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April 28, 2007

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

Re: *In Re: Environmental Disposal Systems, Inc., Birmingham, Michigan*
Docket No. SDWA-05-2007-0003
Administrative Hearing Officer: Marcy A. Toney

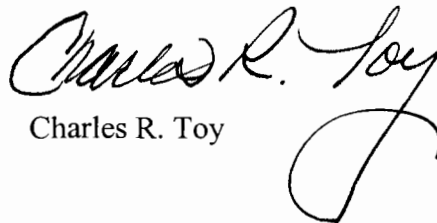
Dear Clerk:

Enclosed in the above matter are the original Answer and Request for Hearing and Affidavit of Paul McConnell. Also enclosed is a document titled Answer in Context. The Answer in Context, and all its attachments, are PROPRIETARY and COMPANY CONFIDENTIAL, for which a claim of business confidentiality is asserted under 40 C.F.R. Part 2, subpart B.

If you have any questions, or need further information, feel free to contact me.

Sincerely,

FARHAT & STORY, P.C.



Charles R. Toy

lmh
encl.

cc: Erik H. Olson, Esq.
Environmental Disposal Systems, Inc.
Lawrence M. Scott, Esq.

REGIONAL CLERK
SEP 22 2007 11:43

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
) Docket No. SDWA-05-2007-0003
Environmental Disposal Systems, Inc.)
Birmingham, Michigan,) Administrative Hearing Officer:
) Marcy A. Toney
Respondent.)
_____)

ANSWER AND REQUEST FOR HEARING

Environmental Disposal Systems, Inc., a dissolved Michigan corporation, through its counsel, Farhat & Story, P.C., in Answer to the Administrative Complaint filed on March 22, 2007, submits the following Answer and Request for Hearing. Also submitted contemporaneously with this Answer and Request for Hearing is an Answer in Context, which includes exhibits, all of which are being submitted with a claim of business confidentiality under 40 C.F.R. Part 2, subpart B because such information is proprietary and company confidential.

A. GENERAL ALLEGATIONS

1. Respondent admits the allegations contained in Paragraph 1 of the Complaint.
2. Respondent admits the allegations contained in Paragraph 2 of the Complaint.
3. Respondent admits the allegations contained in Paragraph 3 of the Complaint.
4. Respondent admits the allegations contained in Paragraph 4 of the Complaint through April 25, 2007, at which time Respondent was dissolved. See Certificate of Dissolution and Filing Endorsement attached as Exhibit 1.¹
5. Respondent admits the allegations contained in Paragraph 5 of the Complaint.
6. Respondent admits the allegations contained in Paragraph 6 of the Complaint.

¹ Exhibits attached to this Answer and Request for Hearing are numeric and there is no claim of business confidentiality. Exhibits attached to the Answer in Context are alphabetic and there is a claim of business confidentiality.

7. Respondent admits the allegations contained in Paragraph 7 of the Complaint.
8. Respondent admits the allegations contained in Paragraph 8 of the Complaint.
9. Respondent admits the allegations contained in Paragraph 9 of the Complaint.
10. Respondent admits the allegations contained in Paragraph 10 of the Complaint.
11. Respondent admits the allegations contained in Paragraph 11 of the Complaint.
12. Respondent admits the allegations contained in Paragraph 12 of the Complaint.
13. Respondent admits the allegations contained in Paragraph 13 of the Complaint.
14. Respondent admits the allegations contained in Paragraph 14 of the Complaint.
15. Respondent admits the allegations contained in Paragraph 15 of the Complaint.

Answering further, all authority under the 1-20² Permit was transferred to the 1-12 and 2-12 Permits.

16. Respondent admits the allegations contained in Paragraph 16 of the Complaint.
17. Respondent admits the allegations contained in Paragraph 17 of the Complaint.
18. Respondent admits the allegations contained in Paragraph 18 of the Complaint.
19. Respondent admits the allegations contained in Paragraph 19 of the Complaint.
20. Respondent admits the allegations contained in Paragraph 20 of the Complaint.
21. Respondent admits the allegations contained in Paragraph 21 of the Complaint.
22. Respondent denies the allegations contained in Paragraph 22 of the Complaint for

the reason that all authority under the 1-20 Permit was transferred to the 1-12 and 2-12 Permits. Well 1-20 was never operated and, once the regulatory authority was transferred to Wells 1-12 and 2-12, Well 1-20 was no longer regulated by the U.S. EPA or any of the statutes or regulations

² All abbreviated references contained in the Complaint are used in this Answer and Request for Hearing, without an initial statement of the entity or term being abbreviated.

implemented or enforced by U.S. EPA. Well 1-20 came under the exclusive jurisdiction of the Michigan Department of Environmental Quality (MDEQ).

23. Respondent admits the allegations contained in Paragraph 23 of the Complaint.

24. Respondent admits the allegations contained in Paragraph 24 of the Complaint.

25. Respondent denies the allegations contained in Paragraph 25 of the Complaint for the reason that all authority under the 1-20 Permit was transferred to the 1-12 and 2-12 Permits. Well 1-20 was never operated and, once the regulatory authority was transferred to Wells 1-12 and 2-12, Well 1-20 was no longer regulated by the U.S. EPA or any of the statutes or regulations implemented or enforced by U.S. EPA. Well 1-20 came under the exclusive jurisdiction of the Michigan Department of Environmental Quality (MDEQ).

26. Respondent admits the allegations contained in Paragraph 26 of the Complaint.

27. Respondent admits the allegations contained in Paragraph 27 of the Complaint.

28. Respondent denies the allegations contained in Paragraph 28 of the Complaint for any time after the authority of the 1-20 Permit was transferred to the 1-12 and 2-12 Permits. For the period of time prior to the transfer of the authority to the 1-12 and 2-12 Permits, Respondent admits the allegations contained in Paragraph 28.

