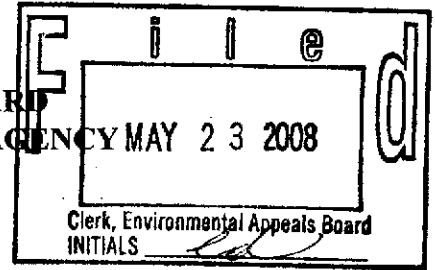


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



In re: )  
Beeland Group, LLC ) UIC Appeal Nos. 08-01 and 08-03  
UIC Permit No. M1-009-11-0001 )

**ORDER DENYING REVIEW**

On February 9, 2008, the U.S. Environmental Protection Agency (“EPA” or “Agency”), Region 5 (“Region”) issued an Underground Injection Control (“UIC”) permit (“Permit”) to Beeland Group, LLC (“Beeland”) pursuant to the Safe Drinking Water Act (“SDWA”), 42 U.S.C. §§ 300h-300h-8, and the implementing regulations at 40 C.F.R. parts 124, 144 and 146-48. Response to Comments for UIC Permit No. MI-009-11-0001 (“RTC”) at 2. The Permit authorizes the construction and operation of a Class I non-hazardous injection well<sup>1</sup> in Antrim County, Michigan. *Id.* As part of the permitting process, the Region received comments from the public between April 12 and July 27, 2007, and EPA and the Michigan Department of Environmental Quality (“MDEQ”) held a joint public hearing on June 13, 2007. *Id.* at 3.

The Environmental Appeals Board (“EAB” or “Board”) received several petitions for review regarding the Region’s decision to issue the Permit.<sup>2</sup> The petitioners, and corresponding appeal numbers, are: Allen and Trisha Freize (the “Freizes”) (08-01); Star Township, Antrim

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<sup>1</sup> The UIC program implementing regulations establish a classification system for injection wells depending on the material being injected into the well. 40 C.F.R. § 144.6. Class I wells are described at section 144.6(a).

<sup>2</sup> The petitions for review are cited throughout as “Petition No. 08-\_\_\_.”

County, and Friends of the Jordan River (together, the "FJR Petitioners") (08-02); and Dr. John W. Richter, President, Friends of the Jordan River Watershed, Inc., and Heidi S. Lang, Antrim Conservation District (together, "Richter/Lang") (08-03).<sup>3</sup> Subsequently, Beeland sought and obtained leave to intervene in these proceedings and, ultimately, sought summary disposition of all petitions. *See* Permittee Beeland Group, LLC's Motion to Intervene or In the Alternative, Request to Respond to Petition Nos. 08-01, 08-02, and 08-03 (Mar. 21, 2008), and Beeland's Response to Petition Nos. 08-01, 08-02, and 08-03 (Apr. 11, 2008) ("Beeland Resp."). We then set a schedule for the parties' briefs regarding summary disposition. *In re Beeland Group, LLC*, UIC Appeal Nos. 08-01, 08-02, 08-03 (EAB Mar. 28, 2008) (Order Consolidating Cases, Granting Motion to Intervene, and Granting Extension of Time). This order established April 21, 2008, as the deadline for all petitioners to reply to Beeland's Response seeking summary disposition. By motion dated April 9, 2008, the FJR Petitioners, through their attorney Susan Hylwa Topp, sought a seven-day extension of time in which to file their reply. Motion for Extension of Time (filed April 11, 2008). The Board identified the relevant petition as Petition No. 08-02 and granted the motion for extension of time. *In re Beeland Group, LLC*, UIC Appeal No. 08-02 (EAB Apr. 14, 2008) (Order Granting Motion for Extension of Time). Accordingly, the FJR Petitioners filed a reply to Beeland's response on April 28, 2008. The Board also received a reply from Dr. John W. Richter pertaining to Petition No. 08-03 on April 28, 2008. Letter from Dr. John W. Richter to Eurika Durr, Clerk of the EAB, U.S. EPA (April 26, 2008)

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<sup>3</sup> Dr. Richter and Ms. Lang filed separate letters that the Board has designated as a single petition for review. In a subsequent filing, Dr. Richter stated that Petition No. 08-03 "represents a collective petition comprising comments from a broad coalition of individuals, governmental agencies and [non-profit organizations] \* \* \*." Letter from Dr. John W. Richter to Eurika Durr, Clerk of the EAB, U.S. EPA (April 26, 2008) ("Second Richter Letter").

