



permit”). On October 23, 2018, Region 5 issued a final permit for the Grove #13-11 well, Permit No. MI-051-2D-0031 (“Grove #13-11 Permit”), as well as a response to comments that Region 5 received regarding the Grove #13-11 draft permit. Region 5 issued the Grove #13-11 Permit under the Safe Drinking Water Act, 42 U.S.C. §§ 300h-300h-8 (“SDWA”), and under the regulations at 40 C.F.R. Parts 124, 144-148. On October 26, 2018, Region 5 mailed the Grove #13-11 Permit and response to comments to all persons who had submitted comments to Region 5 regarding the Grove #13-11 draft permit.

Between November 21-28, 2018, four individuals filed petitions with the Environmental Appeals Board (“Board”) appealing the Grove #13-11 Permit decision: UIC Appeal Nos. 18-06 (Emerson Addison), 18-07 (Ron Kruske), 18-08 (Amy Kruske) and 18-09 (Jennifer Springstead). In a December 13, 2018 order, the Board consolidated these four appeals into one matter.

On April 29, 2019, the Board issued an *Order Remanding In Part and Denying Review In Part in In re Muskegon Development Co.*, UIC Appeal No. 18-05 (“Muskegon Remand Order”). *In re Muskegon* was another appeal of a final permit for a Class II UIC well. In his petition appealing the *In re Muskegon* permit, Petitioner Emerson Addison objected to Region 5’s application of Environmental Justice (“EJ”) to the permitting process, as he has done in this matter where he is also a Petitioner. In the Muskegon Remand Order, in part the Board remanded that permit to Region 5 to explain how Region 5 applied EJ concerns to public participation and Region 5’s use of SDWA omnibus authority in the permitting process, as well as to take further action as necessary (Muskegon Remand Order, at 16-17).

On May 16, 2019, the Board issued the Order. In the Order, the Board stated that Region 5 had explained how it applied EJ concerns to public participation but had not explained “how it addressed its UIC regulatory authority with respect to the environmental justice concerns as set

forth in [Board precedent].” Order, at 2. The Order at 2 then directed Region 5 to answer the following questions:

Whether and how, in accordance with the Executive Order on Environmental Justice and Board precedent, the Region exercised its discretion under UIC regulatory omnibus authority in this permitting action to ensure the protection of the USDWs, including any USDWs upon which a minority or low-income community may rely.

Pursuant to 40 C.F.R. §124.19(f)(2), Region 5 sought to ascertain whether each party concurred with or objected to this motion. Specifically, Region 5 emailed all five parties on May 23, 2019. Permittee Jordan Development Co. supports this motion. Petitioner Emerson Addison objects to this motion. Petitioners Ron Kruske, Amy Kruske and Jennifer Springstead have not responded to Region 5’s email.

## ARGUMENT

**1. The Board should grant Region 5 a 10-day extension of time to provide supplemental briefing.**

The Board should grant Region 5 a 10-day extension of time to provide supplemental briefing pursuant to the Order. This will allow EPA’s Office of General Counsel’s (“OGC”) management, the Office of Water (“OW”) and Region 5 adequate time to coordinate on this EJ issue and provide a higher-level response to the Board’s request.

Region 5 has begun work and coordination with EPA headquarters on this supplemental briefing, which addresses similar topics to the portion of the Muskegon Remand Order discussed above. *See* Muskegon Remand Order, at 15-17. In light of the Muskegon Remand Order, OGC management wishes to provide additional review, input and coordination on Region 5’s supplemental briefing. This additional review, input and coordination will require additional

time. Region 5's request also reflects that the briefing schedule falls over the Memorial Day holiday. This popular vacation time becomes a greater issue as more people want to provide input on the supplemental briefing.

Petitioner's only objection does not address EPA's need for coordination. Petitioner Addison simply objected on the grounds that "EPA has had more than enough time to generate a response," stating that Region 5 should be familiar enough with the facts, EPA regulations and its own arguments to provide supplemental briefing by June 3. Petitioner is correct that Region 5 is aware of the facts of this matter and EPA regulations. And Region 5 has been reviewing relevant policies and Board precedent. But the additional coordination and review that OGC management wishes in this matter requires additional time. Region 5 asks only for the time necessary for an EPA-wide response with additional review, input and coordination.

As stated above, Region 5 and EPA headquarters have begun consultation on the supplemental briefing. OGC and OW both agree with the proposed 10-day extension. Accordingly, Region 5 asks the Board to grant Region 5 a 10-day extension of time to provide supplemental briefing in this matter, to June 13, 2019.

## **CONCLUSION**

The Board should grant this motion for a 10-day extension of time to provide supplemental briefing in this matter, to June 13, 2019, as well as correspondingly extend Petitioner Emerson Addison's deadline to file a supplemental response brief under the Order to June 21, 2019.

Respectfully submitted,



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Dated: May 24, 2019

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

In the Matter of: )  
)  
)

Jordan Development Co., LLC, )  
Traverse City, Michigan, )  
Grove #13-11 SWD, )  
Permit No. MI-051-2D-0031 )

Appeal Nos. UIC 18-06  
UIC 18-07  
UIC 18-08  
UIC 18-09

**CERTIFICATE OF SERVICE**

I hereby certify that the original of this **OPPOSED MOTION FOR EXTENSION OF TIME FOR SUPPLEMENTAL BRIEFING** in the matter **JORDAN DEVELOPMENT COMPANY, LLC OF TRAVERSE CITY, MICHIGAN, GROVE #13-11 SWD, PERMIT NO. MI-051-2D-0031, GLADWIN COUNTY, MICHIGAN, UIC Appeal Nos. 18-06, 18-07, 18-08 and 18-09**, was filed electronically with the Board.

Further, I hereby certify that one copy of this **OPPOSED MOTION FOR EXTENSION OF TIME FOR SUPPLEMENTAL BRIEFING** in the matter **JORDAN DEVELOPMENT COMPANY, LLC OF TRAVERSE CITY, MICHIGAN, GROVE #13-11 SWD, PERMIT NO. MI-051-2D-0031, GLADWIN COUNTY, MICHIGAN, UIC Appeal Nos. 18-06, 18-07, 18-08 and 18-09**, was sent to the Petitioners and Permittee, via email pursuant to Board order, to the following addresses:

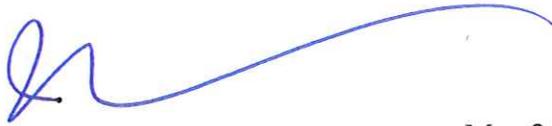
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Kris P. Vezner

May 24, 2019  
Date