29. Respondent admits the allegations contained in Paragraph 29 of the Complaint.

30. Respondent admits the allegations contained in Paragraph 30 of the Complaint.

31. Respondent denies the allegations contained in Paragraph 31 of the Complaint for any time after the authority of the 1-20 Permit was transferred to the 1-12 and 2-12 Permits. For the period of time prior to the transfer of the authority to the 1-12 and 2-12 Permits, Respondent admits the allegations contained in Paragraph 31.

32. Respondent admits the allegations contained in Paragraph 32 of the Complaint.

33. Respondent admits the allegations contained in Paragraph 33 of the Complaint.

34. Respondent denies the allegations contained in Paragraph 34 of the Complaint for any time after the authority of the 1-20 Permit was transferred to the 1-12 and 2-12 Permits. For the period of time prior to the transfer of the authority to the 1-12 and 2-12 Permits, Respondent admits the allegations contained in Paragraph 34.

35. Respondent admits the allegations contained in Paragraph 35 of the Complaint.

36. Respondent admits the allegations contained in Paragraph 36 of the Complaint.

37. Respondent admits the allegations contained in Paragraph 37 of the Complaint.

38. Respondent admits the allegations contained in Paragraph 38 of the Complaint.

39. Respondent admits the allegations contained in Paragraph 39 of the Complaint.

40. Respondent can neither admit nor deny the allegations contained in Paragraph 40 of the Complaint for the reason that following the passage of a Resolution by the Board of Trustees of the Police and Fire Retirement System of the City of Detroit (Pension Fund) on October 19, 2006, an involuntary transition plan was created and executed to minimize disruption to the ongoing operation of the Facility such that by November 7, 2006, possession, ownership, and operation of the Facility were transferred to the Pension Fund pursuant to an Acknowledgment and Assignment, for which Respondent asserts a claim of business confidentiality. See Answer in Context and documents attached to Answer in Context. This November 7, 2006 Acknowledgment and Assignment included provisions whereby Respondent would transfer all right, title, and interest in all governmental Permits, authorizations, approvals, exemptions, and licenses associated with the Facility, including Wells 1-12 and 2-12, to the Pension Fund. After November 7, 2006, top management of Respondent were no longer allowed

at the Facility and all locks were changed. Respondent has no information as to what occurred at the Facility after November 7, 2006.

41. In response to the allegations contained in Paragraph 41 of the Complaint, Respondent does not deny that the U.S. EPA issued a Request for Information dated January 12, 2007. Answering further, Respondent never received the Request for Information. The Request for Information was sent to Respondent's office in Birmingham, Michigan, which was closed in November 2006 for failure to afford rent. Further, the U.S. EPA was notified in December 2006 that Respondent had been removed as the possessors, owners, or operators of the Facility pursuant to the November 7, 2006 Acknowledgment and Assignment attached as an Exhibit to the Answer in Context and explained in Paragraph 40 above. Answering further, the person who signed for the certified or registered mail for the Request for Information dated January 12, 2007, a Nona Stewart, was never an employee or agent of Respondent and is unknown by any of Respondent's management. See Answer in Context and attached documents referenced in the Answer in Context, for which Respondent asserts a claim of business confidentiality, submitted contemporaneously with the Answer and Request for Hearing.

42. In response to the allegations contained in Paragraph 42 of the Complaint, Respondent, for the reasons stated in Paragraph 41, Defendant never received the February 22, 2007 Notice of Intent to File Civil Complaint. Answering further, the February 22, 2007 Notice of Intent was also received by Respondent's local corporate counsel, who called the former President of Respondent. Counsel was informed that the documents pertaining to the alleged violations and financial condition were in the hands of the Pension Fund pursuant to the November 7, 2006 Acknowledgment and Assignment referenced in Paragraph 40 above. Respondent's legal counsel was to contact Pension Fund's secondary special legal counsel.

Respondent has seen an email where the Pension Fund's secondary special legal counsel contacted the U.S. EPA on four occasions, but it is unknown whether one of those contacts was in response to the February 22, 2007 Notice of Intent.

43. Respondent admits the allegations contained in Paragraph 43 of the Complaint. Answering further, Respondent never received either the Request for Information nor the Notice of Intent to File Civil Complaint as set forth above in Paragraphs 41-42. Additionally, as set out in Paragraph 42 above, it is unknown whether secondary special legal counsel for the possessors, owners, and operators of the Facility, as set out in the Acknowledgment and Assignment, responded to the February 22, 2007 Notice of Intent.

B. FAILURE TO COMPLY WITH THE CONDITIONS OF Permit 1-12

Count I - Failure to Provide Information

44. Respondent incorporates Paragraphs 1 through 43 as if fully restated.

45. Respondent admits the allegations contained in Paragraph 45 of the Complaint.

46. In response to the allegations contained in Paragraph 46 of the Complaint, Respondent incorporates Paragraph 41 as if fully restated.

47. Respondent denies as untrue the allegations contained in Paragraph 47 of the Complaint. Answering further, the person who signed for the Request for Information, Nona Stewart, is not an employee or agent of Respondent, and the then President of Respondent has never heard of her. Additionally, Respondent incorporates the Answer to Paragraph 41.

48. Paragraph 48 contains a statement of U.S. EPA's intent, and Respondent therefore neither admits nor denies the statement.

49. Respondent neither admits nor denies the allegations contained in Paragraph 49 of the Complaint for the reason that Respondent never received the Request for Information.

