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## ***Environmental, Oil and Gas, Natural Resource & Condominium Law***

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June 27, 2008

***Via UPS Next Day Air***

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

**In Re: Beeland Group, LLC, Beeland Disposal  
Well #1, UIC Permit Number MI-099-11-0001  
UIC Appeals Nos. 08-02**

Dear Clerk:

Enclosed please find five copies of Petitioners Star Township, Antrim County, and Friends of the Jordan River's Motion for Leave to File Reply Brief, Reply to Region's Response to Petition for Review and Certificate of Service.

Thank you for your attention to this matter.

Very truly yours,

**TOPP LAW PLC**

  
Susan Hlywa Topp

SHT/mc  
Enclosures  
cc w/encl.:

Stuart P. Hersch  
Charles H. Koop  
Roger W. Patrick  
Susan E. Brice & Gregory L. Berlowitz  
Joseph E. Quandt & Gina A. Gozzer  
Allen & Trisha Feize

RECEIVED  
U.S. E.P.A.

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

NOV 30 AM 9:32  
ENVIR. APPEALS BOARD

In Re:

UIC Appeal Nos. 08-02

Beeland Group, LLC

UIC Permit No. M1-009-11-0001

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of Petitioners Star Township, Antrim County, and Friends of the Jordan River's Motion for Leave to File Reply Brief and Reply to Region's Response to Petition for Review were sent to the following persons in the manner indicated:

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Dated: June 27, 2008

  
\_\_\_\_\_  
Mary K. Curran

RECEIVED  
U.S. E.P.A.

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

JUN 30 AM 9:32

ENVIR. APPEALS BOARD

In re: )  
)  
Beeland Group, LLC )  
)  
UIC Permit No. MI-009-11-0001 )  
)

UIC Appeal Nos. 08-02

**MOTION FOR LEAVE TO FILE REPLY BRIEF**

Petitioners Star Township, Antrim County, and Friends of the Jordan River moves for leave to file a reply to the briefs submitted in the above-captioned matter. Petitioners filed their Petition for Review on March 9, 2008. Respondent United States Environmental Agency ("EPA") filed its response on June 13, 2008 and Respondent Beeland Group, LLC ("Beeland") filed its response on June 19, 2008.

In support of its motion, Petitioners state that the succinct reply is limited in scope to the issues raised in the petition. It clarifies a number of issues addressed in the responses and would provide this Board with additional briefing as requested in the May 23, 2008 Order Establishing Briefing Schedule.

Respectively submitted,

**Topp Law, PLC**



Susan Hlywa Topp (P46230)  
Attorney for Petitioners, Star Twp.,  
Antrim Co. & Friends of the Jordan

Dated: June 27, 2008

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

In re: )

Beeland Group, LLC )

UIC Permit No. MI-009-1I-0001 )

UIC Appeal Nos. 08-02

**Reply to Region's Response to Petition for Review**

Petitioners Star Township, Antrim County, and Friends of the Jordan River submit the following reply to the response filed by the United States Environmental Protection Agency ("U.S. EPA"), Region 5 ("the Region") in Appeal Number UIC-08-02:

*Insufficient Data Exists to Conclude that the Bell Shale would Act as a Confining Layer*

The Region admits that "the best geological information at the point of the proposed Beeland well location is available only by reviewing the drilling logs and core samples obtained from an actual well formation test at the proposed well site." *Response*, p. 17. Yet, despite not having the best geological information, the Region somehow has a "very high level of confidence that a leak will not occur" and concludes that "the Bell Shale will likely be an effective confining layer." *Id.* at 14.

In contrast, Petitioners have submitted data showing the Bell Shale will *not* likely act as a confining layer. This includes data addressing the porous and permeable limestone layers in the Bell Shale, the fractures (as opposed to faults) as contained in *Fractured Reservoirs in Carbonate Rocks*:

*The Michigan Basin* by Barnes and Harrison, and the stability of the potentially “brittle” nature of the shale.

Rather than acknowledge this data, the Region has instead opted to assume with a “very high level of confidence” that the Bell Shale will be an effective confining layer, even after admitting their own data is limited. Where the EPA’s explanation for a permit decision lacks sufficient support in the administrative record, or where the EPA provides only a cursory explanation for a decision that is not supported by a detailed explanation or clear rationale, the EAB will grant review and then remand the permit decision back to the EPA. *In re Beckman Prof. Servs.*, 8 E.A.D. 302, 311 (EAB 1999). Such is the case here; hence, review should be granted.

