



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 09 2009

REPLY TO THE ATTENTION OF

Mr. Ronald A. King
Clark Hill PLC
212 East Grand River Avenue
Lansing, MI 48906

Dear Mr. King:

Thank you for your letter dated August 26, 2009, on behalf of Environmental Disposal Systems, Inc.; the Police and Fire Retirement System of the City of Detroit; RDD Operations, LLC; RDD Investment Corp.; and Environmental Geo-Technologies, LLC (EGT). Your letter was addressed both to me and to Administrator Lisa Jackson, and this letter responds on behalf of the United States Environmental Protection Agency (U.S. EPA). Your letter requests that the U.S. EPA issue a stay of the effective date of the Environmental Appeals Board's (EAB's) July 18, 2008, Order Denying Review, which became a final agency action subject to review on July 21, 2009. That Order upholds U.S. EPA, Region 5's decision to terminate Underground Injection Control (UIC) permits for the facility in Romulus, Michigan in which your clients have an interest.

U.S. EPA does not support a stay of the permit termination decision. On July 21, 2009, the EAB declined to continue the stay of its Order Denying Review. U.S. EPA has no basis to reverse the EAB's determination.

As you note in your letter, U.S. EPA, Region 5 initially concurred with your clients' requests that the EAB stay its Order Denying Review. At that time, U.S. EPA, Region 5 expected that it would soon be issuing a proposed decision on new permit applications for the facility from EGT, which could render appeal of the termination decision unnecessary. That expectation was the sole basis of the EAB's agreement to stay the effective date of its Order Denying Review.

However, on July 20, 2009, the Michigan Department of Environmental Quality announced its decision to proceed with revocation of the operating license issued for the facility under Part 111 of Michigan's Natural Resources and Environmental Protection Act. Because the facility cannot operate without a Part 111 license, and the MDEQ's action cast doubt on whether and when EGT will be able to obtain that license, U.S. EPA, Region 5 decided to delay going forward with a decision on EGT's UIC permit applications. This approach will help assure that the U.S. EPA's ultimate decision takes all relevant factors into account so that the Agency's actions are transparent and fair.

Because it is no longer clear whether U.S. EPA will be in a position to issue a proposed decision on the pending permit applications from EGT in the near future, there is no reason to further extend the stay of the effective date of the EAB's Order Denying Review.

Finally, U.S. EPA does not agree with the arguments set forth in your letter asserting that justice requires a stay of the effective date of the EAB's Order Denying Review. The termination decision is a straightforward application of specific regulatory language providing that UIC permits may be terminated based on any violation of permit requirements. There is no dispute that significant permit violations occurred, and therefore no basis to find that U.S. EPA acted arbitrarily and capriciously in implementing its clear regulatory authority.

Please feel free to contact Thomas Krueger, Associate Regional Counsel, of my staff, at (312) 886-0562 if you have any further questions or need additional information concerning this matter.

Sincerely,



Bharat Mathur
Acting Regional Administrator