50. Respondent admits the allegations contained in Paragraph 50 of the Complaint for the reason that Respondent never received the Request for Information.

51. Respondent denies the allegations contained in Paragraph 51 of the Complaint for the reason that the Request for Information was not received by Respondent nor sent to an address where Respondent had an office. On or about December 6, 2006, U.S. EPA was aware that Respondent was no longer the possessors, owners, or operators of the Facility. In response to a Detroit News article, which reported that regulators wondered what had happened to EDS, Respondent's President, surprised by the article, called Lisa Perenchio on or about December 6, 2006 to report that the possession, ownership, and operation of the Facility had been taken over by the Pension Fund pursuant to the November 7, 2006 Acknowledgment and Assignment. Respondent's former President also stated that the Birmingham office of Respondent was closed. Respondent's former President offered Lisa Perenchio a copy of the November 7, 2007 Acknowledgment and Assignment. Two days after the initial telephone conference, Lisa Perenchio called Respondent's President and asked for a copy of the November 7, 2007 Acknowledgment and Assignment. This was sent to Lisa Perenchio. The U.S. EPA knew how to contact Respondent's President in December 2006 and that method of contact did not change at any time in 2007 when the U.S. EPA may have wanted to communicate with Respondent.

Count II - Failure to Allow Access to Records to U.S. EPA Inspectors

52. Respondent incorporates Paragraphs 1 through 51 as if fully restated.

53. Respondent admits the allegations contained in Paragraph 53 of the Complaint, but no request to copy any records was made. Respondent's former Director of Deepwell

Engineering³ was onsite during the November 2006 inspection and had access to all records and chart recordings, but he was never asked for such records. On the first day of the November inspection, the record keeper for Respondent was on vacation, but she was at the Facility on the second day of the November inspection and she produced all of the information requested.

54. Respondent admits the allegations contained in Paragraph 54 of the Complaint, but no request to copy any records was made. Respondent's former Director of Deepwell Engineering was onsite during the November 2006 inspection and had access to all records and chart recordings, but he was never asked for such records. On the first day of the November inspection, the record keeper for Respondent was on vacation, but she was at the Facility on the second day of the November inspection and she produced all of the information requested.

55. Respondent denies as untrue the allegations contained in Paragraph 55 of the Complaint. Answering further, all calibration records were available for inspection, but no request to review or copy these records was made. Respondent's former Director of Deepwell Engineering was onsite during the November 2006 inspection and had access to all records and chart recordings, but he was never asked for such records. On the first day of the November inspection, the record keeper for Respondent was on vacation, but she was at the Facility on the second day of the November inspection and she produced all of the information requested.

³ McConnell, Respondent's former Director of Deepwell Engineering, was EDS's full time technical representative for all EPA matters from January 2003 through the end of May 2006. In June 2006, because of budget concerns, Mr. McConnell began part time employment with EDS at 20 percent FTE; he worked one day per week, plus was on call 24 hours per day. Many weeks, Mr. McConnell was at the Facility three days per week. Mr. McConnell's last day at the Facility was the first day of the U.S. EPA's November inspection; after that EDS's former President was gone, the Pension Fund never contacted Mr. McConnell to offer employment. Mr. McConnell was informed by the EDS employees who remained employed at the Facility that the locks were changed a few days after the U.S. EPA's November inspection.

Answering further, calibrations were completed and given to U.S. EPA-contracted inspector Charles Browns a few weeks before the November inspection and those records were available at the Facility when Dana Rzeknik inspected the Facility in November 2006.

56. Respondent denies as untrue the allegations contained in Paragraph 56 of the Complaint. Answering further, all calibration and maintenance records and original chart recordings were available for inspection. Respondent's former Director of Deepwell Engineering was onsite during the November 2006 inspection and had access to all records and chart recordings, but he was never asked for such records. On the first day of the November inspection, the record keeper for Respondent was on vacation, but she was at the Facility on the second day of the November inspection and she produced all of the information requested. Answering further, these records are contained in an operating system computer and, if requested, they could have been easily downloaded or a U.S. EPA inspector could have looked at them on a computer monitor.

57. Respondent denies as untrue the allegations contained in Paragraph 57 of the Complaint. Answering further, the U.S. EPA inspectors used the conference room of the plant operations office as its office and, consequently, were in the plant operations office. Respondent's former Director of Deepwell Engineering was onsite during the November inspection and he had keys for all locations at the Facility, including the plant operations office.

58. Respondent denies as untrue the allegations contained in Paragraph 58 of the Complaint. Answering further, Respondent incorporates Paragraphs 53-57.

Count III - Failure to Retain Continuous Monitoring Records

59. Respondent incorporates Paragraphs 1 through 58 as if fully restated.

60. Respondent admits the allegations contained in Paragraph 60 of the Complaint.

61. In response to the allegations contained in Paragraph 61 of the Complaint, Respondent states that in December 2006, Respondent was neither the possessor nor operator of the Facility and no employees of Respondent were onsite pursuant to the November 7, 2006 Acknowledgment and Assignment. See Answer in Context and attached documents referenced in the Answer in Context. Respondent asserts a claim of business confidentiality for the Answer in Context and documents attached thereto. Respondent left all records at the Facility and all records that were at the Birmingham office were required to be brought to the Facility. Respondent has no idea why the continuous monitoring records were not available at the Facility in December 2006; they were available when the Pension Fund took over the Facility. Answering further, when Respondent operated the chart recorders for continuous monitoring instrumentation, all three chart recorders, #1, #2, and #3, were always installed, changed, and filed together. Consequently, it is a mystery why one or two charts may be missing but not the third for any particular period. Respondent can only speculate that the new possessors, owners, and operators of the Facility did not know where the continuous monitoring records were filed or they had been misfiled. Additionally, on information and belief, Respondent believes the Pension Fund found the continuous monitoring records and produced them at a later inspection.

