

EXHIBIT A

**PUBLIC COMMENTS OF  
THE POLICE AND FIRE RETIREMENT SYSTEM OF THE CITY OF DETROIT  
AND  
RDD INVESTMENT CORP.  
AND  
RDD OPERATIONS, LLC  
TO  
THE ENVIRONMENTAL PROTECTION AGENCY'S APRIL 12, 2007 NOTICE OF  
INTENT TO TERMINATE UIC PERMITS MI-163-1W-C007 AND MI-163-1W-C008**

**JUNE 20, 2007**

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The Police and Fire Retirement System of the City of Detroit ("PFRS"), and its wholly owned subsidiaries, RDD Investment Corp., and RDD Operations, LLC, by and through their attorneys, Clark Hill PLC, submit the following public comment in opposition to the Environmental Protection Agency's ("EPA") Notice of Intent to Terminate UIC permits MI-163-1W-C007 and MI-163-1W-C008 by stating as follows:

### I. INTRODUCTION/SUMMARY OF COMMENT<sup>1</sup>

The PFRS is a pension plan and trust established by the Charter and Municipal Code of the City of Detroit. The Board of Trustees of the PFRS oversees the pension funds of the police and fire departments of the City of Detroit which secure retirement and disability benefits for all City of Detroit Police and Fire personnel. From 1993 to 2006, the PFRS loaned, as an investment, approximately \$40,000,000.00 to Environmental Disposal Systems, Inc. ("EDS"), Romulus Deep Disposal Limited Partnership ("Romulus") and Remus Joint Venture ("RJV") for construction and completion of a commercial Class I Hazardous Waste underground injection well and hazardous waste treatment and storage facility which is located at 28470 Citrin Drive in Romulus, Michigan ("Facility" or "Project"). EDS received final regulatory approval for operation of the Facility on or about December 27, 2005. Among the regulatory approvals was the issuance by the EPA of the Underground Injection Control ("UIC") permits related to operation of the two deep injection wells at the Facility, which are the subject of this comment.

In October of 2006, EDS, Romulus and RJV defaulted on their various obligations to the PFRS under the loan agreements between the parties. At that time, the PFRS began making arrangements for the orderly transfer of the Facility from EDS to a yet to be determined successor owner or operator. On October 23, 2006 and October 26, 2006, staff of the Michigan

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<sup>1</sup> A detailed Chronology of Relevant Facts is set forth in section II of this comment.

Department of Environmental Quality ("MDEQ") noted leaks from the well heads of the two deep injection wells at the Facility. In light of the possible significance of this discovery and EDS' demonstrated inability to adequately operate the Facility and/or meaningfully respond to the observed leaks, the PFRS, through its newly created designee, RDD Investment Corp. and RDD Operations, LLC (referred to collectively as "RDD"), on or about November 7, 2006, effectively replaced EDS as operator of the Facility and took physical possession and control of the Facility. As part of this transfer of operations of the Facility, EDS assigned to RDD all of its rights and interests in the Project and the various licenses and permits, including the UIC permits. This expedited transfer of the Facility was not the preferred course of action of the PFRS. However, under the circumstances, this was the action the PFRS believed was required to secure the safety and integrity of the Facility.

As detailed further in sections II and III of this comment, since early November of 2006, RDD has expended considerable energy and resources addressing compliance issues at the Facility resulting from EDS' operations. Additionally, the PFRS and RDD have identified a well-capitalized and qualified entity to assume ownership and operation of the Facility, Environmental Geo-Technologies, LLC ("EGT"). On February 28, 2007, RDD and EGT, with the cooperation of EDS, submitted a formal UIC permit transfer request to EPA pursuant to 40 CFR §144.41, requesting transfer of the UIC permits at issue in this matter from RDD/EDS to EGT. On or about April 12, 2007, with no prior notice or indication and without acting on the pending transfer request, EPA issued its Notice of Intent to Terminate the UIC permits for the Facility.

The PFRS and RDD now respectfully submit the following comments in opposition to the EPA's notice of intent to terminate, and request that, as an alternative to termination of the

EDS/RDD UIC permits, EPA approve a minor modification of the permits to acknowledge EGT as the new permittee or, as a last alternative, modify or revoke and reissue the permits at issue to EGT, pursuant to 40 CFR §124.5, §144.39 and/or §144.41, as more fully discussed in section IV of this comment, for the following reasons:

1. The primary stated basis for EPA's intent to terminate the UIC permits is EPA's position that EDS has not complied with various reporting and recordkeeping obligations required under the permits and applicable federal regulations. However, in taking this position, the EPA puts on "legal" blinders, and ignores the well-known and documented fact that EDS assigned its rights in the permits to RDD in November of 2006 and, more importantly, since that time, as detailed in section III of this comment, RDD has otherwise responded to all inquiries and requests for information sent by EPA to EDS. Moreover, any purported non-compliance on the part of EDS is related almost exclusively to a lack of recordkeeping and/or failure to respond to EPA requests for information. Yet, since November 7, 2006, RDD has responded to every EPA inquiry related to the operations of the Facility directed to EDS, and EPA has acknowledged that any recordkeeping and reporting failures of EDS have not impacted the mechanical integrity of the wells at the Facility. While not standing directly in the place of EDS, RDD has fully and completely discharged EDS' obligations with respect to the UIC permits, and the EPA's basis for termination of the permits is entirely one of form over substance, which ignores relevant factors and the record before the agency;

2. Termination of the UIC permits would unfairly punish the very entities who stepped forward to address the operational issues created by EDS in the fall of 2006. Particularly, a termination of the UIC permits would punish the PFRS and the police and fire retirees/beneficiaries for whose benefit the PFRS has invested in the Facility. The PFRS took

immediate action under difficult circumstances and completed an unexpected and unplanned transfer of the Facility in order to promptly secure the Facility. The PFRS could have simply taken no action in its position as a secured creditor and left it to EPA to expend resources to address the operational impact of EDS' actions and insolvency. On the other hand, termination of the permits will have no impact on EDS, as EDS dissolved as a Michigan corporation on or about April 25, 2007, is presumably winding up its affairs, and none of EDS' former officers, directors or shareholders has had any role in the operation of the Facility whatsoever since November of 2006;

3. EPA's decision to hold its review of the transfer request of RDD and EGT in abeyance pending resolution of this matter is arbitrary and capricious and not supported by law. This is particularly true in light of the fact that RDD and EGT have expended considerable effort to meet outstanding permit conditions, the mechanical integrity of the wells has never been brought into question, the wells remain structurally and functionally sound and pose no risk to public health or the environment, and EGT has documented its qualifications to operate the Facility;
4. The PFRS and RDD have incurred significant costs in addressing the compliance issues related to the Facility, in part, in reliance on the fact that prior to April 12, 2007, the day the EPA issued its Notice of Intent to Terminate, EPA never stated, hinted or indicated, in any way, that the UIC permits would be terminated. Even while requesting information and working directly with RDD on permit compliance issues and RDD and EGT on submittal of the UIC permit transfer request, EPA never indicated that EPA was contemplating termination of the UIC permits; and
5. Other remedies are available to the Administrator short of termination of the permits, which are fully and completely supported by the record before the agency and by consideration

of the relevant factors associated with this matter. Pursuing these alternatives will adequately insure the safe and lawful operation of the Facility. Termination of the UIC permits is a drastic remedy which will unfairly place the risks and burdens of on-going operation of the Facility on parties who played no part in the conduct and actions of EDS.

For these reasons and the reasons stated more fully in this comment, the PFRS and RDD respectfully request the Administrator to exercise her discretion in this matter and, based on the information provided and consideration of the relevant factors, make a minor modification to the UIC permits to identify EGT as the new permittee and incorporate such other requirements as may be necessary under the Safe Drinking Water Act.

## II. CHRONOLOGY OF RELEVANT FACTS

1. The Police and Fire Retirement System of the City of Detroit is a pension plan and trust established by the Charter and Municipal Code of the City of Detroit ("PFRS"). The Board of Trustees of the PFRS oversees the pension funds of the police and fire departments of the City of Detroit which secure retirement and disability benefits for all City of Detroit Police and Fire personnel.
2. In 1993, Environmental Disposal Systems, Inc. ("EDS") approached the PFRS with an investment opportunity related to construction and operation of a commercial Class I Hazardous Waste underground injection well and hazardous waste treatment and storage facility ("Facility" or "Project").
3. From 1993 to 2006, the PFRS loaned approximately \$40,000,000.00 to EDS, Romulus Deep Disposal Limited Partnership ("Romulus") and Remus Joint Venture, ("RJV") for construction and completion of the Project which is located at 28470 Citrin Drive in Romulus, Michigan.
4. As lender, the PFRS took a security interest in the real property on which the Facility is located and in all assets related to the Project.
5. The PFRS, through its advisors and representatives, monitored the progress of the Project solely in its capacity as a lender. Otherwise, the PFRS had no direct or indirect involvement in the construction or operations of the Facility.
6. On October 18, 2004, the Environmental Protection Agency ("EPA") Region 5 Administrator issued final underground injection control ("UIC") permits to EDS which authorized use of the two deep injection disposal wells located at the Facility.