*Insufficient Data Exists on the Quality of the Injected Fluid, Existing Reservoir Conditions, and the Effect of Injectate on the Surrounding Material and Fluids*

The Region also challenges Petitioners’ standing to seek review under 40 C.F.R. §124.13(a) and 124.19(a). These rules deprive a petitioner of standing where the petitioner failed to participate during the public comment period. They do not - as the Region contends - limit a petitioner to review of issues which *that petitioner* raised during the comment period. See *In re Dominion Energy Brayton Point, LLC*, 12 E.A.D. 490, 508 (EAB 2006) (“any person who filed comments on the draft permit or who participated in the public hearings may appeal the Region’s final permit decision to the Board”). The Region’s interpretation would require every participant during the comment period to reiterate every single comment in order to preserve the right to challenge them on appeal. This is contrary to the obvious intent of the rule. Because each of the issues in the Petition was raised during the public comment period, Petitioners have standing to bring this action.

Regarding those issues, the Region's analysis is erroneous. Specifically, the Region ignores that the proposed UIC well is part of a CERCLA Removal Action and is not an independent permitting activity. The CERCLA action is only partly underway, and final remedies for all areas under investigation have not been selected. Knowledge of the well's role in the CERCLA process likely would have impacted proposed permit conditions, including proposed term of permit, monitoring and sampling requirements.

Further, four different CKD piles exist at the remediation site. The potential for different leachate levels was identified during the public comment period; yet, samples were only taken from a single pile (the East Park CKD) over a three month period to characterize the entire waste stream from all four piles. The Region's failure to consider these additional three piles constitutes reviewable error. Likewise, the Region erred in not considering how the leachate will inevitably change over time, such as through periods of drought. These issues were all raised during the public comment period. The Region's failure to address them constitutes clear factual error, warranting review by this board.

*Insufficient Data Exists Regarding Whether the Waste is Hazardous*

Petitioner has also successfully demonstrated that the Region failed to consider data in determining whether the proposed wastestream will be hazardous. During the public comment period, a number of participants pointed out how the wastestream may be hazardous. For instance, Jennifer McKay raised concern over the fact that the injectate is originating from a CERCLA site, that the waste would be corrosive, and insufficient sampling has failed to identify its characteristics. *Tip of the Mitt Letter dated June 13, 2007*. Peter Vellenga commented that the wastestream will contain high levels of mercury and other heavy metals, Transcript June 13,

2007, p 55, ln 15-22, and Dr. Patterson observed it will contain high levels of lead. *Letters to EPA and MDEQ dated July 21, 2007 and July 27, 2007.*

Despite these comments, the Region merely stated in its response that it “was not aware of any basis to characterize this wastestream as anything other than non-hazardous.” U.S. EPA Response to Comments, *Geology/Watershed and other Technical Issues*, Comment 19 at 31. The Region’s failure to consider the issues raised during the public comment period constitutes clear error which this board should review.

#### *Economic Policy Considerations Warrant Review*

The Region also erred in not conducting an adequate study focused on the socio-demographics surrounding the proposed injection well. Concern was raised during the public comment period regarding the affluence of the Bay Harbor community where the waste was originating, and the poverty of the Alba community where the well was being proposed.

In the appendix to the response to comments, the Region states that in a .5, 1, and 2 mile radii around the proposed site the poverty levels are “comparable” to the rest of the county and the state. No additional details are provided. The Region’s response was vague and therefore inadequate.

Additionally, no consideration was given to the source of the contamination. Part of the commenter’s concern was the affluence of the Bay Harbor community as opposed to the poverty of the Alba community. The Region’s analysis completely ignores the poverty discrepancy between the neighboring areas, a fact which likely had significant impact on deciding where to place the UIC. As the Region gave this factor no consideration and it is an important policy consideration in issuing a permit, this board should exercise its discretion and grant review.

Respectively submitted,

**Topp Law, PLC**

A handwritten signature in cursive script that reads "Susan Hlywa Topp". The signature is written in black ink and is positioned above a horizontal line.

Susan Hlywa Topp (P46230)  
Attorney for Petitioners, Star Twp.,  
Antrim Co. & Friends of the Jordan

Dated: June 27, 2008