("Second Richter Letter"). The Freizes did not file a reply to Beeland's Response. By motion dated May 6, 2008, Beeland sought leave to file a surreply to the FJR Petitioners' reply and the Second Richter Letter so as to address issues Beeland asserts the FJR Petitioners and Dr. Richter raised for the first time in their reply briefs. Beeland's Motion for Leave to File Instant Surreply to Replies of Petitioners. The FJR Petitioners opposed the motion. Petitioners Star Township, Antrim County and Friends of the Jordan Rivers' Response to Surreply of Intervenor/Respondant Beeland Group.<sup>4</sup>For good cause, the Board now grants Beeland's motion for leave, accepts the surreply for filing, and considers the surreply as it applies to Petition No. 08-03. A determination on Petition No. 08-02 will be made at a later date.

**1. Petition No. 08-01**

The Freizes, who filed a one-page letter (Petition No. 08-01), *pro se*, claim that the issuance of the Permit "is obviously a case of environmental discrimination" in the form of "a wealthy community shipping their problem to a \* \* \* poor community [that] happens to be in a fragile watershed \* \* \*." Letter from Allen & Trisha Freize to EAB (Feb. 29, 2008) ("Petition No. 08-01"). The letter provides no additional allegations or information regarding the Freizes' involvement in the permitting process but does identify them as members of Friends of the Jordan. *Id.*

Beeland asks the Board to deny Petition No. 08-01 because the Freizes lack standing to seek appeal of the Permit as they do not claim to have participated in the public hearing or to have filed comments related to the Permit during the comment period. Beeland Resp. at 11. Additionally, Beeland contends that the Freizes fail to state the reasons supporting review, fail to

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<sup>4</sup> Region 5 has filed no response to these Petitions for Review.

demonstrate that the issues in their letter were raised during the public comment period, and fail to identify any disputed permit conditions. *Id.* As observed by Beeland, Petition No. 08-01 does not even state that Permit review is sought. *Id.*

We agree with Beeland that Petition No. 08-01 is deficient. The Freizes do not indicate that they participated in the public review process by submitting written comments on the draft permit or by presenting testimony at the public hearing. As such, the Freizes have failed to demonstrate standing under 40 C.F.R. §§ 124.13 and 124.19(a) to file an appeal of the Permit to this Board. 40 C.F.R. § 124.13 (describing obligation to “raise all reasonably ascertainable issues and submit all reasonably available arguments supporting \* \* \* [the petitioners’] position by the close of the public comment period”); *id.* § 124.19(a) (describing procedural requirements for permit review); *see, e.g., In re Avon Custom Mixing Servs., Inc.*, 10 E.A.D. 700, 704-08 (EAB 2002) (discussing threshold procedural requirements for permit review); *In re Knauf Fiber Glass, GmbH*, 8 E.A.D. 121, 173 (EAB 1999) (discussing standing). Although “[a]ny person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review \* \* \* to the extent of the changes from the draft to the final permit decision,” the Freizes do not identify any change between the draft and final permits to which they object. 40 C.F.R. § 124.19(a).

In addition, the Freizes’ letter lacks sufficient specificity by failing to identify any permit term or condition that they believe warrants review. *Id.*; *Avon Custom Mixing Servs.*, 10 E.A.D. at 707-08 & n.10. Although the Board will construe a *pro se* petition broadly, it nonetheless must clearly identify the permit conditions at issue and state why those provisions warrant review. *Knauf*, 8 E.A.D. at 127 & n.72 (noting that petitions filed by persons unrepresented by

legal counsel need not contain sophisticated arguments or precise terminology but nonetheless must provide sufficient specificity as to alert the Board to the issues being raised); *In re Envotech, L.P.*, 6 E.A.D. 260, 267-69 (EAB 1996) (same). For these reasons, we deny review of Petition No. 08-01.

## **2. Petition No. 08-03**

Petition No. 08-03, includes two letters filed by Dr. Richter and Ms. Lang and identifies a “Community Forum” hosted by local government and community groups on March 8, 2008, for the purpose of discussing and documenting the public’s concerns regarding the Region’s issuance of the Permit. Letter from Dr. John W. Richter, President, Friends of the Jordan River Watershed, Inc., to Clerk of the EAB, U.S. EPA (Mar. 10, 2008) (“First Richter Letter”); Letter from Heidi S. Lang, Antrim Conservation District, to Clerk of the EAB, U.S. EPA (Mar. 10, 2008) (“Lang Letter”). The First Richter Letter states, “The enclosed transcript and video recording constitute a collective petition \* \* \*.”<sup>5</sup> First Richter Letter at 1. It then characterizes the materials (including the video and audio recordings) arising from the Community Forum and provided to the Board as a “continuum” of the “numerous comments, petitions, resolutions and statements” submitted to the Region in June and July 2007 during the public comment period and

