

CLARK HILL

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July 13, 2009

VIA OVERNIGHT MAIL

U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board
1341 G. Street N.W., Suite 600
Washington D.C., 20005

**Re: *In re: Environmental Disposal Systems, Inc.
Underground Injection Control Permits MI-163-1W-C007 and MI-163-1W-
C008***

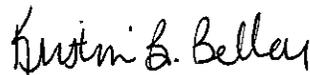
Dear Clerk:

Enclosed for filing, please find an original *Response to Environmental Protection Agency's Status Report* and an original *Proof of Service* in the above-referenced matter.

Should you have any questions or require additional information, please do not hesitate to contact this office.

Very truly yours,

CLARK HILL PLC



Kristin B. Bellar

KBB:rlw
Enclosures

cc: Client
Thomas Krueger, EPA
Mindy G. Nigoff, EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ENVIRONMENTAL APPEALS BOARD

In re: Environmental Disposal Systems, Inc.

UIC Appeal No. 07-03

Underground Injection Control Permits
MI-163-1W-C007 and MI-163-1W-C008

RESPONSE TO ENVIRONMENTAL PROTECTION AGENCY'S STATUS REPORT

The Police and Fire Retirement System of the City of Detroit, RDD Investment Corp. and RDD Operations, LLC (collectively "Petitioners"), and the U.S. Environmental Protection Agency, Region 5 ("EPA"), by their undersigned attorneys, respectfully submit this response to the July 9, 2009 Status Report submitted by EPA to the Environmental Appeals Board ("EAB").

On July 18, 2008, the EAB denied Petitioners' November 21, 2007 Petition for Review of the EPA's October 22, 2007 Notice of Decision to Terminate Underground Injection Control Permits MI-163-1W-C007 and MI-163-1W-C008 (the "UIC Permits") issued for an underground injection control facility located in Romulus, Michigan (the "Facility"). Pursuant to a motion filed by Petitioners, on August 25, 2008, the EAB granted a six-month stay of the termination of the UIC Permits. By order dated February 19, 2009, the EAB extended the stay of the effective date of the EAB's Order Denying Review through June 19, 2009.¹ The EAB's Order Granting Stay required the parties to submit a "report regarding the status of the permit application" which "shall include a discussion of whether it is appropriate to continue the stay" on or before June 19, 2009. (EAB Order Granting Stay, p.2).

On June 18, 2009, Petitioners and EPA submitted a Joint Status Report, stating that:

¹ "For the purposes of judicial review, a final agency action occurs only after the Environmental Appeals Board issues notice to the parties that review has been denied. The Board's *EDS Decision* shall not constitute such notice while the effective date of the decision remains stayed." (EAB August 25, 2008 Order, pp. 8-9, fn. 4) (internal citation and quotation omitted).

EPA's decision on EGT's permit application has been unavoidably delayed. EPA, however, expects to issue a decision on the permit application in the very near future. Petitioners and the EPA agree that an additional extension of the stay is appropriate to allow the EPA to complete its review of the permit application and issue a decision that may affect these proceedings. The parties agree that an extension of the stay will preserve the EAB's and the parties' resources and promote efficiency in resolving the instant proceedings.

(Joint Status Report, p.2). On June 24, 2009, the EAB issued an Order extending the stay through July 19, 2009, and directing EPA to file a status report regarding the projected timing of the review and decision on EGT's UIC permit application.

The EPA submitted a status report, dated July 9, 2009, stating that "it is no longer clear whether U.S. EPA will be in a position to issue a proposed decision on the pending permit applications... in the near future," and that "there is no reason to further extend the effective date of the EAB's July 18, 2008, Order Denying Review based on the potential impact of such a proposed decision on this matter."

The EPA provided no information explaining its statement that it may not issue a proposed decision on EGT's complete UIC permit application in the near future. While there is no legal basis for the EPA to further delay a decision on EGT's UIC permit application, or any legal basis for denial of EGT's UIC permit application, the EPA must, at some point, issue a decision on EGT's UIC permit application. As EGT's complete UIC permit application remains pending before the EPA, the reasons supporting the stay of the EAB's Order Denying Review remain the same. Should the EPA grant complete EGT's UIC permit application, this appeal may be rendered moot. To preserve the EAB's and the parties' resources and promote efficiency in resolving the instant proceedings, Petitioners respectfully request that the EAB extend the stay

for an additional four-month period from July 19, 2009 through November 19, 2009.
Environmental Appeal Board ("EAB").²

Respectfully submitted,

CLARK HILL PLC

By: Kristin B. Bellar

Joseph E. Turner (P44135)
Ronald A. King (P45008)
Kristin B. Bellar (P69619)
212 East Grand River Avenue
Lansing, Michigan 48906
Attorneys for Petitioners

Date: July 13, 2009

² In the event that the EPA issues a draft permit for EGT's underground injection control permits, an additional extension of the stay may be necessary to comply with public participation and other requirements prior to issuance of a final decision.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ENVIRONMENTAL APPEALS BOARD

In re: Environmental Disposal Systems, Inc. UIC Appeal No. 07-03

Underground Injection Control Permits
MI-163-1W-C007 and MI-163-1W-C008

PROOF OF SERVICE

STATE OF MICHIGAN }
 } ss
COUNTY OF INGHAM }

I, Kristin B. Bellar, being duly sworn, depose and say that on July 13, 2009, I served the original *Response to Environmental Protection Agency's Status Report*, along with this *Proof of Service* upon:

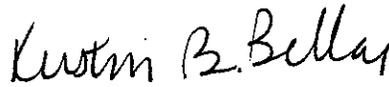
U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board
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Washington, D.C. 20005

via overnight mail, and electronically filed same with the Environmental Appeals Board at www.epa.gov/cab.

Service of same was also accomplished by placing same in a United States mail depository, enclosed in envelopes bearing postage fully prepaid and addressed properly upon:

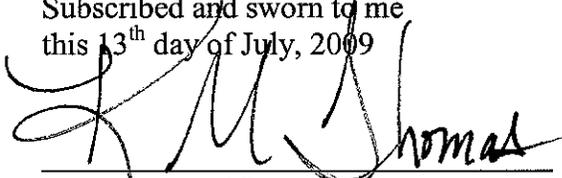
Thomas J. Krueger, Associate Regional Counsel
United States Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

Mindy G. Nigoff
Office of General Counsel
United States Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, D.C. 60604-3590



Kristin B. Bellar

Subscribed and sworn to me
this 13th day of July, 2009



K M Thomas, Notary Public
Ingham County, State of Michigan.
Acting in Ingham County, Michigan.
My Commission Expires: September 25, 2015.