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ENVIR. APPEALS BOARD

May 6, 2008

BY OVERNIGHT DELIVERY

US Environmental Protection Agency
Eurika Durr
Clerk of the Board, Environmental Appeals Board
1341 G Street, NW, Sixth Floor
Washington, DC 20005

Re: In Re: Beeland Group, LLC, Beeland Disposal
Well #1, Appeal Nos. 08-01, 08-02 and 08-03

Dear Ms. Durr:

Enclosed please find an original and six copies of Intervenor/Respondent Beeland Group LLC's Motion for Leave to File Instant Surreply to Replies of Petitioners Star Township, Antrim County, Friends of the Jordan River and Dr. John Richter to the Response by Beeland to the Petition for Review Nos. 08-01, 08-02, and 08-03; and its Surreply to Replies of Petitioners Star Township, Antrim County, Friends of the Jordan River and Dr. John Richter to the Response by Beeland to the Petition for Review Nos. 08-01, 08-02 and 08-03.

Please return one file stamped copy to me in the enclosed self addressed postage paid envelope.

Thank you for your assistance.

Sincerely,



Gregory L. Berlowitz

cc: Service List

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

In Re:)
))
BEELAND GROUP, LLC)
BEELAND DISPOSAL WELL #1)
))
UIC PERMIT NUMBER: MI-099-11-0001)
_____)

Appeal Nos. UIC 08-01,
08-02, and 08-03.

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**Intervenor/Respondent Beeland Group LLC's Motion for Leave to File
Instanter Surreply to Replies of Petitioners Star Township, Antrim County, Friends of the
Jordan River and Dr. John Richter to the Response by Beeland to the
Petition for Review Nos. 08-01, 08-02, and 08-03**

Permittee and Intervenor-Respondent Beeland Group, LLC (Beeland), by and through its attorneys Mayer Brown LLP and Zimmerman, Kuhn, Darling, Boyd, Quandt and Phelps, PLC, moves the Environmental Appeals Board (Board) for leave to file a Surreply. On April 11, 2008, Beeland filed a Response to three consolidated Petitions for Review challenging EPA's issuance of a UIC permit to Beeland. Two of the three Petitioners filed a Reply to Beeland's Response. Beeland moves for leave to file instanter a brief surreply to the Replies filed with respect to Petitions 08-02 and 08-03 in order to address one issue raised by the Petitioners for the first time in their Replies.

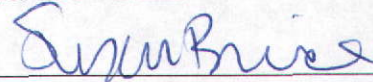
The Board previously has granted leave to file surreplies. *See In re: District of Columbia Water and Sewer Authority*, NPDES Appeal Nos. 05-02, 07-10, 07-11, 07-12, slip op. at 1-2 (EAB, Aug. 3, 2007) (granting surreply for good cause shown). The Surreply is timely, as Petitioners' Replies were just filed on April 28, 2008. It will not prejudice any of the parties and it seeks to address an issue raised for the first time by the Petitioners in their reply briefs.

Wherefore, Beeland requests that the Board grants permission to file instanter its surreply in this matter.

Respectfully Submitted:

Dated: 5-6-08, 2008

Mayer Brown LLP



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

In Re:)
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BEELAND GROUP, LLC)
BEELAND DISPOSAL WELL #1)
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UIC PERMIT NUMBER: MI-099-11-0001)
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Appeal Nos. UIC 08-01,
08-02, and 08-03.

Intervenor/Respondent Beeland Group LLC's Surreply to Replies of Petitioners Star Township, Antrim County, Friends of the Jordan River and Dr. John Richter to the Response by Beeland to the Petition for Review Nos. 08-01, 08-02, and 08-03

Permittee and Intervenor-Respondent Beeland Group, LLC (Beeland), by and through its attorneys Mayer Brown LLP and Zimmerman, Kuhn, Darling, Boyd, Quandt and Phelps, PLC, hereby responds to the Replies of two of the Petitioners, Petitioners Star Township, Antrim County, Friends of the Jordan River (collectively, "FOJR" Petitioners) and Dr. John Richter ("Petitioner Richter").

1. The Petitioners' CERCLA Issues Should be Denied Review Because Issues Raised for the First Time in a Reply are Equivalent to Late Filed Appeals

In their Replies, FOJR Petitioners and Petitioner Richter both raise for the first time the claim that Beeland's UIC well is part of a CERCLA removal action and not a separate/independent permitting activity.

More specifically, the FOJR Petitioners claim in four sections of their Reply that the UIC well was "not an separate/independent permitting activity," but part of an ongoing "CERCLA Removal Action" and that it is "apparent" that Regional UIC personnel are unaware of this. FOJR Reply at 5, 18, 21 and 23. They then speculate that "[k]nowledge of the well's role in the

CERCLA process likely would have impacted proposed permit conditions” including proposed term of permit and sampling requirements.” *Id.* They also claim, somewhat inexplicably, that “EPA refused to respond to comments on the draft UIC permit for a number of concerns raised by stating those issues fell outside the jurisdiction of the UIC program. However, those concerns are not outside of the CERCLA decision process, which is more closely the functional equivalent of NEPA than the SDWA/UIC permitting process.” FOJR Reply at 23. They conclude by claiming that “it is premature to determine underground injection of leachate is consistent with final remedial actions.” *Id.*

Petitioner Richter makes the same claim as Petitioner FOJR, and adds that “[r]efusing to consider the many public comments not covered by UIC Rules violates CERCLA standards” and permitting the UIC well “without considering the full range of consequences resulting from its operation, violates the CERCLA process.” Pet. Richter Reply at 2.