62. Respondent neither admits nor denies the allegations contained in Paragraph 62 of the Complaint for the reasons stated in Paragraph 61.

63. Respondent denies the allegations contained in Paragraph 63 of the Complaint for the reasons stated in Paragraphs 61 and 62.

Count IV - Failure to Increase Cost Estimate for Closure

64. Respondent incorporates Paragraphs 1 through 63 as if fully restated.

65. Respondent admits the allegations contained in Paragraph 65 of the Complaint.

- 66. Respondent admits the allegations contained in Paragraph 66 of the Complaint.
- 67. Respondent admits the allegations contained in Paragraph 67 of the Complaint.
- 68. Respondent admits the allegations contained in Paragraph 68 of the Complaint.

Answering further, this was an oversight by Respondent.

- 69. Respondent admits the allegations contained in Paragraph 69 of the Complaint.

Count V - Failure to Increase Cost Estimate for Post-Closure

- 70. Respondent incorporates Paragraphs 1 through 69 as if fully restated.
- 71. Respondent admits the allegations contained in Paragraph 71 of the Complaint.
- 72. Respondent admits the allegations contained in Paragraph 72 of the Complaint.
- 73. Respondent admits the allegations contained in Paragraph 73 of the Complaint.
- 74. Respondent admits the allegations contained in Paragraph 74 of the Complaint.

Answering further, this was an oversight by Respondent.

- 75. Respondent admits the allegations contained in Paragraph 75 of the Complaint.

Count VI - Failure to Test the Automatic Warning System

- 76. Respondent incorporates Paragraphs 1 through 75 as if fully restated.
- 77. Respondent admits the allegations contained in Paragraph 77 of the Complaint.
- 78. Respondent admits the allegations contained in Paragraph 78 of the Complaint.
- 79. Respondent admits the allegations contained in Paragraph 79 of the Complaint.
- 80. Respondent denies the allegations contained in Paragraph 80 of the Complaint for

the reason that the automatic warning system and automatic shut-off system were tested regularly and were demonstrated to the EPA-contracted inspector, Charlie Brown, on every occasion that he visited the Facility between June 30, 2004 and June 8, 2006. The automatic warning system tested computer logic and it was tested at a minimum of two times per year in front of U.S. EPA

inspectors. Respondent's former Director of Deepwell Engineering tested the automatic warning system in front of Dana Rzeznik on November 2, 2006. In October, 2006, Respondent's former Director of Deepwell Engineering conducted a test of the automatic warning system in front of EPA-contracted inspector Charles Brown. There were two occasions when Charles Brown could not attend a test of the automatic warning system and the MDEQ stood in for Mr. Brown. Respondent's former Director of Deepwell Engineering conducted every test and every test was also conducted in conjunction with the mechanical integrity tests.

81. Respondent denies the allegations contained in Paragraph 81 of the Complaint for the reasons set out in Paragraph 80.

Count VII - Failure to Conduct Ambient Monitoring

82. Respondent incorporates Paragraphs 1 through 81 as if fully restated.

83. Respondent admits the allegations contained in Paragraph 83 of the Complaint, but the effective date of the Permit was when Respondent received authorization to inject at the end of December 2005.

84. In response to the allegations contained in Paragraph 84 of the Complaint, Respondent states that it believes that the 12-month period ended in December 2006, one year after Respondent received authorization to inject in Wells 1-12 and 2-12. Before December 2005, nothing was injected in the wells and there was no test that could be performed. In November 2006, over 30 days before the anniversary of the authorization to inject, Respondent was no longer the possessors, owners, or operators of the Facility pursuant to the November 7, 2006 Acknowledgment and Assignment. Hazardous waste was first injected into Wells 1-12 and 2-12 on January 1, 2006. One year of operating the wells and triggering the monitoring tests would have been January 1, 2007. Injection in Wells 1-12 and 2-12 ceased by October 29, 2006 when

the Facility temporarily ceased operations. See Answer in Context and attached documents referenced in the Answer in Context, for which Respondent asserts a claim of business confidentiality.

85. In response to the allegations contained in Paragraph 85 of the Complaint, Respondent admits that it never submitted plans for monitoring the buildup in the injection interval, but, for the reasons stated in Paragraph 84, Respondent had no reasons to submit such plans and, when such plans would have been due, Respondent was no longer the possessors, owners, or operators of the Facility pursuant to the November 7, 2006 Acknowledgment and Assignment.

86. Respondent admits the allegations contained in Paragraph 86 of the Complaint for the period before November 7, 2006, when the Acknowledgment and Assignment became effective. Respondent is without information of what was received by the Pension Fund after November 7, 2006.

87. Respondent admits the allegations contained in Paragraph 87 of the Complaint for the reason that over 30 days before the testing would have been planned, Respondent was neither the possessors, owners, or operators of the Facility pursuant to the November 7, 2006 Acknowledgment and Assignment.

88. Respondent denies the allegations contained in Paragraph 88 of the Complaint for the reasons set out in Paragraphs 84-87.

Count VIII - Failure to Submit Quarterly Reports

89. Respondent incorporates Paragraphs 1 through 88 as if fully restated.

90. Respondent admits the allegations contained in Paragraph 90 of the Complaint.

91. Respondent admits the allegations contained in Paragraph 91 of the Complaint.

92. Respondent admits the allegations contained in Paragraph 92 of the Complaint.

93. Respondent admits the allegations contained in Paragraph 93 of the Complaint for the reason that when the quarterly report would have been due, October 31, 2006, Respondent was already in the process of being evicted from the Facility and the transition by the Pension Fund was underway pursuant to the October 19, 2006 Resolution adopted by the Board of the Pension Fund. See Answer in Context and attached documents referenced in the Answer in Context.