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<sup>5</sup> A VHS tape and DVD accompanied Petition No. 08-03. The First Richter Letter does not describe the date or circumstances under which the tape and DVD were made, and a transcript does not appear to have been filed.

in opposition to the issuance of the Permit.<sup>6</sup> *Id.* The letter then identifies a number of reasons raised at the Community Forum that allegedly support the Board's review of the Permit:

[N]early 30% of the public's comments were either not considered, rejected or inadequate under the narrow UIC Rules[;] this permit fails to consider all of our water resources and constitutes an unnecessary risk[;] this is a wrong and inadequate solution to the fundamental problems at Bay Harbor[;] the permit represents a failure of EPA to enforce its own Administrative Order of 2005 and a failure of EPA to address the total scope of the problems, not just those under UIC Rules[;] the Environmental Justice Evaluation was inadequate[;] and this permit failed to access prudent and feasible alternatives to the disposal well.

*Id.* at 1-2. This letter also appears to challenge the issuance of the Permit "before a final remediation plan is adopted" and the adequacy of the UIC regulations. *Id.* at 2.

The letter submitted by Ms. Lang summarizes the consensus of the Community Forum's attendees as "a very impassioned plea to the EPA to reconsider the issuance of" the Permit. Lang Letter at 1. The Lang Letter also requests the consideration of ten issues, of varying specificity, related to the Permit decision. *Id.* These comments generally concern the following: (1) the amount of a surety bond; (2) a request for EPA to "mandate properly positioned sentinel wells instead of just monitoring wells"; (3) a question related to who will pay for "a site investigation in case the Bell Shale Layer fails and results in groundwater contamination"; (4) a challenge to the "determination that the Bell Layer is protective"; (5) who will pay for wear and tear on the

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<sup>6</sup> The First Richter Letter provides that "[i]ncluded in these submissions [in June and July 2007] were resolutions from Antrim and Charlevoix County Commissions, City of East Jordan, Star Township, several [non-profit organizations] and many, many others." First Richter Letter at 1. The letter directs the Board to a "CD documenting these submissions as well as a significant electronic and paper file" that should be "in [our] records." *Id.* The CD referenced in the First Richter Letter is apparently different from the video recording and DVD filed with that letter. We note that such submissions have not been independently filed with the Board.

roads; (6) whether Emergency Action Plans will be mandated; (7) whether “CMS/Beeland [will] work to fix the problem [and] not just apply a band-aide to the wound”; (8) the adequacy of the proposed solution for contaminated beaches at Bay Harbor; (9) Antrim County residents protesting the shipment of Bay Harbor/Emmett County’s hazardous waste; and (10) environmental justice. *Id.* at 2.

Beeland asserts that Petition No. 08-03 also does not meet the threshold procedural requirements to be reviewed under 40 C.F.R. § 124.19. According to Beeland, Petition No. 08-03 raises issues that were not preserved for appeal during the comment period and do not address any permit conditions. Beeland Resp. at 31-33. Beeland also argues that Petition No. 08-03 raises issues that are outside the scope of the SDWA and UIC. *Id.* at 31. Further, Ms. Lang allegedly fails to “identify either disputed conditions of the permit or EPA responses to comments relating to such disputed conditions[,] \* \* \* and merely states that ‘the following items should be considered.’” *Id.* at 32. According to Beeland, the comments in the Lang Letter were not previously provided to the Region, and therefore, EPA did not prepare responses to those comments, and Ms. Lang is precluded from arguing that the Region relied on erroneous findings of fact or conclusions of law.<sup>7</sup> *Id.*

The Second Richter Letter seeks to clarify several of the issues raised in Beeland’s Response. At the outset, we note that the Second Richter Letter, which serves as a “reply to

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<sup>7</sup> Beeland also notes that Petition No. 08-03 is unclear as to the identity of the petitioner because the First Richter Letter and Lang Letter are on Friends of the Jordan River Watershed, Inc., and Antrim Conservation District letterheads, respectively, and neither letter states whether the authors submitted the letters on behalf of themselves as individuals, the organizations whose names are on the letterhead, or another entity. Beeland Resp. at 30-31.

