

# CLARK HILL

PLC

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October 5, 2007

Regional Hearing Clerk  
U.S. EPA, Region 5 (E-13J)  
77 West Jackson Boulevard  
Chicago, IL 60604

**RE: In the Matter of Environmental Disposal Systems, Inc.**  
**Case No.: SDWA-05-2007-0003**

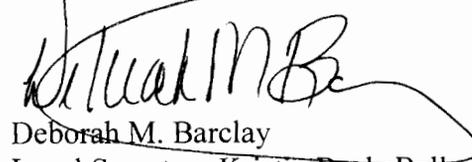
Dear Clerk:

Enclosed for filing, please find the Proposed Intervenors' *Attorney Appearance, Motion for Leave to Intervene as Respondents, and Brief in Support of Motion for Leave to Intervene as Respondents* with this *Proof of Service*.

Should you have any questions, please do not hesitate to contact this office at your earliest convenience.

Very truly yours,

CLARK HILL PLC



Deborah M. Barclay  
Legal Secretary Kristin Beats Bellar

Enclosures

cc: Erik Olson  
Douglas Wicklund  
Lawrence Scott  
client

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

IN THE MATTER OF:

Case No. SDWA-05-2007-0003

Environmental Disposal Systems, Inc.  
Birmingham, Michigan,

Respondent.

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**ATTORNEY APPEARANCE**

**MOTION FOR LEAVE TO INTERVENE AS RESPONDENTS**

**BRIEF IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE AS RESPONDENTS**

**PROOF OF SERVICE**

Clark Hill, PLC

Joseph E. Turner (P44135)  
Ronald A. King (P45008)  
Kristin Beals Bellar (P69619)  
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212 East Grand River Avenue  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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IN THE MATTER OF:

Case No. SDWA-05-2007-0003

Environmental Disposal Systems, Inc.  
Birmingham, Michigan,

Respondent.

**ATTORNEY APPEARANCE**

PLEASE TAKE NOTICE that, pursuant to 40 CFR 22.10 and 40 CFR 22.11 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, Clark Hill PLC, through the undersigned, hereby enters its appearance in this proceeding as counsel for RDD Investment Corp. and RDD Operations, LLC as Proposed Intervenors, and requests that all notices and papers filed in this proceeding be served on the undersigned counsel.

Respectfully submitted,

CLARK HILL PLC

By: Kristin Bellar  
Joseph E. Turner (P44135)  
Ronald A. King (P45008)  
Kristin B. Bellar (P69619)  
Lansing, Michigan Office  
212 East Grand River Avenue  
Lansing, Michigan 48906  
(517) 318-3100  
Attorneys For Proposed Intervenors

Date: October 5, 2007

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05/10/07 10:11:21 AM  
CLEM

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

IN THE MATTER OF:

Case No. SDWA-05-2007-0003

Environmental Disposal Systems, Inc.  
Birmingham, Michigan,

Respondent.

**MOTION FOR LEAVE TO INTERVENE AS RESPONDENTS**

Proposed Intervenors-Respondents, RDD Investment Corp., and RDD Operations, LLC (collectively, "RDD"), by and through their attorneys, Clark Hill PLC, respectfully request leave from the Environmental Protection Agency (the "EPA") to intervene as respondents in the above-captioned administrative proceeding, pursuant to 40 CFR §22.11. In support of this request, RDD states as follows:

1. The subject matter of the above-captioned administrative proceeding is the alleged noncompliance of Environmental Disposal Systems, Inc. ("EDS" or "Respondent"), a dissolved Michigan corporation, with Underground Injection Control ("UIC") Permits # MI163-1W-0006, #MI-163-1W-C007 and MI-163-1W-C008 (the "Permits"), for operation of a commercial Class I hazardous waste underground injection well and hazardous waste treatment and storage facility located at 28470 Citrin Drive in Romulus, Michigan (the "Facility").

2. The complaint issued by the United States Environmental Protection Agency in this administrative proceeding (the "Complaint") alleges that EDS failed to comply with certain provisions of the Permits and applicable regulations.

3. The Complaint alleges that, pursuant to conditions of the Permits and applicable laws and regulations, EDS failed to:

- a. provide the EPA with required information for wells 1-12 and 2-12 (the "Wells");
- b. allow access to records regarding the Wells to EPA inspectors;

- c. retain continuous monitoring records for the Wells;
- d. increase the cost estimate for closure and post-closure for the Wells;
- e. test the automatic warning system for the Wells;
- f. conduct ambient monitoring for the Wells;
- g. submit quarterly and annual reports for the Wells; and
- h. submit closure report for well 1-20

4. The Complaint proposes a civil penalty of \$73,992.00 to be imposed upon EDS for the alleged violations.

5. From 1993 to 2006, the Police and Fire Retirement System of the City of Detroit (“PFRS”) loaned, as an investment, approximately \$40,000,000.00 to EDS, Romulus Deep Disposal Limited Partnership (“Romulus”) and Remus Joint Venture (“RJV”) for construction and completion of the Facility.