7. On December 27, 2005, the Michigan Department of Environmental Quality ("MDEQ") issued a final Hazardous Waste Management Facility operating license to EDS for the storage and treatment of hazardous wastes at the Facility.

8. As of December 27, 2005, EDS had received all of the necessary regulatory permits and licenses required for operation of the Facility, including the Resource Conservation and Recovery Act ("RCRA") Land Ban Exemption, the UIC permits, the MDEQ Part 111 Hazardous Waste Management Facility construction permit and operating license, the MDEQ Part 625 well permit, the MDEQ National Pollutant Discharge Elimination System ("NPDES") permit, the MDEQ storage tank registrations, certifications, permits and licenses, the MDEQ Wetlands Protection permit, the Wayne County Storm Water System permit, and the City of Romulus Soil Erosion permit.

9. On or about December 27, 2005, EDS commenced operations at the Facility and began receiving and treating hazardous waste and injecting the hazardous waste in the deep disposal wells.

10. Throughout the first nine months of 2006, the PFRS received intermittent updates regarding the operations at the Facility through its business advisor. During this time, the PFRS had no direct involvement in the Project, had no day to day access to the Facility and was not involved in the management or operations of the Facility in any manner.

11. Under the various loan agreements between the PFRS, EDS, Romulus and RJV, the PFRS had no specific right to possession of the Facility, provided EDS, Romulus and RJV were not in default under the agreements.

12. Additionally, during this period the PFRS had no indication or reason to suspect that operations at the Facility were not being conducted in full compliance with all license and permit conditions.

13. In early October of 2006, EDS approached the PFRS and requested additional capital to fund operations at the Facility. While unaware of the full scope of EDS' financial condition at that time, the PFRS was beginning to learn that EDS was not capable of operating the Facility in manner consistent with the PFRS' expectations or EDS' obligations under the various loan agreements.

14. It also became apparent at that time that EDS' management of the Facility and declining financial condition were adversely affecting day to day operations at the Facility.

15. On October 13, 2006, personnel from the MDEQ conducted an inspection of the Facility and noted staffing changes which were not consistent with EDS' Part 111 license application. The PFRS later learned that several of the staffing changes noted by MDEQ were the direct result of qualified and competent employees resigning from EDS due to disagreements with the operational decisions of EDS' management.

16. On October 19, 2006, the PFRS Board, after reviewing the status of the Project, passed a resolution authorizing special legal counsel to take steps to secure the PFRS' investment in the Facility and to seek the orderly transfer of the Facility and the regulatory licenses and permits from EDS to the PFRS' designee. (Exhibit 1, Resolution of PFRS Board).

17. The initial objective of the resolution was to complete the orderly transfer of the Facility and the licenses and permits without disrupting on-going operation of the Facility by, among other things, requesting a minor modification of the permits and licenses, as appropriate, under applicable federal and state law.

18. In correspondence to EDS dated October 20, 2006, the MDEQ outlined its concerns related to staffing issues at the Facility and requested specific information related to personnel and employee training. (Exhibit 2, October 20, 2006 Correspondence from MDEQ to EDS).
19. In correspondence to the PFRS dated October 23, 2006, EDS advised the PFRS for the first time that the Facility was about to close due to lack of operating capital. (Exhibit 3, October 23, 2006 Letter from EDS to PFRS). At this time, the PFRS was unaware of the full scope of EDS' financial situation. However, it was apparent that EDS was unable to meet any of its obligations with respect to Facility operations at that time.
20. On the same day, MDEQ inspectors were on-site at the Facility and observed a leak at the well head of well 2-12 during performance of a mechanical integrity test. It was ultimately determined that the leak was caused by a failed gasket resulting in the release of brine (salt) water which had been injected into the well to achieve sufficient head pressure to perform the mechanical integrity tests.
21. Notably, both wells demonstrated internal mechanical integrity during these tests.
22. In correspondence to EDS dated October 25, 2006, the MDEQ described the October 23, 2006 leak and requested information regarding the source of the leak, staffing and employee training. (Exhibit 4, October 25, 2006 Correspondence from MDEQ to EDS).
23. While steps were being taken to obtain the orderly transfer of the Facility operations from EDS to the PFRS designee, the PFRS was unaware of the day to day operational issues occurring at the Facility.
24. In correspondence to EDS dated October 25, 2006, special counsel to the PFRS advised EDS that it was in default on its agreements with the PFRS due to, among other things,

its failure to meet its on-going obligations, and special counsel requested a meeting to work out an orderly transfer of the Facility.

25. On October 26, 2006, the MDEQ was on-site at the Facility and observed a leak at the well head of well 1-12. It was later determined that this leak was caused by the use of a replacement bolt at the well head. The original bolt was used to make the repair of the gasket leak on well 2-12.

26. In correspondence to EDS dated October 27, 2006, the MDEQ requested a report regarding the leak at well 1-12 and the MDEQ suspended use of the well. (Exhibit 5, October 27, 2006 Correspondence from MDEQ to EDS).

27. In correspondence to EDS dated October 27, 2006, special counsel to the PFRS again requested EDS' cooperation in the orderly transfer of the Facility, including transfer of the regulatory permits and licenses, to the PFRS' designee. (Exhibit 6, October 27, 2006 Correspondence from PFRS to EDS regarding transfer of operations).

28. On or about October 27, 2006, representatives of the PFRS learned for the first time of the leaks at the respective wellheads.

29. Given the immediate and substantial concern about: 1) the overall safety and security of the Facility in light of the leaks at the wellheads; 2) the potential environmental risks associated with EDS' continued operation of the Facility; 3) appropriate staffing of Facility operations; and 4) the financial condition of EDS, the PFRS determined that it must move as expeditiously as possible to gain physical possession of the Facility.

30. At that time, the PFRS had no affirmative obligation of any manner or kind to take possession of the Facility or to take any action with respect to the Facility. The PFRS could have

let EDS abandon the Facility, leaving any required clean-up and closure action to the appropriate governmental agencies.

31. Instead, the PFRS, through its designee, took immediate action, at a significant cost, to secure control of the Facility in order to fully and completely address any health and safety risks and to abate any risks of future leaks.

32. This was not necessarily the desired course of action. However, the PFRS felt it had little choice under the circumstances but to take immediate action.

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 Acknowledgement 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-Technologies, 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 UIC 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 UIC 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 remedied 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 PFRS 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.

105. Importantly, RDD had taken specific steps and actions to ensure the mechanical integrity of the deep disposal wells at the Facility.

106. Additionally, RDD and EGT submitted financial assurance documentation, securing an irrevocable Letter of Credit and closure bond related to the wells. (Exhibit 28, April 12, 2007 Correspondence Enclosing Financial Documents from RDD to EPA).

107. On April 25, 2007, EDS filed a Certificate of Dissolution with the Michigan Department of Labor and Economic Growth. (Exhibit 35, Certificate of Dissolution).

108. On or about the same time, the MDEQ issued notice to RDD that it would table consideration of RDD's request to transfer the Part 111 permit, pending a decision by the EPA on the UIC permits.

109. On May 7, 2007, RDD submitted to the MDEQ an updated work plan and detailed schedule regarding waste removal, decontamination and re-certification of the Facility, implementing the "First In - First Out" plan to remove EDS' waste material from the Facility safely and in compliance with all applicable laws and regulations. (Exhibit 36, May 7, 2007

Work Plan and Schedule, and May 24, 2007 Correspondence from MDEQ to RDD approving Work Plan).

110. In an email dated May 9, 2007, James Stropkai of the Michigan Attorney General's office stated that if the EPA were to terminate the UIC permits, then the Part 111 permit would automatically terminate, and any new operator would have to re-apply for all permits and licenses. (Exhibit 37, May 9, 2007 Electronic Mail from Attorney General to RDD).

111. From November 2006 through April of 2007, RDD and the PFRS provided approximately \$1,200,000.00 in capital for operation, maintenance, and repair costs for the Facility, including over \$450,000.00 in expenditures related to compliance with the MDEQ's and the EPA's directives, and have budgeted at least an additional \$1,000,000.00 for Facility operations through July of 2007.

112. From November 2006 through June of 2007, RDD and/or EGT have addressed virtually every compliance or regulatory issue raised by EPA or MDEQ, whether directed to RDD, EGT or EDS.

113. In correspondence dated May 8, 2007, MDEQ issued a "no further action" letter in response to RDD's efforts and actions addressing the October 23, 2006 leak at well 2-12. (Exhibit 38, May 8, 2007 Correspondence from MDEQ to RDD).

114. On May 23, 2007, the public hearing on the EPA's Notice of Intent to Terminate the UIC permits was held in Romulus at which the PRFS, RDD and EGT stated their opposition to EPA's intent to terminate the EDS UIC permits.

115. As of June 10, 2007, RDD had made substantial progress in implementing the waste removal work plan. Approximately 130,000 gallons of hazardous waste have been removed from the Facility. (Exhibit 39, June 12, 2007 Summary of Waste Disposal).

116. RDD and EGT are finalizing the Part 625 transfer request for submission to MDEQ OGS staff.

117. Upon completion of the implementation of the waste removal and decontamination work plan, RDD will move forward with re-certification of the Facility for future operations as required by EPA and MDEQ.