94. Respondent denies the allegations contained in Paragraph 94 of the Complaint as to the July 1 - September 30, 2006 Quarterly Report for the reasons set out in Paragraph 93 and admits the remaining allegations in Paragraph 94.

Count IX - Failure to Submit Annual Report

95. Respondent incorporates Paragraphs 1 through 94 as if fully restated.

96. Respondent admits the allegations contained in Paragraph 96 of the Complaint, but the effective date of the Permit was when Respondent received authorization to inject at the end of December 2005.

97. Respondent admits the allegations contained in Paragraph 97 of the Complaint.

98. In response to the allegations contained in Paragraph 98 of the Complaint, Respondent states that it believes that the 12-month period ended in December 2006, one year after Respondent received authorization to inject in Wells 1-12 and 2-12. Before December 2005, nothing was injected in the wells and, therefore, no fluid injection analysis or pressure fall-off testing that could be performed. On November 7, 2006, over 30 days before the anniversary of the authorization to inject, Respondent was no longer the possessors, owners, or operators of the Facility, pursuant to the November 7, 2007 Acknowledgment and Assignment. See Answer in

Context and attached documents referenced in the Answer in Context, to which Respondent asserts a business confidentiality.

99. Respondent denies the allegations contained in Paragraph 99 of the Complaint for the reasons set out in Paragraph 98; Respondent believed no reports were due until the end of December 2006.

100. Respondent denies the allegations contained in Paragraph 100 of the Complaint for the reasons set out in Paragraphs 98-99.

C. FAILURE TO COMPLY WITH THE CONDITIONS OF Permit 2-12

Count X - Failure to Provide Information

101. Respondent incorporates Paragraphs 1 through 100 as if fully restated.

102. Respondent admits the allegations contained in Paragraph 102 of the Complaint.

103. In response to the allegations contained in Paragraph 103 of the Complaint, Respondent incorporates Paragraph 41 as if fully restated.

104. Respondent denies as untrue the allegations contained in Paragraph 104 of the Complaint. Answering further, the person who signed for the Request for Information, Nona Stewart, is not an employee or agent of Respondent, and the then President of Respondent has never heard of her. Additionally, Respondent incorporates the Answer to Paragraph 41.

105. Paragraph 105 contains a statement of U.S. EPA's intent, and Respondent therefore neither admits nor denies the statement.

106. Respondent neither admits nor denies the allegations contained in Paragraph 106 of the Complaint for the reason that Respondent never received the Request for Information.

107. Respondent admits the allegations contained in Paragraph 107 of the Complaint for the reason that Respondent never received the Request for Information.

108. Respondent denies the allegations contained in Paragraph 108 of the Complaint for the reason that the Request for Information was not received by Respondent nor sent to an address where Respondent had an office. On or about December 6, 2006, U.S. EPA was aware that Respondent was no longer the possessors, owners, or operators of the Facility. In response to a Detroit News article, which reported that regulators wondered what had happened to EDS, Respondent's President, surprised by the article, called Lisa Perenchio on or about December 6, 2006 to report that the possession, ownership, and operation of the Facility had been taken over by the Pension Fund pursuant to the November 7, 2006 Acknowledgment and Assignment. Respondent's former President also stated that the Birmingham office of Respondent was closed. Respondent's former President offered Lisa Perenchio a copy of the November 7, 2007 Acknowledgment and Assignment. Two days after the initial telephone conference, Lisa Perenchio called Respondent's President and asked for a copy of the November 7, 2007 Acknowledgment and Assignment. This was sent to Lisa Perenchio. The U.S. EPA knew how to contact Respondent's President in December 2006 and that method of contact did not change at any time in 2007 when the U.S. EPA may have wanted to communicate with Respondent.

Count XI - Failure to Allow Access to Records to U.S. EPA Inspectors

109. Respondent incorporates Paragraphs 1 through 108 as if fully restated.

110. Respondent admits the allegations contained in Paragraph 110 of the Complaint, but no request to copy any records was made. Respondent's former Director of Deepwell Engineering was onsite during the November 2006 inspection and had access to all records and chart recordings, but he was never asked for such records. On the first day of the November inspection, the record keeper for Respondent was on vacation, but she was at the Facility on the second day of the November inspection and she produced all of the information requested.

111. Respondent admits the allegations contained in Paragraph 111 of the Complaint, but no request to copy any records was made. Respondent's former Director of Deepwell Engineering was onsite during the November 2006 inspection and had access to all records and chart recordings, but he was never asked for such records. On the first day of the November inspection, the record keeper for Respondent was on vacation, but she was at the Facility on the second day of the November inspection and she produced all of the information requested.

112. Respondent denies as untrue the allegations contained in Paragraph 112 of the Complaint. Answering further, all calibration records were available for inspection, but no request to review or copy these records was made. Respondent's former Director of Deepwell Engineering was onsite during the November 2006 inspection and had access to all records and chart recordings, but he was never asked for such records. On the first day of the November inspection, the record keeper for Respondent was on vacation, but she was at the Facility on the second day of the November inspection and she produced all of the information requested. Answering further, calibrations were completed and given to U.S. EPA-contracted inspector Charles Browns a few weeks before the November inspection and those records were available at the Facility when Dana Rzeznik inspected the Facility in November 2006.