6. Due to a declining financial position, in October of 2006, EDS, Romulus and RJV defaulted on their various obligations to the PFRS under the loan agreements between the parties. Pursuant to the default, the PFRS began making arrangements for the orderly transfer of the Facility from EDS to a yet to be determined successor owner or operator.

7. At this time, the Proposed Intervenors did not have physical control or possession over the Facility.

8. On October 23, 2006 and October 26, 2006, staff of the Michigan 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 continue to adequately operate the Facility and/or meaningfully respond to the observed leaks, the PFRS, through its newly created designees, RDD Investment

Corp. and RDD Operations, LLC, on or about November 7, 2006, effectively replaced EDS as operator of the Facility and took physical possession and control of the Facility. RDD took title to the Property by Quit Claim Deed recorded November 14, 2006.

9. As part of this transfer of operations of the Facility, EDS assigned to RDD all of its rights and interests in the Facility, granted RDD the right to take any actions relating to the operation and management of the Facility, and assigned the various licenses and permits relating to the Facility, including the UIC permits. (Exhibit A, Assignment and Acknowledgment Agreement and Quit Claim Deed).

10. Since November 2, 2006, all operations at the Facility have been suspended, pursuant to the order of the MDEQ.

11. Since November of 2006, the PFRS and its designee, RDD, have owned and operated the Facility pursuant to the Acknowledgment and Assignment Agreement, and have exercised its rights and authority to take actions relating to the Permits and the Facility, including but not limited to extensive communication with the EPA and the MDEQ, physical maintenance and repairs to the Facility, the disposal of waste located on-site as of the suspension of operations, and the submission of formal requests for transfer of the applicable state and federal licenses and permits.

12. Since gaining control of the Facility in November of 2006, RDD has fully responded to all EPA requests for information directed to EDS, and has taken steps to keep the Facility in compliance with the UIC permits and applicable laws and regulations.

13. On or about February 8, 2007, the PFRS and RDD entered into a formal agreement with Environmental Geo-Technologies, LLC ("EGT") to transfer to EGT the Facility, and all related permits and licenses.

14. As part of its ongoing communications with the EPA in early 2007, RDD worked directly with the EPA to submit a formal transfer request for the transfer of the Permits from EDS/RDD to EGT. As part of this cooperative effort, the EPA specifically required that EDS, RDD and EGT all be parties to any transfer request.

15. On February 28, 2007, RDD, with the cooperation of EDS, submitted a formal UIC permit transfer request to EPA pursuant to 40 CFR §144.41, requesting transfer of Permits #MI-163-1W-C007 and MI-163-1W-C008 at issue in this matter from RDD/EDS to Environmental Geo-Technologies, LLC, the proposed owner and operator of the Facility. (Exhibit B, Application for Transfer of Permits).

16. This request was not granted and, according to the EPA, was held in abeyance pending a final decision on the EPA's Notice of Intent to Terminate the UIC Permits. (Exhibit C, EPA Notice of Intent to Terminate UIC Permits) (Exhibit D, April 12, 2007 Correspondence from the EPA to RDD and EGT).

17. The PFRS and RDD objected to the proposed termination of the UIC Permits, and requested that the EPA grant their transfer request and modify the Permits to transfer ownership to EGT, or revoke and re-issue the permits to EGT. (Exhibit E, PFRS and RDD's Public Comments on the EPA's Notice of Intent to Terminate UIC Permits).

18. Nearly all of EDS' compliance issues identified by the EPA in the Complaint 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's requests for information, providing access to records, providing calibration and continuous monitoring records, providing an adjusted cost estimate for closure and post-closure, maintaining a trained operator on site

when the wells are in operation, testing and maintaining an emergency warning system, conducting the test for reservoir pressure, and provision of EPA-required reports.

19. As of April 12, 2007, RDD was in compliance, substantially, if not completely, with the EPA's requests for information, remedied the staffing concerns, implemented testing and provided results of same to the EPA, and made necessary repairs to the Facility to prevent leaks or other unsafe conditions.

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

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

22. At present time, RDD owns the Facility and manages the day-to-day limited operations of the Facility. RDD has expended over \$1,500,000.00 in compliance and operational costs for the Facility.