### III. SUMMARY OF REGULATORY RESPONSES/EXPENDITURES/ACTIONS

- A. See Chart of Regulatory Requests for Information, Compliance and Remedial Action Issued to EDS and the Corresponding Responses of PFRS/RDD, attached as Tab A to this section.
- B. See Exhibits presented by RDD at May 23, 2007 Public Hearing on EPA's Notice of Intent to Terminate Permits, attached as Tab B to this section.
- C. See Chart of RDD Compliance and Operational Expenditures, attached as Tab C to this section.

November 06

Leads at Wellheads  
EPA Disposition Confirms Clean  
RDD Takes Immediate Action  
To Gain Control of Facility

January 07

RDD Submits Interim Status Reports  
Responds to EPA Concerns  
RDD/EGT Meet with EPA

April 07

RDD/EGT Continue Compliance Work  
Implement Work Plan  
Remain in Contact with Regulators

December 06

RDD Submits Detailed Response to  
MDEQ and EPA Concerns  
RDD Meets with MDEQ

March 07

RDD/EGT Submit License  
Transfer Application to MDEQ

October 06

EDS Financial Situation  
Deteriorates, Affects  
Ability to Operate  
Facility

March 07

RDD/EGT Meet with MDEQ  
Discuss Transfer of License

May 23, 2007

November 06

Board Installs RDD as Interim Facility Manager  
EGT Approved as Prospective Operator

October 06

RDD Initiates Discussion  
For Orderly Transfer of Facility

November 06 - May 07

Constant Communication between RDD and Regulators

November 06

December 06

January 07

February 07

March 07

April 07

May 07

10/1/2006

6/1/2007

October 27, 2006

EDS Suspends Use of Wells

November 06

EDS Does Not Respond To  
EPA and MDEQ  
Requests for Information

April 07

EPA Sends Notice to EGT/RDD  
Will Not Consider Transfer Application  
EPA Issues Notice of Intent to Terminate

March 2007

EPA Fines EDS \$73,992

November 2, 2006

EDS Submits  
Suspension of Operations

January 07

EPA Requests  
Information from EDS  
After December Inspection

April 07

MDEQ Dismisses TO

November 2006

\$68,428.54  
Water Vault and Secondary Containment Vaults  
Plant and Well Computer Operating System Repairs  
Disposal of Hazardous Solids in Rolloffs  
Treatment Chemicals  
Monitoring and Analytical  
Compliance Support

November 2006  
\$73,506.00

City of Romulus Construction  
Inspection & Sewer Fees

December 2006 - January 2007

\$155,321.39  
Operating Costs  
Insurance  
Closure Bond  
Lab Equipment  
Utilities  
Plant and Site Maintenance

November 2006 - May 2007

PFRS and RDD spend \$1,340,000.00 on  
Compliance and Operational Costs

November 2006  
\$89,517.94

Deferment Property Taxes

November 2006  
Operating Costs  
Utilities  
Lab Equipment  
Plant and Site Maintenance

December 2006 - January 2007

\$188,493.45  
Disposal and Tricking of Water in Storm Water Vault  
Disposal of Hazardous Solids  
Remediation Costs at Wellheads  
Temperature Survey Tests for Wells  
Plant Equipment and Repairs  
Plant Cleaning  
Lab Equipment and Supplies  
Monitoring and Analytical  
Compliance Support

February 2007 - April 2007

\$255,620.74  
Disposal of Water Draining to Storm Water Vault  
Disposal of Hazardous Solids  
Liquid Detection/Monitoring System at Wellhead  
EPA Required Tests for Wells  
Engineering Recertification of Plant  
Plant Equipment and Repairs  
Plant Cleaning  
Safety Supplies and Employee Training  
Monitoring and Analytical  
Compliance Support  
Lab Equipment and Supplies

November 2006 - May 2007

\$45,269.85  
Security Costs

February 2007 - April 2007

\$269,521.74  
Operating Costs  
Insurance  
Closure Bond  
Lab Equipment  
Utilities  
Plant and Site Maintenance

May 2007  
Operating Costs  
Insurance  
Closure Bond  
Lab Equipment  
Utilities

May 2007  
\$261,805.90

Disposal of Stored Waste  
Decontamination of Tanks  
Tank Monitoring

Corrosive Resistance Unit for Well Covers  
EPA Required Tests  
Plant Equipment and Supplies  
Safety Supplies and Training  
Lab Equipment  
Monitoring and Analytical  
Compliance Support

**COMPLIANCE, REMEDIAL AND OPERATIONAL COSTS  
EXPENDED BY PFRS AND RDD  
FORMER ENVIRONMENTAL DISPOSAL SYSTEMS FACILITY**

**NOVEMBER 1, 2006 – MAY 31, 2007**

<b>Description of Expense</b>	<b>Amount Expended</b>
Disposal of Water Draining to Storm Water Vault	\$214,377.25
Disposal of Stored Waste and Decontamination of Tanks	\$67,102.07
Disposal of Hazardous Solids in Rolloffs	\$44,224.04
Liquid Detection/Monitoring System at Wellheads	\$2,320.00
Remediation Costs at Wellheads	\$12,551.46
EPA Required Tests for Wells, including Ambient Reservoir Pressure Test, Temperature Survey Test and Well Reservoir Pressure Test	\$21,488.60
Engineering Recertification of Plant	\$12,000.00
Plant Equipment and Repairs	\$49,302.27
Plant and Well Computer Operating System Repairs	\$10,000.00
Drum Room Repairs	\$7,000.00
Plant Cleaning	\$4,406.71
Lab Equipment and Supplies	\$11,607.05
Safety Supplies/Employee Training	\$4,638.13
Monitoring and Analytical	\$6,052.10
Compliance Support	\$11,669.76
Security	\$56,941.02
Insurance and Closure Bond	\$170,747.51
Utilities and Telephone	\$70,077.15
Administrative Expenses	\$8,989.46
Plant and Site Maintenance	\$5,278.95
City of Romulus Construction Inspection and Sewer Fees	\$73,506.00
Property Taxes	\$89,646.00
Furnace Repair	\$12,633.00
Locksmith - Change all locks	\$1,227.00
Subsurface Technologies - Core Storage	\$1,082.00
Management and Staffing Expenses	\$207,835.48
<b>Grand Total:</b>	<b>\$1,176,703.01</b>

**EPA AND MDEQ REQUESTS FOR INFORMATION, COMPLIANCE AND REMEDIAL ACTION ISSUED TO EDS AND THE CORRESPONDING RESPONSES OF PFRS/RDD**

Requesting Entity	Recipient	Correspondence	Requests	Responding Party	Correspondence	Responses
OGS	EDS	10/25/2006 Correspondence regarding Well Leak and Injectate Loss Well 1-12 and Well Conditions Well 2-12	Investigation into failure of gasket at 2-12 wellhead on 10/23/2006	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided Incident Report for gasket failure and leak
OGS	EDS	10/25/2006 Correspondence regarding Well Leak and Injectate Loss Well 1-12 and Well Conditions Well 2-12	Explanation of failure of gasket	RDD	12/14/2006 Interim Response to Regulatory Correspondence	RDD was unable to provide this information, as EDS did not make this information available; RDD provided incident reports detailing the circumstances of the gasket failure
OGS	EDS	10/25/2006 Correspondence regarding Well Leak and Injectate Loss Well 1-12 and Well Conditions Well 2-12	Clarification of nature of rinse water	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Described nature of rinse water as municipal water
OGS	EDS	10/25/2006 Correspondence regarding Well Leak and Injectate Loss Well 1-12 and Well Conditions Well 2-12	Description of training/expertise of well operator	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided description of training and expertise of staff; provided updated version of personnel training program
OGS	EDS	10/25/2006 Correspondence regarding Well Leak and Injectate Loss Well 1-12 and Well Conditions Well 2-12	Plan for liquid detection system	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided plan to address liquid accumulation and to implement a warning system

Reporting Entity	Recipient	Correspondence	Requests	Responding Party	Correspondence	Responses
OGS	EDS	10/25/2006 Correspondence regarding Well Leak and Injectate Loss Well 1-12 and Well Conditions Well 2-12	Install liquid detection system in the wells' cellars	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Submitted plan to address liquid accumulation, including pumping of cellars on regular schedule; installed liquid detection monitoring system
OGS	EDS	10/25/2006 Correspondence regarding Well Leak and Injectate Loss Well 1-12 and Well Conditions Well 2-12	Plan for visual inspections of wellhead during pumping initiation and while the well is online	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided plan for visual inspection of wellhead during pumping initiation and while well is online
OGS	EDS	10/27/2006 Correspondence regarding Well Leak and Injectate Loss Well 1-12 and Well Conditions Well 2-12	Report regarding the circumstances surrounding the failure of wellhead 1-12 on 10/26/2006	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided Incident Report regarding the failure of wellhead 1-12
OGS	EDS	10/27/2006 Correspondence regarding Well Leak and Injectate Loss Well 1-12 and Well Conditions Well 2-12	Provide plan for removal of contents of Rinse Wastewater Vault and Storm Water Run-off Vault	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided and implemented plan for removal of contents of the vaults on a daily basis
OGS	EDS	10/27/2006 Correspondence regarding Well Leak and Injectate Loss Well 1-12 and Well Conditions Well 2-12	Submit a P.E. certification for all repairs and recertification of facility's capability of treating, storing and disposing of hazardous waste	RDD	2/28/2007 Application for Transfer of UIC Permits	Submitted certification with 2/28/2007 Application for Transfer of UIC Permits
OGS	EDS	10/27/2006 Correspondence regarding Well Leak and Injectate Loss Well 1-12 and Well Conditions Well 2-12	Identify the nature of injected fluid at time of failure into well 1-12	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided information regarding the substance being injected at time of leak
OGS	EDS	10/27/2006 Correspondence regarding Well Leak and Injectate Loss Well 1-12 and Well Conditions Well 2-12	Submit plan to restore mechanical integrity	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Submitted report of plan to restore mechanical integrity