113. Respondent denies as untrue the allegations contained in Paragraph 113 of the Complaint. Answering further, all calibration and maintenance records and original chart recordings were available for inspection. Respondent's former Director of Deepwell Engineering was onsite during the November 2006 inspection and had access to all records and chart recordings, but he was never asked for such records. On the first day of the November inspection, the record keeper for Respondent was on vacation, but she was at the Facility on the second day of the November inspection and she produced all of the information requested. Answering

further, these records are contained in an operating system computer and, if requested, they could have been easily downloaded or a U.S. EPA inspector could have looked at them on a computer monitor.

114. Respondent denies as untrue the allegations contained in Paragraph 114 of the Complaint. Answering further, the U.S. EPA inspectors used the conference room of the plant operations office as its office and, consequently, were in the plant operations office. Respondent's former Director of Deepwell Engineering was onsite during the November inspection and he had keys for all locations at the Facility, including the plant operations office.

115. Respondent denies as untrue the allegations contained in Paragraph 115 of the Complaint. Answering further, Respondent incorporates Paragraphs 110-114.

Count XII - Failure to Retain Continuous Monitoring Records

116. Respondent incorporates Paragraphs 1 through 115 as if fully restated.

117. Respondent admits the allegations contained in Paragraph 117 of the Complaint.

118. In response to the allegations contained in Paragraph 118 of the Complaint, Respondent states that in December 2006, Respondent was not the possessor, owner, nor operator of the Facility and no employees of Respondent were onsite pursuant to the November 7, 2006 Acknowledgment and Assignment. See Answer in Context and attached documents referenced in the Answer in Context. Respondent asserts a claim of business confidentiality for the Answer in Context and documents attached thereto. Respondent left all records at the Facility and all records that were at the Birmingham office were required to be brought to the Facility. Respondent has no idea why the continuous monitoring records were not available at the Facility in December 2006; they were available when the Pension Fund took over the Facility. Answering further, when Respondent operated the chart recorders for continuous

monitoring instrumentation, all three chart recorders, #1, #2, and #3, were always installed, changed, and filed together. Consequently, it is a mystery why one or two charts may be missing but not the third for any particular period. Respondent can only speculate that the new possessors, owners, and operators of the Facility did not know where the continuous monitoring records were filed or they had been misfiled. Additionally, on information and belief, Respondent believes the Pension Fund found the continuous monitoring records and produced them at a later inspection.

119. Respondent neither admits nor denies the allegations contained in Paragraph 119 of the Complaint for the reasons stated in Paragraph 61.

120. Respondent denies the allegations contained in Paragraph 120 of the Complaint for the reasons stated in Paragraphs 61 and 62.

Count XIII - Failure to Increase Cost Estimate for Closure

121. Respondent incorporates Paragraphs 1 through 120 as if fully restated.

122. Respondent admits the allegations contained in Paragraph 122 of the Complaint.

123. Respondent admits the allegations contained in Paragraph 123 of the Complaint.

124. Respondent admits the allegations contained in Paragraph 124 of the Complaint.

125. Respondent admits the allegations contained in Paragraph 125 of the Complaint.

Answering further, this was an oversight by Respondent.

126. Respondent admits the allegations contained in Paragraph 126 of the Complaint.

Count XIV - Failure to Increase Cost Estimate for Post-Closure

127. Respondent incorporates Paragraphs 1 through 126 as if fully restated.

128. Respondent admits the allegations contained in Paragraph 128 of the Complaint.

129. Respondent admits the allegations contained in Paragraph 129 of the Complaint.

130. Respondent admits the allegations contained in Paragraph 130 of the Complaint.

131. Respondent admits the allegations contained in Paragraph 131 of the Complaint.

Answering further, this was an oversight by Respondent.

132. Respondent admits the allegations contained in Paragraph 132 of the Complaint.

Count XV - Failure to Test the Automatic Warning System

133. Respondent incorporates Paragraphs 1 through 132 as if fully restated.

134. Respondent admits the allegations contained in Paragraph 134 of the Complaint.

135. Respondent admits the allegations contained in Paragraph 135 of the Complaint.

136. Respondent admits the allegations contained in Paragraph 136 of the Complaint.

137. Respondent denies the allegations contained in Paragraph 137 of the Complaint

for the reason that the automatic warning system and automatic shut-off system were tested regularly and were demonstrated to the EPA-contracted inspector, Charlie Brown, on every occasion that he visited the Facility between June 30, 2004 and June 8, 2006. The automatic warning system tested computer logic and it was tested at a minimum of two times per year in front of U.S. EPA inspectors. Respondent's former Director of Deepwell Engineering tested the automatic warning system in front of Dana Rzeznik on November 2, 2006. In October, 2006, Respondent's former Director of Deepwell Engineering conducted a test of the automatic warning system in front of EPA-contracted inspector Charles Brown. There were two occasions when Charles Brown could not attend a test of the automatic warning system and the MDEQ stood in for Mr. Brown. Respondent's former Director of Deepwell Engineering conducted every test and every test was also conducted in conjunction with the mechanical integrity tests.

138. Respondent denies the allegations contained in Paragraph 138 of the Complaint for the reasons set out in Paragraph 80.

Count XVI - Failure to Have a Deep Well Operator on Site During Injection

139. Respondent incorporates Paragraphs 1 through 138 as if fully restated.

140. Respondent admits the allegations contained in Paragraph 140 of the Complaint.

141. Respondent admits the allegations contained in Paragraph 141 of the Complaint.

142. Respondent denies the allegations contained in Paragraph 142 of the Complaint for the reason that John Webb, who was trained by Respondent's former Director of Deepwell Engineering, was present at the Facility during the night of October 22, 2006 until he was relieved by Respondent's former Director of Deepwell Engineering at approximately 8:30 a.m. on the morning of October 23, 2006. Respondent's former Director of Deepwell Engineering trained Mr. Webb over a two-year period of time.