23. Pursuant to 40 CFR §22.11, on timely application, the Presiding Officer will grant a party's motion for leave to intervene if:

the movant claims an interest relating to the cause of action; a final order may as a practical matter impair the movant's ability to protect that interest; and the movant's interest is not adequately represented by existing parties.

24. Upon information and belief, this request is timely, as RDD is not aware of the occurrence of the exchange of information pursuant to 40 CFR §22.19.

25. RDD claims an interest relating to cause of action, which are the Permits relating to the Facility and Property owned and operated by RDD.

26. Further, the disposition of this administrative proceeding may impair RDD's ability to protect its ownership interest in the Facility and the Property, as the EPA has the authority to require EDS to comply with the Permits, which would necessarily impact RDD's continued efforts to bring the Facility into compliance. The EPA also has the authority to enter into a consent agreement with EDS that may affect the status of the Permits or the Facility.

27. Given EDS' dissolved corporate status, EDS' prior failure to respond to EPA requests for information, the EPA's intent to terminate the Permits, and RDD's status as owner of the Facility, RDD's interests are not adequately represented by existing parties.

28. Attached hereto as Exhibit H is RDD's Proposed Answer to the Complaint filed by the EPA in this administrative proceeding.

WHEREFORE, for the reasons set forth above and more fully addressed in the brief filed contemporaneously herewith, RDD Investment Corp. and RDD Operations, LLC respectfully request that the Presiding Officer grant leave to intervene as respondents in these consolidated actions, and to file the pleadings attached hereto as Exhibit H.

Respectfully submitted,

CLARK HILL PLC

By: Kristin Bellar  
Joseph E. Turner (P44135)  
Ronald A. King (P45008)  
Kristin B. Bellar (P69619)  
212 East Grand River Avenue  
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(517) 318-3100  
Attorneys For Proposed Intervenors  
RDD Investment Corporation, RDD  
Operations, LLC

Date: October 5, 2007

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Case No. SDWA-05-2007-0003

Environmental Disposal Systems, Inc.  
Birmingham, Michigan,

Respondent.

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REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**BRIEF IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE**

RDD Investment Corp. and RDD Operations, LLC (“RDD”) (collectively, “Proposed Intervenor”), by and through its attorneys, Clark Hill PLC, and in support of its motion for leave to intervene, state as follows:

**I. INTRODUCTION**

In the above-captioned administrative proceeding, EPA alleges multiple violations of conditions of underground injection control (“UIC”) permits #MI-163-1W-C006, #MI-163-1W-C007 and MI-163-1W-C008 (the “Permits”) and proposes a civil penalty of \$73,992.00 to be imposed upon Environmental Disposal Systems, Inc. (“EDS” or “Respondent”) for the alleged violations with respect to a commercial liquid hazardous waste treatment, storage, and disposal facility (the “Facility”) located at 28470 Citrin Drive, Romulus, Michigan (the “Property”).

Prior to November 14, 2006, EDS was the owner of the Property and operator of the Facility. However, all of EDS’s rights, title, and interest in Permits #MI-163-1W-C007 and MI-163-1W-C008, the Property and the Facility have been assigned or transferred to RDD. As the subject matter of these proceedings relates to compliance with the Permits in operation of the Facility, RDD, as owner of the Property and the Facility, and as equitable owner of the Permits, claims an interest relating to this administrative proceeding. As such, RDD now respectfully requests leave from the Presiding Officer, pursuant to 40 CFR §22.11 to intervene as a

respondent in this proceeding to protect its interests and to ensure the full and fair adjudication of these consolidated matters.

## II. FACTUAL BACKGROUND

The Facility, a Class 1 hazardous waste underground injection facility, first opened in December of 2005 upon receiving the last of the federal, state and local licenses and permits necessary for operation. However, the project that resulted in the Facility dates back many years and was principally financed by the Police and Fire Retirement System of the City of Detroit (the “PFRS”), pursuant to a series of secured loan transactions. Under the various loan documents, EDS was obligated to maintain certain operational and financial standards. Unfortunately, EDS was not able to fulfill its obligations to the PFRS, resulting in events of default under the loan documents and subjecting the Facility and the Property to potential foreclosure.

In an effort to stave off foreclosure, to secure the Facility and Property, and to protect the rights and interests of all parties involved in the loan transactions, EDS agreed to and assigned and transferred all of its rights in and title to the Facility and the Property, as well its rights and interest in the licenses and permits related to the operation of the Facility to RDD, including the Permits at issue in the instant proceeding. As part of this assignment, RDD was granted the authority to take any action necessary relating to the Permits and the wells at issue. However, RDD has not assumed any of EDS’s obligations or liabilities to any third parties and is not a successor to EDS in any way other than being the assignee of title to the Property and the assignee and transferee of the Permits.