Requesting Entity	Recipient	Correspondence	Requests	Responding Party	Correspondence	Responses
OGS	EDS	10/27/2006 Correspondence regarding Well Leak and Injectate Loss Well 1-12 and Well Conditions Well 2-12	Implement proper removal and disposal of fluids in well cellar	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided and implemented plan to dispose of any liquid accumulation in secondary containments within 24 hours of detection
WHMD	EDS	11/2/2006 Letter of Warning and Suspension of Operations	Provide plan for cleanup of impacted areas due to 10/23/2006 and 10/26/2006 leaks/failures	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided confirmation of soil samples and stated intention to implement remedial action if needed
WHMD	EDS	11/2/2006 Letter of Warning and Suspension of Operations	Provide plan to seal sumps (cellars)	RDD	12/14/2006 Interim Response to Regulatory Correspondence; well cellar Work Plan submitted 6/15/2007	Provided plan to seal sumps (cellars)
WHMD	EDS	11/2/2006 Letter of Warning and Suspension of Operations	Provide plan to install leak detection system with automatic shutoffs	RDD	12/14/2006 Interim Response to Regulatory Correspondence; well cellar Work Plan submitted 6/15/2007	Provided plan to install leak detection system with automatic shutoffs and installed curtain to address squirt protection
WHMD	EDS	11/2/2006 Letter of Warning and Suspension of Operations	Plan to provide constant staff monitoring of the well during pumping operations	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided plan to provide constant staff monitoring of the well during pumping operations
WHMD	EDS	11/2/2006 Letter of Warning and Suspension of Operations	Provide written report containing all information in License Conditions II.L.6(a)(i)-(iii)	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided written report containing all information in License Conditions II.L.6(a)(i)-(iii)

Requesting Entity	Recipient	Correspondence	Requests	Responding Party	Correspondence	Responses
EPA	EDS	11/20/2006 Notice of Noncompliance	Provide signed certification of activities required	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Explained that certification was impossible due to RDD's function as interim facility manager
EPA	EDS	11/20/2006 Notice of Noncompliance	Ensure that all staff associated with operation complete all required training and update training records	RDD	12/14/2006 Interim Response; 12/14/2006 Correspondence to EPA and MDEQ; 2/28/2007 Application for Transfer of UIC Permits	Provided updated version of staff training program and trainers, as well as list of staff and their qualifications; identified Facility Emergency Coordinator and Backup Coordinator; provided updated contingency plan; provided names, job titles, training requirements and training records for all staff; described changes in staffing; identification of employees present during leak; identified trained well operators; submitted a copy of the resume and training qualifications for EGT's deep well operator and an expected work schedule; submitted a general overview of personnel qualifications for EGT, including resumes for each expected individual employee

Reporting Entity	Recipient	Correspondence	Requests	Responding Party	Correspondence	Responses
EPA	EDS	11/20/2006 Notice of Noncompliance	Properly calibrate all gauges that measure operating conditions	RDD	12/14/2006 Interim Response to Regulatory Correspondence and 1/30/2007 Response to Request for Information; 5/10/0 Electronic Mail	Provided gauge calibration records showing proper calibration
EPA	EDS	11/20/2006 Request for Information	Provide information regarding the circumstances of each leak or failure	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided incident reports for the leaks or failures on 10/23/2006 and 10/26/2006
EPA	EDS	11/20/2006 Request for Information	Retain and make available gauge calibration and maintenance records	RDD	12/14/2006 Interim Response to Regulatory Correspondence and 1/30/2007 Response to Request for Information	Provided available calibration and maintenance records
EPA	EDS	11/20/2006 Request for Information	Retain and make available original chart recordings for continuous monitoring instrumentation	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided original chart recordings
EPA	EDS	11/20/2006 Request for Information	Provide access to required records	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided required records if available
EPA	EDS	11/20/2006 Request for Information	Operate wells only while a trained operator is on-site	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Not applicable, as well has not been operated since October of 2006

Requesting Entity	Recipient	Correspondence	Requests	Responding Party	Correspondence	Responses
EPA	EDS	11/20/2006 Request for Information	Provide information regarding staff at the facility during the leaks/failures	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided list of EDS employees at the facility at the time of the leaks/failures
EPA	EDS	11/20/2006 Request for Information	Identification of former and current EDS employees considered to be trained operators to meet the requirements of UIC permit, and describe those employees' training	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Identified the EDS employees considered to be trained operators; submitted records of completed training
EPA	EDS	11/20/2006 Request for Information	Provide updated staff training records, information regarding staff changes and information regarding interim facility staffing	RDD	12/14/2006 Interim Response; 12/14/2006 Correspondence to EPA and MDEQ, and 2/28/2007 Application for Transfer of UIC Permits	Provided updated version of staff training program and trainers, as well as list of staff and their qualifications; identified Facility Emergency Coordinator and Backup Coordinator; provided updated contingency plan; provided names, job titles, training requirements and training records for all staff; described changes in staffing; identification of employees present during leak; identified trained well operators; submitted a copy of the resume and training qualifications for EGT's deep well operator and an expected work schedule; submitted a general overview of personnel qualifications for EGT, including resumes for each expected individual employee

Requesting Entity	Recipient	Correspondence	Requests	Responding Party	Correspondence	Responses
EPA	EDS	11/20/2006 Request for Information	Explain discrepancies in readings of gauges and state whether the annulus system of each well includes a site gauge, and its location	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Explained discrepancies in the readings of gauges; provided explanation of calibration and use of manual and digital gauges; explained computer failure of annulus gauges and subsequent repair of the system; provided location of site gauges for annulus systems
EPA	EDS	11/20/2006 Request for Information	Explain why well calibration records and original chart recordings for continuous monitoring instrumentation were unavailable during 11/2/2006 and 11/3/2006 inspections	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided explanation of unavailability of records due to submission to MDEQ and EPA on 10/23/2006
EPA	EDS	11/20/2006 Request for Information	Describe that source and composition of the rinse water that leaked from well 2-12 on 10/23/2006	RDD	12/14/2006 Interim Response to Regulatory Correspondence	Provided description of source and composition of rinse water as part of incident report for leak on 10/23/2006
EPA	EDS	11/20/2006 Request for Information	Describe any changes in facility ownership or operational control of the facility	RDD	12/14/2006 Interim Response and 12/14/2006 Correspondence to EPA and MDEQ	Provided statement of RDD as interim facility manager and stated that a formal request for permit transfer was being developed; explained circumstances surrounding the change in control and ownership of the facility
EPA	EDS	11/2/2007 Request for Information	Provide leak incident report for 11/2/2006 leak	RDD	1/30/2007 Response to Request for Information	Provided incident report detailing the 11/2/2006 leak

Reporting Entity	Recipient	Correspondence	Requests	Responding Party	Correspondence	Responses
EPA	EDS	1/12/2007 Request for Information	Describe notification procedures for instances of permit noncompliance	RDD	1/30/2007 Response to Request for Information	Provided description of notification procedures for instances of permit noncompliance
EPA	EDS	1/12/2007 Request for Information	Provide injection pressure gauge calibration and maintenance records from December 2005 through the present	RDD	12/14/2006 Interim Response to Regulatory Correspondence and 1/30/2007 Response to Request for Information; 5/10/2007 Electronic Mail	Provided all available injection pressure gauge and maintenance records
EPA	EDS	1/12/2007 Request for Information	Provide pH meter gauge calibration and maintenance records from 2005 to the present	RDD	12/14/2006 Interim Response to Regulatory Correspondence and 1/30/2007 Response to Request for Information; 5/10/2007 Electronic Mail	Provided all available pH meter gauge calibration and maintenance records
EPA	EDS	1/12/2007 Request for Information	Provide original chart recordings for the continuous monitoring instrumentation for the week of 10/2/2006 and from 10/23/2006 through 11/1/2007	RDD	1/30/2007 Response to Request for Information	Provided all available original chart continuous monitoring records

