part 111 administrative rules, and discussed the timing and content of the submittal in detail with staff of the WHMD.
- RDD outlined steps to obtain information regarding the leak at well 2-12 in October, at the request of the MDEQ.
- EGT prepared written qualifications of its staff and management team, including a summary of the training and experience of the well operators.
- RDD and EGT met on March 5, 2007 regarding the transfer of the NPDES and air quality permits, and finalized the content of the request for the license transfer to be submitted to the MDEQ.
- RDD hired Stantec Consulting Michigan, Inc., the original Facility design engineering company, which performed an engineering review of the Facility to certify repairs to the Facility and recertify the Facility's capability for treating, storing and disposing of hazardous waste in compliance with applicable federal and state laws and administrative rules. (Exhibit 22, February 26, 2007 Certification).
- EGT continued, during this time period, to identify qualified personnel, including a Facility Manager, an Environmental Control Manager and a trained Well Operator, and identified and/or retained additional staff to fill positions required when the Facility returns to operational status.

83. On March 9, 2007, RDD and EGT submitted a draft request for transfer of the Part 111 license to the MDEQ, pursuant to Michigan Administrative Rules 299.9519 and 299.9522,

including numerous exhibits and attachments addressing the MDEQ's January 26, 2007 Notice of Violation. (Exhibit 23, Draft Request for Transfer of Part 111 License).

84. During this time, RDD and EGT made progress in moving towards compliance with and transfer of the Part 625 permit including, obtaining the conformance bonds for each of the wells, completing an application for transfer of the permit, preparing statements regarding the qualifications of the well operator and an organizational chart of EGT, and coordinating with MDEQ Office of Geological Survey ("OGS") staff on the transfer process.

85. On March 9, 2007, RDD submitted results from a Bottom Hole Pressure Survey of the wells to EPA as required under the EDS UIC permits. (Exhibit 24, March 9, 2007 facsimile from RDD to EPA enclosing testing results).

86. On March 13, 2007, the EPA requested additional information from RDD and EGT for the processing of its UIC transfer application package. (Exhibit 25, March 13, 2007 Electronic Mail from EPA to RDD and March 16, 2007 Correspondence from EPA to RDD and EGT).

87. In electronic mail to EPA dated March 15, 2007, counsel for RDD provided an update on the UIC transfer request of RDD and EGT, and indicated that the UIC Transfer Agreement had been revised, consistent with the EPA's suggestions. (Exhibit 26, March 15, 2007, March 19, 2007 and March 23, 2007 Electronic Mail from counsel for RDD to the EPA).

88. On March 19, 2007, counsel for RDD submitted an update to EPA on the information requested on March 13, 2007 via electronic mail. (Exhibit 26).

89. On March 21, 2007, EPA staff conducted an inspection of the Facility (Exhibit 29, March 21, 2007 Inspection Results). The Facility Manager for RDD was on-site for this inspection, and RDD demonstrated a successful test of the annulus pressure alarm system as

requested by EPA, as acknowledged by Charles Brown of the EPA. This instance provides another example of the EPA acknowledging, by its words and actions, RDD's status as the "de facto" permittee of the wells.

90. In a letter dated March 22, 2007, counsel for the PFRS demanded the immediate cooperation of EDS in executing the UIC Transfer Agreement and other documents consistent with the November 7, 2006 transfer. (Exhibit 40, March 22, 2007 Correspondence from counsel for PFRS to counsel for EDS).

91. On March 23, 2007, RDD submitted to the EPA, via electronic mail, copies of the Standby Letter of Credit and Standby Trust Agreement executed by the PFRS Board in favor of RDD and EDS, pursuant to EPA's directions. (Exhibit 26, March 23 Electronic Mail from counsel for RDD to the EPA).

92. In a letter dated March 26, 2007, RDD provided hard copies of the Standby Trust Agreement between RDD and the PFRS and Standby Letter of Credit for the account of RDD and EDS. (Exhibit 27, March 26, 2007 Letter from RDD to the EPA).