Intervenor/Respondant Beeland Group's response to Petition 08-03[,]” was not timely filed.<sup>8</sup>

Second Richter Letter at 1. Even if the Second Richter Letter were timely filed as a reply to Beeland's Response, the information contained therein does not persuade the Board that Petition No. 08-03 meets the threshold procedural requirements for our review of the Permit.

The Second Richter Letter states that Petition 08-03 “represents a collective petition comprising comments from a broad coalition of individuals, government agencies and [non-profit organizations] who oppose the proposed injection well.” *Id.* The Second Richter Letter neither identifies the members of the “broad coalition” nor provides a formal name for the coalition, but the Second Richter Letter states that comments were collected on March 8, 2008 at the Community Forum. *Id.* The Second Richter Letter also alleges that “[t]hese same comments were raised and submitted by the coalition during the official comment period in June and July 2007.” *Id.* No documentation of those comments was provided, however. The Second Richter Letter further alleges that Dr. Richter was the twenty-sixth speaker at the June 13, 2007 public hearing in Alba, Michigan, and that he has legal standing both as an individual and as a spokesperson for the coalition. *Id.* Dr. Richter does not, however, assert that he was speaking on behalf of the coalition or provide any evidence that he indicated as much in his testimony. In addition, he does not state whether the objections he raises in the 08-03 Petition are the same as the objections he raised at the June 13, 2007, public hearing. Similarly, the Second Richter

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<sup>8</sup> As previously mentioned, replies to Beeland's Response were initially due from all petitioners on April 21, 2008. The Board granted the motion for a seven-day extension of time sought by Attorney Topp on behalf of the entities filing Petition 08-02: Star Township, Antrim County and Friends of the Jordan River Watershed, Inc. – the FJR Petitioners. *In re Beeland Group, LLC*, UIC Appeal No. 08-02 (EAB Apr. 14, 2008) (Order Granting Motion for Extension of Time). At no time did Dr. Richter or Ms. Lang seek an extension for their reply to Beeland's Response, nor did the Board extend the deadline.



Letter alleges that Ms. Lang “submitted written comments during the official comment period \* \* \* [and] also serves as a representative, spokesperson and participant in the previously mentioned coalition.” *Id.* Again, no comments were provided.

The remainder of the Second Richter Letter alleges several violations of “the CERCLA [(Comprehensive Environmental Response, Compensation and Liability Act)] process.” *Id.* at 2. Specifically, the Second Richter Letter states that “[t]he proposed UIC well is part of a CERCLA [r]emoval [a]ction<sup>9</sup> and not a separate or independent permitting activity. Refusing to consider the many public comments not covered by UIC Rules violates CERCLA standards.” *Id.* Further, “[t]he UIC permit is \* \* \* premature and should be revoked” because “a Final Remediation Plan has not been adopted or approved or gone through the required review process” and “approval of the UIC well is also inconsistent with the CERCLA process because the required Feasibility Study has not been followed.” *Id.*

Upon examination of Petition No. 08-03, we are troubled that the petitioner – according to Dr. Richter, the broad coalition – remains essentially unidentifiable, which makes standing difficult to ascertain. To the extent that Dr. Richter and Ms. Lang serve as representatives of a coalition for the purposes of this appeal, as alleged, their participation in the public process and whether they stated their representation of the coalition at that time is essential to establish the

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<sup>9</sup> Removal actions are a category of cleanup response to sites contaminated by hazardous substances. CERCLA § 101(23), 42 U.S.C. § 9601(23); *see also In re Cyprus Amax Minerals Co.*, 7 E.A.D. 434, 441 n.13 (EAB 1997). “The removal program is intended to address [hazardous substance] releases that pose a relatively near-term threat.” National Oil & Hazardous Substances Pollution Contingency Plan, 53 Fed. Reg. 51,394, 51,405 (proposed Dec. 21, 1988). The authority to conduct removal actions “is mainly used to respond to emergency and time-critical situations where long deliberation prior to response is not feasible.” National Oil & Hazardous Substances Pollution Contingency Plan, 55 Fed. Reg. 8,666, 8,695 (Mar. 8, 1990).

coalition's standing to petition for review of the Permit. *See American Soda, LLP*, 9 E.A.D. 280, 288 (EAB 2000) (limiting standing when documentation that a petitioner either submitted written comments or participated in the public hearing was lacking and second petitioner failed to state it was commenting on behalf of another entity). Moreover, the burden to demonstrate standing falls squarely on the Petitioner. *See* 40 C.F.R. §124.19 (conferring standing on those who participated in the public hearing, i.e., by making oral or written statements in accordance with 40 C.F.R. § 124.12, and requiring the petition to include a demonstration that any issue being raised was previously raised during the public comment period); *see also In re Avon Custom Mixing Services, Inc.*, 10 E.A.D. 700, 705 (EAB 2002).