143. In response to the allegations contained in Paragraph 143 of the Complaint, Respondent admits that Respondent's former Director of Deepwell Engineering arrived at the Facility on October 23, 2006 at approximately 8:30 a.m., but states that he was not the only trained operator. The other trained operator, John Webb, was on duty during the night of October 22, 2006 until he was relieved by Respondent's former Director of Deepwell Engineering at approximately 8:30 a.m. the morning of October 23, 2006.

144. Respondent denies the allegations contained in Paragraph 144 of the Complaint for the reasons set out in Paragraphs 142-143.

145. Respondent denies the allegations contained in Paragraph 145 of the Complaint for the reasons set out in Paragraphs 142-144.

Count XVII - Failure to Conduct Ambient Monitoring

146. Respondent incorporates Paragraphs 1 through 145 as if fully restated.

147. Respondent admits the allegations contained in Paragraph 147 of the Complaint, but the effective date of the Permit was when Respondent received authorization to inject at the end of December 2005.

148. In response to the allegations contained in Paragraph 148 of the Complaint, Respondent states that it believes that the 12-month period ended in December 2006, one year after Respondent received authorization to inject in Wells 1-12 and 2-12. Before December 2005, nothing was injected in the wells and there was no test that could be performed. In November 2006, over 30 days before the anniversary of the authorization to inject, Respondent was no longer the possessors, owners, or operators of the Facility pursuant to the November 7, 2006 Acknowledgment and Assignment. Hazardous waste was first injected into Wells 1-12 and 2-12 on January 1, 2006. One year of operating the wells and triggering the monitoring tests would have been January 1, 2007. Injection in Wells 1-12 and 2-12 ceased by October 29, 2006 when the Facility temporarily ceased operations. See Answer in Context and attached documents referenced in the Answer in Context, for which Respondent asserts a claim of business confidentiality.

149. In response to the allegations contained in Paragraph 149 of the Complaint, Respondent admits that it never submitted plans for monitoring the buildup in the injection interval, but, for the reasons stated in Paragraph 148, Respondent had no reasons to submit such plans and, when such plans would have been due, Respondent was no longer the possessors, owners, or operators of the Facility pursuant to the November 7, 2006 Acknowledgment and Assignment.

150. Respondent admits the allegations contained in Paragraph 150 of the Complaint for the period before November 7, 2006, when the Acknowledgment and Assignment became effective. Respondent is without information of what was received by the Pension Fund after November 7, 2006.

151. Respondent admits the allegations contained in Paragraph 151 of the Complaint for the reason that over 30 days before the testing would have been planned, Respondent was neither the possessors, owners, or operators of the Facility pursuant to the November 7, 2006 Acknowledgment and Assignment.

152. Respondent denies the allegations contained in Paragraph 152 of the Complaint for the reasons set out in Paragraphs 148-151.

Count XVIII - Failure to Submit Quarterly Reports

153. Respondent incorporates Paragraphs 1 through 152 as if fully restated.

154. Respondent admits the allegations contained in Paragraph 154 of the Complaint.

155. Respondent admits the allegations contained in Paragraph 155 of the Complaint.

156. Respondent admits the allegations contained in Paragraph 156 of the Complaint.

157. Respondent admits the allegations contained in Paragraph 157 of the Complaint for the reason that when the quarterly report would have been due, October 31, 2006, Respondent was already in the process of being evicted from the Facility and the transition by the Pension Fund was underway pursuant to the October 19, 2006 Resolution adopted by the Board of the Pension Fund. See Answer in Context and attached documents referenced in the Answer in Context.

158. Respondent denies the allegations contained in Paragraph 158 of the Complaint as to the July 1 - September 30, 2006 Quarterly Report for the reasons set out in Paragraph 157 and admits the remaining allegations in Paragraph 158.

Count XIX - Failure to Submit Annual Report

159. Respondent incorporates Paragraphs 1 through 158 as if fully restated.

160. Respondent admits the allegations contained in Paragraph 160 of the Complaint, but the effective date of the Permit was when Respondent received authorization to inject at the end of December 2005.

161. Respondent admits the allegations contained in Paragraph 161 of the Complaint.

162. In response to the allegations contained in Paragraph 162 of the Complaint, Respondent states that it believes that the 12-month period ended in December 2006, one year after Respondent received authorization to inject in Wells 1-12 and 2-12. Before December 2005, nothing was injected in the wells and, therefore, no fluid injection analysis or pressure fall-off testing that could be performed. On November 7, 2006, over 30 days before the anniversary of the authorization to inject, Respondent was no longer the possessors, owners, or operators of the Facility, pursuant to the November 7, 2007 Acknowledgment and Assignment. See Answer in Context and attached documents referenced in the Answer in Context, to which Respondent asserts a business confidentiality.

163. Respondent denies the allegations contained in Paragraph 163 of the Complaint for the reasons set out in Paragraph 162; Respondent believed no reports were due until the end of December 2006.

164. Respondent denies the allegations contained in Paragraph 164 of the Complaint for the reasons set out in Paragraphs 162-163.

D. FAILURE TO COMPLY WITH THE CONDITIONS OF Permit 1-20

Count XX - Failure to Submit Closure Report by Required Date

165. Respondent incorporates Paragraphs 1 through 164 as if fully restated.

166. Respondent admits the allegations contained in Paragraph 166 of the Complaint, but, answering further, states that the 1-20 Permit was transferred to the 1-12 and 2-12 Permits. At that time, Well 1-20 came under the exclusive jurisdiction of the MDEQ; any jurisdiction by the U.S. EPA ceased.