93. On March 29, 2007, final copies of the UIC Permit Transfer Agreement, executed by RDD, EGT and EDS, were transmitted to EPA, via electronic mail, and by April 12, 2007, hard copies of all of the original documents related to the UIC permit transfer request were submitted to EPA. (Exhibit 26, March 15, 2007, March 19, 2007 and March 23, 2007 Electronic Mail from counsel for RDD to the EPA); (Exhibit 28, April 12, 2007 Letter from RDD to the EPA).

94. In a letter dated March 27, 2007, the MDEQ acknowledged the February 15, 2006 meeting between MDEQ, RDD and EGT and the completion by RDD of a number of the required actions set forth in the Notice of Violation. The MDEQ correspondence identified

additional issues to be remedial before the Part 111 license and Part 625 permits could be transferred. (Exhibit 30, March 27, 2007 Letter from MDEQ to RDD).

95. Pursuant to the March 27, 2007 letter from the MDEQ, on April 6, 2007, RDD submitted to the MDEQ a work plan and schedule to address issues relating to removal of waste from storage tanks on-site dating back to EDS' operations, including a plan for decontamination and re-certification of the Facility to bring the Facility into compliance with the conditions of the Part 111 license. (Exhibit 31, Work Plan).

96. On April 11, 2007, RDD and EGT again met with the MDEQ to discuss the transfer of the Part 111 license and the Part 625 permit. MDEQ indicated that it had performed only a preliminary review of RDD's and EGT's draft Part 111 license transfer request submission because the EPA approval of the transfer of UIC permits was still pending.

97. At that meeting, the MDEQ also requested that EDS' previous violations of the financial assurance requirements be remedied. In response to this request, RDD and EGT immediately undertook to ensure that the Facility closure bond remained in place. RDD and EGT further agreed to continue to develop the work plan to address the remaining waste stored at the Facility, and confirmed that an amended work plan would be submitted based on MDEQ's comments to the April 6, 2007 work plan. (Exhibit 32, April 17, 2007 Electronic Mail from MDEQ to RDD summarizing April 11, 2007 Meeting).

98. On April 12, 2007, RDD and EGT received notice from the EPA that, while it had received the supplemental information requested in order to process the transfer request, the EPA had decided instead to terminate EDS' permits. (Exhibit 33, April 12, 2007 Correspondence to RDD and EGT from the EPA).

99. At no time prior to April 12, 2007, in the many communications and meetings between EPA, RDD and/or EGT, was there ever any mention or indication whatsoever that EPA intended to terminate the UIC permits. In fact, there was virtually no expression of dissatisfaction with the actions of RDD related to the Facility, as EPA effectively acknowledged, by its conduct and communication, RDD as the "de facto" permittee for the wells.

100. Also, on April 12, 2007, the EPA indicated for the first time that it would not consider or process the RDD/EGT UIC transfer request, as the termination would render the transfer request moot.

101. Up until April 12, 2007, RDD and EGT were under the belief that the request for transfer of the UIC permits was being duly processed and considered by EPA.

102. On that same date, the EPA issued a Notice of Intent to Terminate the UIC permits to EDS, pursuant to 40 CFR §124.5 and 40 CFR §144.40, due to "EDS' noncompliance with numerous provisions of the permits," referring to EDS' historical violations and compliance issues occurring prior to November 2006. (Exhibit 34, Notice of Intent to Terminate).

103. Nearly all of EDS' compliance issues identified by the EPA in the Fact Sheet that accompanied the Notice of Intent to Terminate were remedied in full by RDD in the months leading up to the February 28, 2007 transfer request of RDD and EGT, including the submission of responses to EPA (and MDEQ) requests for information, providing calibration and continuous monitoring records, providing an adjusted cost estimate for closure, maintaining a trained operator on site when the well is in operation, testing and maintaining an emergency warning system, conducting the test for reservoir pressure, and provision of EPA required reports.

104. As of April 12, 2007, the PERS and RDD complied, substantially, if not completely, with the EPA's and the MDEQ's requests for information, remedied the staffing concerns,

implemented testing and provided results of same to the MDEQ and EPA, and made necessary repairs to the Facility to prevent leaks or other unsafe conditions.

1496428.1 1488 V111688