Requesting Entity	Recipient	Correspondence	Requests	Responding Party	Correspondence	Responses
EPA	EDS	1/12/2007 Request for Information	Provide electronic records of continuous monitoring information for flow rate and injectate pH collected from December 2005 to the present, or a report detailing the reasons for the unavailability of those records	RDD	1/30/2007 Response to Request for Information	Provided explanation regarding the unavailability of the electronic records, as it was unknown if EDS maintained such records, and they were not available to RDD
EPA	EDS	1/12/2007 Request for Information	Provide legend for three continuous monitoring charts and operational parameters	RDD	1/30/2007 Response to Request for Information	Provided legend for continuous monitoring charts, operational parameters and colors of identifiers
EPA	EDS	1/12/2007 Request for Information	Provide the dates/hours where the operator was onsite from December 2005 to November 2006	RDD	1/30/2007 Response to Request for Information	RDD was unable to provide this information, as EDS did not make these records available
EPA	EDS	1/12/2007 Request for Information	Describe failure of automatic warning system on 12/5/2006	RDD	1/30/2007 Response to Request for Information	Provided statement regarding status of investigation of failure of automatic warning system, and stated that the failure was likely electronic; hired contractor to address electronic issues
EPA	EDS	2/15/2007 Electronic Mail re: EDS Facility Compliance	Demonstrate calibration of the injection pressure gauges	RDD	12/14/2006 Interim Response to Regulatory Correspondence and 1/30/2007 Response to Request for Information; 5/10/2007 Electronic Mail	Submitted documentation of calibration of injection pressure gauges

Requesting Entity	Recipient	Correspondence	Requests	Responding Party	Correspondence	Responses
EPA	EDS	2/15/2007 Electronic Mail re: EDS Facility Compliance	Post calibration marks on the annulus tank level sight glasses	RDD	5/8/2007 Electronic Mail	Submitted photographs of calibration marks on the annulus tank level sight glasses
EPA	EDS	2/15/2007 Electronic Mail re: EDS Facility Compliance	Demonstrate adequate staffing and submit resumes, training records and expected work schedules of deep well operator	RDD	2/28/2007 Application for Transfer of UIC Permits	Submitted a copy of the resume and training qualifications for EGT's deep well operator and an expected work schedule; submitted a general overview of personnel qualifications for EGT, including resumes for each expected individual employee
EPA	EDS	2/15/2007 Electronic Mail re: EDS Facility Compliance	Certify repairs to automatic warning and shutoff system	RDD	2/28/2007 Application for Transfer of UIC Permits	Submitted documentation certifying repairs to the automatic warning and shutoff system, plans for installation of a well leak detection system, plan for lining system for well head cellars and certification of facility by Stantec
EPA	EDS	2/15/2007 Electronic Mail re: EDS Facility Compliance	Conduct demonstration of annulus pressure automatic warning and shutoff system in presence of EPA official	RDD	3/21/2007 EPA Inspection	Successful demonstration of annulus pressure automatic warning and shutoff system, as evidenced by EPA inspection report
EPA	EDS	2/15/2007 Electronic Mail re: EDS Facility Compliance	Provide assurance that alarm is audible to deep well operator	RDD	3/21/2007 EPA Inspection	Successful demonstration of annulus pressure automatic warning and shutoff system, as evidenced by EPA inspection report

Requesting Entity	Recipient	Correspondence	Requests	Responding Party	Correspondence	Responses
EPA	EDS	2/15/2007 Electronic Mail re: EDS Facility Compliance	Submit procedures to conduct an ambient reservoir pressure test for EPA approval	RDD	2/28/2007 Application for Transfer of UIC Permits	Submitted documentation demonstrating the intended performance of an Ambient Reservoir Pressure Test by Baker Hughes
EPA	EDS	2/15/2007 Electronic Mail re: EDS Facility Compliance	Conduct ambient reservoir pressure test	RDD	Submitted by 3 <sup>rd</sup> party week of 3/12/2007	Conducted ambient reservoir pressure test 3/9/2007; submitted results of test
EPA	EDS	2/15/2007 Electronic Mail re: EDS Facility Compliance	Submit updated corrosion monitoring plan	RDD	Unknown	Drafted updated corrosion monitoring plan on March 10, 2007, and submitted to EPA
EPA	EDS	2/15/2007 Electronic Mail re: EDS Facility Compliance	Submit descriptive statement of how the electronic records and the circle charts of the continuous monitoring information will be maintained	RDD	2/28/2007 Application for Transfer of UIC Permits	Submitted documentation regarding electronic record keeping for process data logging, steps for maintaining electronic records by EGT and information regarding an investigation of missing chart recordings
EPA	RDD	3/16/2007 Correspondence Regarding Transfer Application Submission	Provide transfer of ownership agreement signed by EDS with specific dates of transfer of permit responsibility, coverage and liability	RDD	3/19/2007 electronic mail; 3/26/2007 and 4/12/2007 Correspondence Regarding Financial Assurance	Submitted original executed copies of UIC Permit Transfer Agreements executed on behalf of RDD Investment Corp., EGT and EDS; submitted a copy of the Affidavit of Douglas Wicklund evidencing authority to execute various documents on behalf of EDS and related entities; submitted a copy of the Authorization Resolution of Remus Joint Venture

Requesting Entity	Recipient	Correspondence	Requests	Responding Party	Correspondence	Responses
EPA	RDD	3/16/2007 Correspondence Regarding Transfer Application Submission	Provide RDD Letter of Credit with exact wording of 40 CFR 144.70(d) for the account of RDD and EDS	RDD	3/19/2007 electronic mail; 3/26/2007 and 4/12/2007 Correspondence Regarding Financial Assurance	Submitted cover letter (as required by 40 CFR 144.63(d)(4)) and two executed duplicate original Irrevocable Standby Letters of Credit effective March 22, 2007, for the account of RDD and EDS, along with the February 8, 2007, Plugging and Abandonment Cost Update prepared by Petrotek Engineering Corporation
EPA	EDS	3/16/2007 Correspondence Regarding Transfer Application Submission	Provide EGT Letter of Credit with exact wording of 40 CFR 144.70(d)	RDD	3/19/2007 electronic mail; 3/26/2007 and 4/12/2007 Correspondence Regarding Financial Assurance	Submitted cover letter (as required by 40 CFR 144.63(d)(4)) and two executed duplicate original Irrevocable Standby Letters of Credit effective March 22, 2007, for the account of EGT, along with the February 8, 2007, Plugging and Abandonment Cost Update prepared by Petrotek Engineering Corporation
EPA	RDD	3/16/2007 Correspondence Regarding Transfer Application Submission	Submit standby trust agreements	RDD	3/19/2007 electronic mail; 3/26/2007 and 4/12/2007 Correspondence Regarding Financial Assurance	Submitted executed duplicates of the Standby Trust Agreements, one between RDD (Grantor) and PFRS (Trustee), and one between EGT ("Grantor) and Comerica Bank ("Trustee"), effective March 22, 2007

Requesting Entity	Recipient	Correspondence	Requests	Responding Party	Correspondence	Responses
EPA	EDS	3/16/2007 Correspondence Regarding Transfer Application Submission	Demonstrate calibration of the injection pressure gauges	RDD	12/14/2006 Interim Response to Regulatory Correspondence and 1/30/2007 Response to Request for Information; 5/10/2007 Electronic Mail	Submitted documentation of calibration of injection pressure gauges via electronic mail
EPA	RDD	3/16/2007 Correspondence Regarding Transfer Application Submission	Post calibration marks on the annulus tank level sight glasses	RDD	5/7/2007 Electronic Mail	Submitted photographs of annulus tank level sight glasses
EPA	RDD	3/16/2007 Correspondence Regarding Transfer Application Submission	Provide assurance that alarm is audible to deep well operator	RDD	3/21/2007 EPA Inspection Report; 3/21/2007 electronic mail	Successful demonstration of annulus pressure automatic warning and shutoff system, as evidenced by EPA inspection report
EPA	RDD	3/16/2007 Correspondence Regarding Transfer Application Submission	Update corrosion monitoring plan	RDD	Unknown	Drafted updated corrosion monitoring plan on March 10, 2007, and submitted to EPA
WHMD	RDD	3/27/2007 Correspondence Regarding Compliance of EDS Facility	Submit written certification of Facility construction and capability for management of hazardous waste	RDD		This procedure has begun, but is currently on hold pending removal of all hazardous waste per the request of MDEQ
WHMD	RDD	3/27/2007 Correspondence Regarding Compliance of EDS Facility	Provide work plan and schedule for waste removal and decontamination and rinsing of tanks, piping and other equipment	RDD	4/6/2007 and 5/7/2007 work plans and schedules	Submitted initial and revised work plan and schedule for waste removal, decontamination and re-certification of Facility

Requesting Entity	Recipient	Correspondence	Requests	Responding Party	Correspondence	Responses
WHMD	RDD	3/27/2007 Correspondence Regarding Compliance of EDS Facility	Remove and properly dispose of hazardous waste; decontaminate storage tanks	RDD	5/1/2007 - Current	Removal and off-site disposal of hazardous waste from fourteen tanks as of 6/14/2007; decontaminated four tanks as of 6/14/2007

Key:	
EDS	Environmental Disposal Systems, Inc.
EGT	Environmental Geo-Technologies, LLC
EPA	United States Environmental Protection Agency
MDEQ	Michigan Department of Environmental Quality
OGS	Michigan Department of Environmental Quality Office of Geological Survey
PFRS	Police and Fire Retirement System for the City of Detroit
RDD	RDD Operations, LLC
WHMD	Michigan Department of Environmental Quality Waste and Hazardous Materials Department

#### IV. STATEMENT OF POSITION

The PFRS and RDD oppose the EPA's Intent to Terminate the UIC permits and request that, as an alternative to termination of the permits, EPA make a minor modification of the permits to acknowledge EGT as the new permittee or, as a last alternative, approve the transfer request and make other permit modifications or revoke and reissue the permits to EGT, pursuant to 40 CFR §124.5, §144.39 and/or §144.41, for the reasons stated below.