The assignment and transfer was accomplished by the execution and delivery of an Assignment and Acknowledgment Agreement, including a Quit Claim Deed,<sup>1</sup> and an Assignment of Permits, a copy of which is attached to RDD’s Motion for Leave to Intervene as

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<sup>1</sup> The Quit Claim Deed was recorded with the Wayne County Register of Deeds on November 14, 2006.

Exhibit A (the “Agreement”). As a result, RDD is now the record title holder to the Property and owner of the Facility, and, to the extent that the UIC Permits are transferred or reissued to RDD and the Facility operates in the future, RDD or its designee will be the operator of the Facility.<sup>2</sup>

Shortly after the execution of the Agreement, RDD physically secured the Facility, and began proactively responding to and working with the EPA and the Michigan Department of Environmental Quality to bring the Facility back into full compliance with the Permits and other applicable licenses. RDD has responded fully to all EPA requests for information, whether formal or informal, and has been in constant contact with representatives of the EPA over the past nine months. In responding to the requests for information and in performing EPA required and requested activities, RDD has expended over \$1,500,000.00 in compliance and operational costs related to the Facility.

Pursuant to applicable regulations, RDD, with the cooperation of EDS, submitted to the EPA a formal transfer request for the Permits on February 28, 2007, requesting transfer of Permits #MI-163-1W-C007 and MI-163-1W-C008 at issue in this matter from RDD/EDS to Environmental Geo-Technologies, LLC (“EGT”) as the proposed owner and operator of the Facility. (See Exhibit B to RDD’s Motion for Leave to Intervene, Transfer Request). This request is, according to the EPA, being held in abeyance pending a final decision on the EPA’s Notice of Intent to Terminate the UIC Permits. (See Exhibit C to RDD’s Motion for Leave to Intervene, EPA Notice of Intent to Terminate UIC Permits) (See Exhibit D to RDD’s Motion for Leave to Intervene, April 12, 2007 Correspondence from EPA to RDD and EGT). The PFRS and RDD objected to the proposed termination of the UIC Permits, and have requested that the EPA grant their transfer request and modify the Permits to transfer ownership to EGT, or revoke

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<sup>2</sup> By order of the Michigan Department of Environmental Quality, operations at the Facility have been suspended since November of 2006.

and re-issue the permits to EGT. (See Exhibit E to RDD's Motion for Leave to Intervene, PFRS and RDD's Public Comments on the EPA's Notice of Intent to Terminate UIC Permits).

On March 22, 2007, the EPA filed its complaint in this administrative proceeding, seeking a civil penalty of \$73,992.00.

### **III. STANDARD OF REVIEW**

Pursuant to 40 CFR §22.11, on timely application, the Presiding Officer will grant a party's motion for leave to intervene if:

the movant claims an interest relating to the cause of action; a final order may as a practical matter impair the movant's ability to protect that interest; and the movant's interest is not adequately represented by existing parties.

Further, 40 CFR §22.11 provides that

A motion for leave to intervene that is filed after the exchange of information pursuant to §22.19(a) shall not be granted unless the movant shows good cause for its failure to file before such exchange of information.

### **IV. DISCUSSION**

As a result of the transactions and occurrences set forth above, RDD has a right to intervene as a respondent in these consolidated cases under 40 CFR §22.11, as: (1) RDD claims an interest relating to the subject of this proceeding; (2) a final order or other disposition of this proceeding may as a practical matter impair RDD's ability to protect that interest; and (3) RDD's interests are not adequately represented by the existing parties. Upon information and belief, RDD's motion for leave to intervene is timely, as RDD is not aware of the occurrence of the exchange of information between the parties as provided in 40 CFR §22.19(a)

#### **1. RDD Claims An Interest In The Subject Matter of this Administrative Proceeding**

The first element of the right to intervene is that "the movant claims an interest relating to the cause of action" 40 CFR §22.11. As noted above, this administrative proceeding concerns

compliance with Permits to operate the Facility. As a result of the Acknowledgment and Assignment Agreement, the Quit Claim Deed and Assignment of Permits attached to RDD's motion, RDD possesses an actual legal interest in the Facility and Property as well as an at least equitable interest in the Permits that are alleged to have been violated by EDS. As such, this element is unquestionably satisfied.