The Second Richter Letter alleges public participation on the parts of Dr. Richter, Ms. Lang, and the coalition. Second Richter Letter at 2. However, Petition No. 08-03 lacks any documentation of comments submitted by the coalition, or any documentation that any comments submitted by Dr. Richter or Ms. Lang were submitted on behalf of the coalition. The only documentation submitted with Petition No. 08-03 consists of several sets of comments dated March 8, 2008, which appear, based on their labeling, to have been compiled at or for the purpose of the Community Forum held on March 8, 2008. The Community Forum occurred long after the public comment period for the draft permit closed and was not part of the federal permitting process. To the extent that a similar compilation of comments was created by the coalition prior to March 8, 2008, and was "submitted by the coalition to Mr. William Bates of

EPA Region 5 during the official comment period,” Petitioner has provided no evidence of that fact.<sup>10</sup>

Even if the coalition, or Dr. Richter and Ms. Lang individually, could establish standing, Petition No. 08-03 lacks sufficient specificity to be reviewed by this Board. *Id.*; *Avon Custom Mixing Servs.*, 10 E.A.D. at 707-08 & n.10. We are unable to discern from the petition any specific Permit condition or term that is at issue, despite attempting to generously construe the objections.<sup>11</sup> It appears that Petition No. 08-03 seeks review based on numerous general concerns, without a single citation to a permit term or condition that, in Petitioners’ view, is based on a clearly erroneous finding of fact or conclusion of law. *See* 40 C.F.R. § 124.19(a) (requiring Petitioners, when appropriate, to show that the condition in question is based on “[a] finding of fact or conclusion of law which is clearly erroneous,” or “[a]n exercise of discretion or in important policy consideration which [the Board] should, in its discretion, review”). Further, although Petitioner asserts that the appeal involves “important policy considerations which the Board, in its discretion, should review, the Board cannot discern from the Petition what those policy considerations are, or any argument warranting Board review.<sup>12</sup> Based on the foregoing,

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<sup>10</sup> A petitioner who does not participate in the permitting process during the comment period may, nevertheless, petition for review of provisions that have changed between draft and the final permit. *See* 40 C.F.R. § 124.19(a); *Avon Custom Mixing Servs.*, 10 E.A.D. at 707-08 & n.10. Petition No. 08-03, however, does not specifically identify any changes to the permit, let alone any specific objections to such changes.

<sup>11</sup> As noted above, in cases where, as here, the petitioner is not represented by counsel, the Board typically attempts to identify the substance of the argument despite “the informal manner in which those arguments are presented.” *In re Federated Oil & Gas of Traverse City, Mich.*, 6 E.A.D. 722, 727 (EAB 1997).

<sup>12</sup> Additionally, we note that, to the extent that Petition No. 08-03 was intending to raise  
(continued...)

Petition No. 08-03 does not meet threshold procedural requirements for our review and is, accordingly, denied.

CONCLUSION

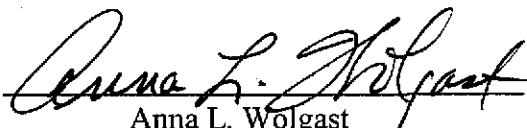
For the foregoing reasons, review of Petition Nos. 08-01 and 08-03 are denied.

So ordered.<sup>13</sup>

ENVIRONMENTAL APPEALS BOARD

Dated: May 23, 2008

By:

  
Anna L. Wolgast  
Environmental Appeals Judge

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<sup>12</sup>(...continued)

issues concerning any ongoing CERCLA removal action, such issues would be beyond the scope of a petition for review of this UIC permit.

<sup>13</sup> The panel deciding this matter is comprised of Environmental Appeals Judges Edward E. Reich, Kathie A. Stein, and Anna L. Wolgast.

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review in the matter of *Beeland Group, LLC*, UIC Appeal Nos. 08-01 and 08-03, were sent to the following persons in the manner indicated:

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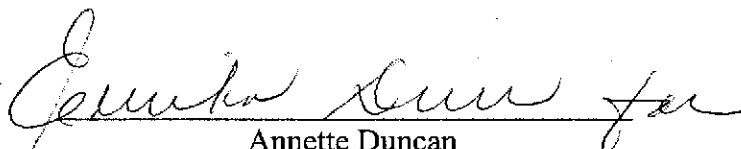
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