##### Standard of Review

The final determination of the EPA with respect to termination of the UIC permits for the Facility must be supported by the agency record after consideration of all relevant factors. The Safe Drinking Water Act, 42 U.S.C. §300f, *et seq.*, pursuant to which the EPA has promulgated regulations for the UIC Program, provides for judicial review of any final agency action by the Administrator of the EPA. 42 U.S.C. §300j-7(a)(2). A final decision of an administrative agency will be held unlawful and set aside where the agency's decision is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706; *Southwestern Pa. Growth Alliance v. Browner*, 121 F.3d 106, 111 (3d Cir. 1997); *W.R. Grace & Co. v. United States EPA*, 261 F.3d 330, 338 (3d Cir. 2001). In applying the arbitrary and capricious standard, the court determines whether the EPA "considered the relevant factors and articulated a rational connection between the facts and the choice made." *Southwestern Pa. Growth Alliance*, 121 F.3d at 111. The court will overturn or remand an agency decision to the EPA if "the record before the agency does not support the agency action, if the agency has not considered all relevant factors, or if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it." *C.K. v. N.J. Dep't of Health & Human Servs.*,

92 F.3d 171, 182 (3d Cir. 1996), quoting *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985).

### Consideration of the Relevant Factors Does Not Support Termination of the UIC Permits

The primary stated basis for EPA's intent to terminate the UIC permits as set forth in the April 12, 2007 Notice of Intent to Terminate Permit and the supporting Fact Sheet is EPA's position that EDS has not complied with various reporting and recordkeeping obligations required under the permits and applicable federal regulations and/or responded to the various EPA requests for information ("RFI"). While it may be true that EDS, on its own behalf, did not specifically provide responses as alleged by EPA, RDD, as the assignee of the permits and licenses for the Facility, provided a substantive response to each inquiry or permit requirement, as detailed in section III of this comment. EPA's position artificially avoids consideration of the actual and thoroughly documented efforts of RDD in responding to the EPA RFIs by narrowly propounding a technical legal position, namely, that EDS is the permittee for all purposes until EPA approves a transfer or takes other action with respect to the permit. This position incorrectly permits the EPA to review EDS' conduct in a vacuum, and to ignore the reality of the unique and difficult circumstances surrounding transfer of the Facility's operations to RDD and the subsequent efforts of RDD at the Facility.

Perhaps the most troubling aspect of EPA's position is that EPA repeatedly and continuously communicated directly with RDD regarding specific issues and matters related to the UIC permits and permit compliance, treating RDD, in all respects, as the "de facto" permittee. In this regard, EPA was entirely complicit in RDD's role as assignee of the permits. For example, EPA willingly accepted RDD's December 14, 2006 response to the EPA's November 20, 2006 RFI directed to EDS. EPA approved the RDD work plan for the mechanical

integrity testing on January 3, 2007 as required by the permit, and accepted the test results provided by RDD. EPA and RDD coordinated and arranged for the EPA March 21, 2007 testing of the audible alarm system at the Facility and RDD personnel escorted EPA during the testing. EPA communicated directly with counsel for RDD on remedying deficiencies with EDS' financial responsibility requirement under the permit. On the one hand, EPA worked continuously, directly and cooperatively with RDD on discharging permit specific requirements and obligations and, then, on the other hand, EPA issues a notice of intent to terminate the very same permits because EDS did not perform the work EPA coordinated with RDD. If the actions of EPA do not act as an immediate estoppel to this permit termination process, then failure to consider RDD's actions in this proceeding would be arbitrary and capricious at best.

#### Factors Related to Transfer of Facility to RDD

Beginning in mid-October 2006, the PFRS had determined that EDS could no longer manage or operate the Facility consistent with the PFRS' expectations or EDS' obligations under the various loan agreements between the parties. The PFRS directed special counsel to take steps to arrange for the orderly transfer of Facility. Specifically, the intent was to identify a suitable operator and make a request for a minor modification of the permit to allow for a change in ownership or operational control of the Facility pursuant to 40 CFR §144.41(d). The transfer was intended to take place without disrupting the then on-going operations of the Facility.

However, before this plan could be put into action, several events occurred which forced a more expedited course of action. Particularly: 1) EDS announced that it was insolvent and would have to shut down operations; 2) releases at the well heads were observed during Facility inspection, creating, among other things, considerable uncertainty regarding the environmental condition of the Project; 3) payroll and other critical and time sensitive obligations were not

being met by EDS; and 4) by late October 2006, MDEQ had shut down operation of the Facility. Given the immediate and substantial concern regarding: 1) the safety and security of the Facility in light of the leaks at the wellheads; 2) the potential environmental risks associated with EDS' continued operation of the Facility; 3) appropriate staffing of Facility operations; and 4) the financial condition of EDS, the PFRS determined that it must move as expeditiously as possible to gain physical possession of the Facility. At that time, the PFRS had no affirmative obligation of any manner or kind to take possession of the Facility or to take any action with respect to the Facility. The PFRS could have let EDS abandon the Facility, leaving any required clean-up and closure action to the appropriate governmental agencies. Instead, the PFRS, through RDD, took immediate action, at a significant cost, to secure control of the Facility in order to fully and completely address any health and safety risks and to abate any risks of future leaks and to preserve its considerable investment in the Facility.

Moreover, in light of the considerable uncertainty regarding EDS' financial condition and its known (and unknown) liabilities and the unknown environmental condition of the Facility at that time, RDD could not have acquired EDS or made any agreement or taken any actions which might lead to a claim that RDD was somehow a successor to EDS. On or about November 7, 2006, EDS executed a Quit Claim deed transferring ownership of the real property to RDD, an Acknowledgement and Assignment Agreement, assigning the assets of the Facility to RDD and an Assignment of Permits. EDS also surrendered physical possession of the Facility. Copies of these documents were provided to EPA by way of correspondence, which also explained the relevant provisions of the Acknowledgement and Assignment Agreement authorizing RDD to do any and all acts under the permits. (Exhibit 8, RDD Transfer Agreement and Documents under cover of letter to the EPA). This agreement was drafted such that RDD was not directly

assuming any liabilities or obligations of EDS. - RDD fully recognized that it was taking physical possession of the Facility and assignment of the permits without EPA prior approval and that the permits could not be transferred without an EPA approved permit transfer. However, RDD believed it had little choice but to take this immediate course of action under the circumstances.

RDD has Substantively Responded to EPA Requests to EDS

Acting under authority of the Acknowledgement and Assignment Agreement and as the owner of the Facility, since early November of 2006, RDD has otherwise responded to all inquiries and requests for information sent by EPA to EDS. While not directly standing in the place of EDS, RDD has fully and completely discharged EDS' obligations with respect to the UIC permits. The substantial responses of RDD to the various regulatory demands and requests for information are detailed in section III. of this comment. The specific responses by RDD to the non-compliance issues cited in the EPA Fact Sheet for the Notice of Intent to Terminate are set forth below:

**1) I.E.7 - EDS' failure to respond to the January 12, 2007 RFI on or before March 4, 2007**

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). 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 RFI 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. EPA readily accepted RDD's submission.

**2) I.E.8/I.E.9 – EDS did not provide or have available calibration and continuous monitoring records at the time of the EPA's November 2-3, 2006 inspection**

Copies of these records were not available on November 2-3, 2006 as the originals of these documents were hand-delivered to EPA staff on October 23, 2006. RDD explained this situation in detail in its December 14, 2006 submittal.

**3) I.E.9 – EDS did not provide certain weeks of continuous monitoring records for Well #1-12 and #2-12**

In its submittals of December 14, 2006, January 30, 2007 and other in correspondence with EPA, RDD has provided all of the available monitoring records for the wells after a thorough and diligent search. Perhaps more importantly, EPA acknowledged that RDD had provided recent calibration records for the pH meter and copies of the majority of requested circle charts. Additionally, EPA acknowledged that the primary purpose of the recordkeeping was to insure the mechanical integrity of the wells and that both wells demonstrated internal mechanical integrity during testing in October of 2006.

**4) I.I.1 – EDS failed to provide updated cost estimates for closure and post-closure of wells**

As part of its request for transfer of the UIC permits submitted to EPA on February 28, 2007 (Exhibit 21, Transfer Application Package), both RDD and EGT furnished Irrevocable Letters of Credit in favor of EPA using updated well plugging and abandonment costs at the basis for the Letter of Credit. Specifically, at the request of EPA staff, the Letter of Credit issued by the PFRS was expressly written on behalf of both RDD and EDS.

**5) II.B.4 – EDS failed to have a trained operator on-site during operation of the wells on October 22-23, 2006**

This action occurred prior to RDD acquiring physical possession of the Facility. A trained operator well operator is now employed full-time. Moreover, it was this type of operational irregularity which forced the PFRS and RDD to take immediate action to gain possession of the Facility in November of 2006.

**6) II.B.4 – EDS did not demonstrate the automatic warning and shut-off system by June 30, 2006**

RDD successfully demonstrated the automatic warning and shut-off system to EPA inspectors on March 21, 2007. (Exhibit 29, Inspection Results).