**2. A final order or other disposition of this proceeding may as a practical matter impair RDD's ability to protect its interest in the Facility, Property and Permits**

The second element of the right to intervene is that "a final order may as a practical matter impair the movant's ability to protect that interest" 40 CFR §22.11. In this case, it is not only possible, but likely that a final order issued by the Presiding Officer or a consent order entered into by the EPA and EDS will impair or impede RDD's ability to protect its interest. The disposition of this administrative proceeding, whether by consent order or final order may impair or otherwise affect the Permits, Facility or Property. In that case, RDD, the owner of the Facility and the Property and the equitable owner of the Permits, will be directly affected. Therefore, as a final order or other disposition may impair RDD's ability to protect its interests, RDD has satisfied element two of 40 CFR §22.11.

**3. RDD's Interests Are Not Adequately Represented By The Existing Parties.**

The third and final element of the right to intervene under 40 CFR §22.11 involves the adequacy of the representation given to the movant's interest by the existing parties. In the present action, and in light of the circumstances and occurrences leading up to and resulting in the assignment and transfer of the Facility, Property, and Permits to RDD, RDD's rights and interests are not and will not be adequately represented by any existing party.

While EDS may have previously been in a position to represent and defend the same interests that RDD now possesses, such is no longer the case. As stated in RDD's Motion for

Leave to Intervene, EDS is a dissolved Michigan corporation with no legal or property interest in the Facility or the Property. EDS has no incentive to protect RDD's interest in the Permits, the Facility or the Property, and has no incentive to comply with directives of the EPA as they may relate to the Permits, the Facility or the Property. The very fact that RDD has interests to be represented is conclusive with respect to the issue of whether an existing party will adequately represent those interests, as RDD has interests in the Facility, Property, and Permits solely because EDS was not and is not in a position to adequately represent and protect those interests.

Moreover, with respect to any possible injunctive relief that may be contained in a consent order or a final order, *only* RDD will truly be adversely affected if any consent order affecting the Facility, the Permits or the Property is entered. EDS, lacking any legal or property rights in the Permits, Facility or Property, will not be prejudiced or adversely affected if the Facility cannot be operated going forward, and thus EDS is not in a position to adequately represent RDD's interests. Moreover, even if EDS were otherwise so inclined to continue to defend those claims seeking to prevent the future operation of the Facility, it is simply not in a position to do so, financially or otherwise, as evidenced by its dissolution and the very act of the assignment and transfer of interests to RDD.

## **V. CONCLUSION**

WHEREFORE, as RDD has satisfied each of the elements required for intervention in an administrative proceeding pursuant to 40 CFR §22.11, and for the reasons set forth above, RDD Investment Corp. and RDD Operations, LLC respectfully request that this Court enter an order granting RDD leave to intervene as a respondent in this administrative proceeding and to file the pleadings attached to its Motion for Leave to Intervene as Exhibit H.

Respectfully submitted,

CLARK HILL PLC

By: Kristin Bell Bellar

Joseph E. Turner (P44135)

Ronald A. King (P45008)

Kristin B. Bellar (P69619)

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Attorneys For Proposed Intervenors

Date: October 5, 2007

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Case No. SDWA-05-2007-0003

Environmental Disposal Systems, Inc.  
Birmingham, Michigan,

Respondent.

**PROOF OF SERVICE**

STATE OF MICHIGAN     }  
                                  } ss  
COUNTY OF INGHAM    }

I, Kristin Beals Bellar, being duly sworn, depose and say that on October 5, 2007, I served Proposed Intervenors's *Attorney Appearance, Motion for Leave to Intervene as Respondents, and Brief in Support of Motion for Leave to Intervene as Respondents* with this *Proof of Service* upon:

Regional Hearing Clerk  
U.S. EPA, Region 5 (13J)  
77 West Jackson Boulevard  
Chicago, IL 60604

Service was accomplished by placing same in an overnight Federal Express package and addressed properly.

Service was also accomplished by placing same in a United States mail depository, enclosed in envelopes bearing certified, returned receipt requested postage fully prepaid and addressed properly to the recipients listed below:

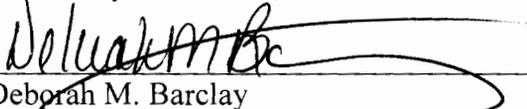
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Sterling Heights, Michigan 48313-1151

  
\_\_\_\_\_  
Kristin Beals Bellar

Subscribed and sworn to me  
this 5<sup>th</sup> day of October, 2007

  
\_\_\_\_\_  
Deborah M. Barclay  
Notary Public for Ingham County, Michigan  
Acting in Ingham County, Michigan  
My Commission Expires: January 7, 2013