Issues raised for the first time in a reply may be denied by the EAB on the basis of timeliness because they are equivalent to late filed appeals. See *In re: ConAgra Soybean Processing Company*, PSD Appeal Nos. 98-27 & 98-28, slip op. at 2-3 (EAB, Sept. 8, 1999), citing *In re Knauf Fiber Glass, GmbH*, PSD Appeal Nos. 98-3 through 98-20, slip op. at 8 n.9 (EAB, Feb.4, 1999). As these issues relating to the well’s role in a CERCLA removal action first were raised more than six weeks after the Petitions for Review, and after Beeland’s Response was filed with the EAB, they are untimely.

2. **The Petitioners’ CERCLA Issues Should be Denied Review Because They Fail to Meet Either the Fundamental Information Standard for Consideration on the Merits or the Standard of Review for UIC Permits**

The EAB has jurisdiction to review “any condition of the permit decision.” 40 C.F.R. § 124.19. Other fundamental information in a petition for review must include a demonstration

that the issues were raised during the public comment period, and a showing that the condition is based on a finding of fact or conclusion of law which is clearly erroneous, or an exercise of discretion or an important policy consideration. 40 C.F.R. § 124.19(a); *In Re Envotech, L.P.*, 6 E.A.D. 260, 264 (EAB 1996). In addition, the grounds for review must be within the scope of the Safe Drinking Water Act (SDWA) and the UIC regulations. *In re: Core Energy, LLC*, UIC Appeal No. 07-02, slip op. at 3 (EAB Dec. 19, 2007).

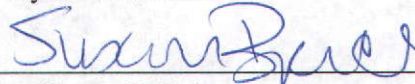
The FOJR Petitioners and Petitioner Richter fail to meet these threshold requirements with respect to their new argument regarding the well's role in a CERCLA removal action. First, this is not a challenge to a permit condition. Second, Petitioners make no allegation that this issue was raised or preserved during the public comment period or that EPA issued a response to a comment on this issue that was clearly erroneous or an abuse of discretion. Finally, this issue falls outside the Board's scope of review. The Petitioners do not identify any case law or regulation, or otherwise explain how the fact that the well will be used to dispose of non-hazardous materials collected during a CERCLA removal action is a criteria for considering whether to issue a UIC permit. *See* 40 C.F.R. § 146, UIC Program: Criteria and Standards; *see also In Re: American Soda, LLP*, 9 E.A.D. 280, 286 (EAB 2000) ("the SDWA . . . and the UIC regulations . . . establish the only criteria that EPA may use in deciding whether to grant or deny an application for a UIC permit . . ."); *Core Energy*, slip op. at 3 (where petitioners raise concerns outside the scope of the UIC program, the Board will deny review). As a result, there is no basis for review.

Wherefore, Beeland respectfully requests that the EAB dismiss the new CERCLA claims in Petitions 08-02 and 08-03 on summary disposition grounds.

Respectfully Submitted:

Dated: 6 May, 2008

Mayer Brown LLP



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Intervenor/Respondent Beeland Group LLC's Motion for Leave to File Surreply to Replies of Petitioners Star Township, Antrim County, Friends of the Jordan River and Dr. John Richter's to the Response by Beeland to the Petition for Review Nos. 08-01, 08-02, and 08-03 and Intervenor/Respondent Beeland Group LLC's Surreply to Replies of Petitioners Star Township, Antrim County, Friends of the Jordan River and Dr. John Richter's to the Response by Beeland to the Petition for Review Nos. 08-01, 08-02, and 08-03** were served by United States First Class Mail on the following persons, this 6th day of May, 2008:

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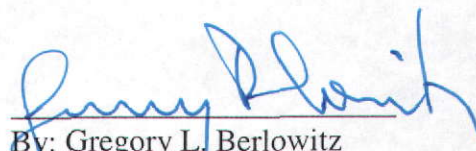
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Dr. John W. Richter, President
Friends of the Jordan River Watershed, Inc.
P.O. Box 412
East Jordan, MI 49727

I have also filed the foregoing **Intervenor/Respondent Beeland Group LLC's Motion for Leave to File Surreply to Replies of Petitioners Star Township, Antrim County, Friends of the Jordan River and Dr. John Richter's to the Response by Beeland to the Petition for Review Nos. 08-01, 08-02, and 08-03 and Intervenor/Respondent Beeland Group LLC's Surreply to Replies of Petitioners Star Township, Antrim County, Friends of the Jordan River and Dr. John Richter's to the Response by Beeland to the Petition for Review Nos. 08-01, 08-02, and 08-03** and this **Certificate of Service** with the Clerk of the Environmental Appeals Board, by overnight delivery service, on this 6th day of May, 2008 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


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May 6, 2008
Dated