**7) II.C.4 – EDS failed to conduct an ambient reservoir pressure test within 12 months of issuance of the UIC permits**

RDD prepared and submitted to EPA a work plan for conducting the required ambient reservoir testing. EPA approved the work plan, and the test was conducted on March 9, 2007 and the results of the test were submitted directly to EPA.

**8) II.D. – EDS failed to submit the required Quarterly and Annual Reports**

RDD has prepared the applicable reports where required. Given that the wells have not been used since late October 2006, no reports are required for 2007. Moreover, all available reports and data were submitted to EPA as part of the RDD December 14, 2006 and January 30, 2007 submittals and the February 28, 2007 RDD/EGT transfer request.

Notably, the purported non-compliance on the part of EDS cited above has been related almost exclusively to lack of recordkeeping and/or failure to respond to EPA requests for information. There has never been any implication that the mechanical integrity of the wells was

ever at risk. As stated above, a more exhaustive summary of RDD's responses to EPA requests for information, reports or testing is located in section III of this comment.

Suffice to say, RDD and/or EGT have substantively responded to all of the issues the EPA cites as a basis for permit termination. As importantly, RDD continues to work directly with EPA staff to ensure compliance with permit obligations and the mechanical integrity of the wells. For all practical purposes, RDD has met any response and reporting obligation which would otherwise have been the responsibility of EDS. The EPA's stated basis for termination of the UIC permits appears to be one of form over substance, which ignores the record before the agency and the EPA's direct action in working with RDD to meet permit requirements. While the responses to the EPA may not have been submitted on EDS letterhead or under EDS' signature, the substance and completeness of RDD's responses and the EPA's direct role in this process cannot be ignored or denied. The agency record and consideration of the relevant factors do not support termination of the permits on the basis cited by EPA.

**Termination of Permits Will Impose An Unfair Hardship on the Very Parties Who Moved Decisively to Protect Human Health, the Environment and the Facility**

Termination of the UIC permits will unfairly punish the very parties who stepped forward to address the operational issues created by EDS in the fall of 2006. Particularly, a termination of the UIC permits will punish the PFRS and the police and fire retirees/beneficiaries for whose benefit the PFRS has invested in the Facility. The PFRS moved forward under very difficult circumstances and completed an unexpected and unusual transfer of the Facility when it could have simply taken no action as a secured creditor and left it to EPA to expend resources to address the operational impact of EDS' actions and insolvency.

At the time of EDS' default on its obligations to the PFRS, the PFRS faced little additional exposure with respect to the Facility. EPA and MDEQ would have been left with the task of staffing and directing any required action once EDS abandoned the Facility. Once EPA and MDEQ completed their work, the PFRS would have retained ownership of the real property and all improvements with little additional risk. The PFRS, instead, took action, in part, due to the seriousness of the problem facing EDS and the Facility in October of 2006 and in an effort to protect its investment and its beneficiaries.

Instead, from November 2006 through April of 2007, RDD and the PFRS have provided approximately \$1,200,000.00 in capital for operation, maintenance, and repair costs for the Facility, including over \$450,000.00 in expenditures related to compliance with the MDEQ's and the EPA's directives, and have budgeted at least an additional \$1,000,000.00 for Facility operations through July of 2007. (See Tab C to section III of this comment). During this same time, RDD and/or EGT have addressed virtually every compliance or regulatory issue raised by EPA or MDEQ, whether directed to RDD, EGT or EDS. The PFRS and RDD have incurred these costs in addressing the compliance issues related to the Facility, in part, in reliance on the fact that prior to April 12, 2007, the day the EPA issued its Notice of Intent to Terminate, EPA never stated, hinted or indicated, in any way, that the UIC permits would be terminated, and, in part, in reliance on EPA's direct role in assisting RDD in meeting the ongoing permit requirements. Even while requesting information and working directly with RDD and EGT on submittal of the UIC permit transfer request, EPA never indicated that EPA was contemplating termination of the UIC permits.

Termination of the permits will put the PFRS' investment in the Facility at considerable risk and will cause RDD and EGT to bear the risk of working through the time consuming and

costly process of preparing and submitting a new permit application. Additionally, the MDEQ has taken the position that termination of the UIC permits will cause termination of the Part 111 Hazardous Waste Disposal Facility Operating License. In such a case, EGT would be required to submit a new request for a construction and operating license from the MDEQ. This action will unfairly punish the parties who have made a significant investment in the Facility and who have done the right thing at every turn in the road in addressing EDS' past operations.

On the other hand, termination of the permits will have no impact on EDS whatsoever. ESE transferred and assigned all of its rights, interests and title to the Facility on November 7, 2006. None of EDS' former officers, directors or shareholders has had any role in the operation of the Facility in any manner since November of 2006. Moreover, on April 25, 2007, EDS filed a certificate of dissolution with the State of Michigan and is presumably in the process of winding up its affairs. Termination of the permits will not remedy or address in any way the past practices of EDS. Rather, it will significantly jeopardize the investment of the PFRS which was made to benefit the police and fire men and woman of the City of Detroit.

**Failure to Act on the Pending Transfer Request is Arbitrary and Capricious**

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). This package contained a considerable amount of material including: 1) Application to Transfer Permit (EPA Form 7520-7) requesting transfer of the UIC permits from EDS to EGT; 2) UIC Permit Transfer Agreement which was subsequently executed fully and completely by RDD, EGT and EDS, and which established April 1, 2007 as the date all permit obligations would transfer to EGT; 3) An Irrevocable Standby Letter of Credit (effective February 22, 2007) issued on behalf of RDD, as the present operator of the facility, for purposes of meeting the financial

responsibility requirement set for in 40 CFR §144.63 along with a February 8, 2007 cost estimate for plugging and abandonment prepared by Petrotek Engineering Corporation; 4) A copy of an Irrevocable Standby Letter of Credit issued on behalf of EGT, effective immediately; 5) An updated Plugging and Abandonment Plan certified by Austin Marshall on behalf of EGT for both wells; 6) A copy of the resume and training qualifications for EGT's deep well operator, Donald A. Anderson, along with an expected work schedule for Mr. Anderson; 7) A general overview of personnel qualifications for EGT, including resumes for each expected individual employee; 8) Documentation demonstrating the intended performance of an Ambient Reservoir Pressure Test by Baker Hughes; 9) Documentation certifying repairs to the automatic warning and shut-off system, plans for installation of a well leak detection system, a plan for a lining system for well head cellars and certification of facility by Stantec; and 10) Documentation regarding electronic record keeping for process data logging, steps for maintaining electronic records by EGT and an investigation regarding missing chart recordings.

On March 19, 2007, RDD submitted an update to EPA related to information requested by EPA on March 13, 2007 via electronic mail, and in a letter dated March 26, 2007 provided the Standby Trust Agreement between RDD and the PFRS and Standby Letter of Credit for the account of RDD and EDS. 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 on 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 19, 2007 Electronic Mail from counsel for RDD to the EPA), (Exhibit 27, March 26, 2007 Letter from RDD to the EPA), (Exhibit 28, April 12, 2007 Letter from RDD to the EPA).

In all material respects, RDD and EGT have provided the documentation necessary for EPA to review the permit transfer request, including the provision of documents which were specifically drafted or modified at the direction of EPA. During this entire period that RDD and EGT were working with EPA to finalize the permit transfer request there was never any mention or indication that EPA would not promptly act on this request and/or take any action with respect to the permits. In fact, RDD and EGT were relying on the positive feedback from EPA in continuing to press forward with the transfer request and expending capital to meet all permit conditions. Additionally, RDD was relying on the conduct of EPA in working with RDD directly to meet permit conditions. However, on April 12, 2007 and in correspondence of the same date, RDD and EGT were informed that EPA would not consider or process the transfer request in light of EPA's intent to terminate the UIC permits.

EPA's decision to hold the transfer request in abeyance is entirely arbitrary, contrary to law, places RDD and EGT in an untenable position with respect to continued permit compliance and underscores the need for the relief requested in this comment. EPA's decision not to act on the transfer request is not supported by relevant factors related to operation of the facility and ignores the completeness of the transfer request. First, since November of 2006, RDD and/or EGT have complied with all of the applicable permit conditions. Specifically, RDD has conducted temperature log testing, mechanical integrity testing, ambient reservoir pressure testing and ensured the operation of the continuous monitoring system. In total, this testing confirms the mechanical integrity of the wells. EGT has, among other things provided required staffing, including the hiring of a highly qualified deep well operator who is on site on a full time basis. Secondly, EGT is a highly capable and qualified operator. EGT provided the EPA with significant information regarding its qualifications to operate the facility. Additionally, EGT

provided a complete demonstration of financial responsibility as required by the applicable regulations. RDD and EGT have demonstrated a financial and operational commitment to ensuring the safe operation of the wells. Given that the mechanical integrity of the wells has never been brought into question, the wells remain structurally and functionally sound and pose no risk to public health or the environment, and that EGT stands ready, willing and able to assume operations of the Facility, there is no basis for terminating the permits or delaying the processing of the permit transfer request.

The EPA's decision to delay the processing of the transfer request also leaves RDD and EGT in limbo with respect to on-going operations at the Facility. Apparently, RDD must continue to meet the permit obligations, in some cases at the direction of EPA, or run the risk of having its failure to do so serve as a basis for permit termination. Moreover, every month EPA delays acting on the transfer request costs RDD considerable funds in meeting the on-going and necessary operating expenses of the Facility. The EPA has a valid request to transfer the permit which was submitted in compliance with applicable law and it is incumbent on EPA to act on this request.

Finally, as set forth below, acting on the transfer request and modifying the permit or revoking and reissuing the permits is completely consistent with the regulatory scheme set forth in the federal rules. EPA is tentatively choosing to take the most costly and inefficient course of action by terminating the permits and ignoring the lawful and complete request to transfer the UIC permits to EGT.

The Administrator Has Discretion To Take Other More Appropriate Action

The Administrator has other remedies, short of termination of the permits, which are fully and completely supported by record before the agency and consideration of the relevant factors associated with this matter. These other remedies are a more appropriate action under the circumstances related to the Facility, and will still adequately insure the safe and lawful operation of the Facility by EGT.

There are at least three possible courses of action that could be taken by the Administrator regarding the RDD/EDS UIC permits following the present public comment period. The Administrator could: 1) transfer ownership of the permits to EGT, as requested, as a minor modification to the UIC permits; 2) modify or revoke and reissue the permits; or 3) terminate the permit. The applicable regulations, 40 CFR §§144.39-41, provide the Administrator with very broad discretion in deciding which course of action is most appropriate. *See In Re: Waste Technologies Industries*, 1995 EPA App. LEXIS 8; 5 E.A.B. 646 (1985).

The first option, which is the most appropriate under these circumstances and is the option urged by the PFRS and RDD, is for the Administrator to make a minor modification of the UIC permits by identifying EGT as the new permittee and owner/operator of the Facility. Pursuant to 40 CFR §144.41, a minor modification of a permit may be implemented to allow for a change in ownership or operational control of a facility where the EPA determines that no other changes to the permit are necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability has been submitted to the EPA. In this case, a minor modification of the UIC permits allowing for a change in ownership or operational control is appropriate, as a written agreement for transfer of the UIC permits was executed by RDD, EGT and EDS and included as part of the formal request for transfer submitted on February 28, 2007. The UIC Transfer Agreement between RDD, EGT and EDS set

April 1, 2007 as the effective date of the transfer. The present named permittee, EDS, has consented to such a transfer, and RDD and EGT have substantially complied with all of the conditions of the permit.

As detailed above, the structural soundness and supporting systems of the Facility have not changed, and the Facility still meets all structural and physical requirements for a Class I hazardous waste deep injection well. As a practical matter, the interim facility manager, RDD, is in substantial compliance with virtually all conditions of the permits, and therefore it would be unnecessary and unduly burdensome to require a completely new permit at this time.

Finally, the Administrator has the discretion to incorporate such other requirements as may be necessary under the Safe Drinking Water Act as part of a transfer of permits by way of a minor modification. (See, 40 CFR §144.38(a)). In this way, adjustments could be made to the permits, as appropriate, to help ensure that the permit obligations are being met timely by EGT. As set forth in detail in this comment, the record and the relevant factors in this matter would amply support the Administrator's decision to approve the transfer of the permits to EGT by way of a minor modification pursuant to 40 CFR §144.41(d).

The second option available to the Administrator, which is less severe than termination and also appropriate under these circumstances, is to modify or revoke and reissue the UIC permits to EGT as provided in 40 CFR 144.39. The following are causes for modification or revocation and re-issuance of the permits applicable to the Facility: 1) cause exists for termination of the permits under §144.40, and the Administrator determines that modification or revocation and re-issuance is appropriate; or 2) the Administrator has received notification of a proposed transfer of the permit. 40 CFR §144.39 provides the Administrator with broad discretion in choosing to modify or revoke and reissue a permit rather than terminating the

permit. See *In re Waste Technologies Industries, supra*. The action of RDD and EGT submitting the formal request for transfer on February 28, 2007, acts as a specific cause for permit modification or revocation and reissue (See 40 CFR 144.39(b)(2)).

In the case of a modification of a permit under 40 CFR 144.39, only the conditions subject to modification are reopened. Outside of a minor modification as discussed above, a modification pursuant to 40 CFR §144.39 seems the next most appropriate action as only the conditions subject to the modification would need to be reopened and addressed. This is particularly appropriate in this case where the physical well had been constructed and drilled and is consistently demonstrating mechanical integrity. There is no need to revisit the mechanical and structural components of the wells as part of the permit modification. On the other hand, where the cited non-compliance issues are solely related to record keeping and reporting as in this case, modification of the permit would provide EPA with sufficient flexibility to remedy identified deficiencies, if any, related to record keeping and reporting as part of the permit modification. Under the circumstances of this matter, modification of the permits pursuant to 40 CFR 144.39 is a much more appropriate remedy than termination.

In the event the permit is revoked and reissued, the entire permit is reopened and subject to revision. While this is a much better course of action than termination, it is unnecessarily costly and time consuming to reopen the entire permit where, as in the case of this Facility, the wells are properly constructed and have demonstrated mechanical integrity. Notably, during revocation and reissue, all conditions of the permit to be revoked and reissued must continue to be met until a new final permit is entered, and only the permit conditions to be modified are subject to public comment and reissuance. RDD and EGT are prepared to continue to meet

permit conditions pending final transfer of the permits in the event the Administrator exercises her discretion and chooses an action other than termination.

Moreover, the Administrator may, in her discretion, as provided in 40 CFR §144.39, choose to modify or revoke and reissue the permits even if cause exists otherwise for the termination of the permits. Assuming the non-compliance issues set forth in the Fact Sheet provide a basis for permit termination, the Administrator would be well within the discretion afforded by applicable regulations to modify or revoke and reissue the UIC permits to EGT instead of terminating the permits and requiring EGT to proceed with a new application.

The third option is permit termination. This option is the most severe course of action that the Administrator may take with respect to the permits. Such action is not required in this case, where the non-compliance issues cited in the Fact Sheet all relate to conduct of EDS at the Facility prior to October 2006 and are exclusively related to record keeping and reporting issues. Since October 2006, RDD has remedied or addressed each of the non-compliance issues cited in the Fact Sheet where it has control over the requested information. Additionally, EPA acknowledges that the purpose of the record keeping requirements are to better ensure the mechanical integrity of the wells and that, in this case, the wells at the Facility have demonstrated mechanical integrity and have otherwise passed all appropriate testing and inspections.

Termination of the UIC permits in this case is the most costly and inefficient option, and it places an unfair risk and burden on the PFRS, RDD and EGT. It is always within the EPA's discretion to conclude that a less drastic permit action would be more appropriate than the most severe. *See In re Waste Technologies Industries, supra.* Further, "less resource-intensive enforcement mechanisms would often make more sense than a full scale effort to close down a

permitted facility." *Id.*, at 39-40. In light of the circumstances surrounding the Notice of Intent to Terminate (with the request for transfer by a new operator currently pending before the Administrator), it is inappropriate to place undue consideration on past violations of a prior operator in processing the request for transfer. EDS no longer has any role at the Facility. The inquiry should be focused on ensuring EGT meets the qualifications to operate the Facility. See *In Re Beckman Production Services*, 1994 EPA App. LEXIS 55; 5 E.A.D. 10 (1994) (stating that "generalized concerns regarding [the permittee's] past [regulatory] violations do not, without more, establish a link to a 'condition' of a present permit modification," citing *In Re Laidlaw Env't'l Servs. Thermal Oxidation Corp.*, RCRA Appeal No. 92-20, at 15 (E.A.B. Oct. 26, 1993)). A minor modification under 40 CFR §144.41 or a modification or revocation and reissue of the permits under 40 CFR §144.39 provide the Administrator with ample flexibility to focus on the qualifications of EGT without imposing an unfair burden and penalty on the PFRS, RDD and EGT related to EDS' actions or inactions.

In this case, the most appropriate course of action is to transfer the permits to EGT by minor modification, as EGT and RDD: 1) submitted a transfer request providing all required information; 2) have fully complied with virtually all requests of the EPA and the permit conditions; 3) are fully prepared, via the proposed operator, EGT, to accept transfer of the permits and operate the wells in compliance with all applicable federal, state and local regulations and permit conditions.

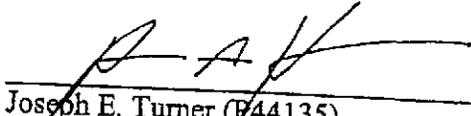
## V. CONCLUSION

For the reasons stated more fully in this comment, the PFRS and RDD, respectfully request the Administrator to exercise her discretion in this matter and, based on the information provided and consideration of the relevant factors, make a minor modification to the UIC permits to identify EGT as the new permittee and incorporate such other requirements as may be necessary under the Safe Drinking Water Act or, alternatively, make other modifications or revoke and reissue the permits as provided by Federal statute and regulation.

Respectfully submitted,

CLARK HILL PLC

By:

  
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Joseph E. Turner (P44135)  
Ronald A. King (P45008)  
500 Woodward Ave.  
Suite 3500  
Detroit, MI 48226  
(313) 965-8300  
Attorneys For PFRS and RDD

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