167. Respondent admits the allegations contained in Paragraph 167 of the Complaint, but, answering further, states that the 1-20 Permit was transferred to the 1-12 and 2-12 Permits. At that time, Well 1-20 came under the exclusive jurisdiction of the MDEQ; any jurisdiction by the U.S. EPA ceased.

168. Respondent neither admits nor denies the allegations contained in Paragraph 168 of the Complaint for the reason that Respondent was no longer the possessors, owners, or operators of Well 1-20. Answering further, Respondent's former Director of Deepwell Engineering completed a closure report for Well 1-20 in August 2006 and sent it to the MDEQ, Mr. Ray Vugrinovich, Senior Geologist, Office of Geological Survey. Respondent's former Director of Deepwell Engineering does not know whether he copied the closure report sent to the MDEQ to Dana Rzeznik of the U.S. EPA or whether she asked for the closure report submitted to the MDEQ and it was sent to her. Either way, Respondent's former Director of Deepwell Engineering knew that Dana Rzeznik had received the closure report for Well 1-20, although that well was no longer under the regulation of U.S. EPA.

169. Respondent neither admits nor denies the allegations contained in Paragraph 169 of the Complaint for the reason that Respondent does not know what was sent to the U.S. EPA in

December 2006. Answering further, Respondent was no longer the possessors, owners, or operators of the Facility in December 2006, pursuant to the November 7, 2006 Acknowledgment and Assignment.

170. Respondent denies the allegations contained in Paragraph 170 of the Complaint for the reasons set out in Paragraphs 166-168 and U.S. EPA, Dana Rzeznik did receive the closure report for Well 1-20 submitted to the MDEQ.

171. Respondent denies the allegations contained in Paragraph 171 of the Complaint for the reasons set out in Paragraphs 166-170.

E. PROPOSED CIVIL PENALTY

172. Respondent incorporates Paragraphs 1 through 171 as if fully restated. Answering further, Respondent admits the allegations contained in Paragraph 172 of the Complaint

173. Respondent denies the allegations contained in Paragraph 173 for the reasons stated in the Answer in Context and attached documents referenced in the Answer in Context, to which Respondent asserts a business confidentiality. Answering further, Respondent specifically did not receive any economic benefit from the violations, Respondent had just begun operations and did not have a history of violations, Respondent attempted in good faith to comply with all applicable requirements. Respondent believed that the Pension Fund would in good faith operate the Facility after November 7, 2006, Respondent stopped injecting into Wells 1-12 and 2-12 and temporarily ceased operations at the Facility on October 29, 2006 to avoid any violations, Respondent is dissolved, Respondent is not the possessor, owner, or operator of the Facility, Respondent is no longer in business, Respondent has no business activity, and Respondent has absolutely no money and, in fact, creditors are owed \$2,848,920.03. See Answer in Context and attached documents referenced in the Answer in Context.

174. Respondent assumes that the reference to Paragraph 208 is an error and refers to Paragraph 172. After substituting "172" for "208," Respondent denies the allegations contained in Paragraph 174 for the reasons set forth in Paragraph 173, the Answer in Context and attached documents referenced in the Answer in Context, to which Respondent asserts a business confidentiality.

REQUEST FOR HEARING

Although Respondent is filing an Answer with the U.S. EPA Regional Hearing Clerk, it has no money to challenge the allegations in the Complaint and relies exclusively on the rebuttals contained in this Answer. Respondent challenges the appropriateness of the civil penalty proposed to be assessed for the violations and, in support of this challenge, submits concurrent with this Answer and Request for Hearing, the Answer in Context and the exhibits attached to the Answer in Context, to which Respondent asserts a business confidentiality. Respondent is being as responsible as possible by answering this Complaint to avoid the issuance of a Default Order.

Respondent is committed to working with the U.S. EPA and MDEQ to protect the environment and public health and welfare in whatever way it can in relation to Wells 1-12 and 2-12. Respondent will provide whatever documents the U.S. EPA requests except those documents to which Respondent no longer has access because they are at the Facility or under the control of the Pension Fund. Respondent has not had access to the Facility since November 7, 2006 when all of Respondent's employees were fired and the locks were changed at the Facility. Since the day of the Pension Fund's takeover, several former EDS employees were re-hired by the Pension Fund. Respondent requests that a Consent Agreement and a Final Order be entered in

this case. Respondent will cooperate in any way in arriving at such a Consent Agreement and Final Order with the U.S. EPA.

CONCLUSION

Respondent requested and participated in an informal settlement conference that took place on Tuesday, April 10, 2007, at which the following persons participated:

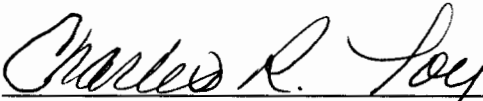
- For the U.S. EPA - Erik H. Olson, Esq., Robert A. Kaplan, Esq., Leslie Patterson, and Lisa Perenchio.
- For Respondent - Charles R. Toy, Esq. and Paul McConnell.

The Answers set forth herein and the Answers in Context are consistent with the comments made by the participants in the informal settlement conference. This Answer provides a means to document the explanations given by Respondent's representatives during the informal settlement conference. Respondent requests that the U.S. EPA enter a Consent Agreement and a Final Order with Respondent and communicate with the Pension Fund about any resumption of operations at the Facility. Further, Respondent has provided the U.S. EPA, MDEQ, and the Pension Fund with information on bonds and any other means of financial assurance in order to provide protection to the environment and the public health and welfare for any cleanup or well closures required at the Facility and to inform the Pension Fund of necessary information in the event it desires to renew the mechanisms for financial assurance.

Respectfully submitted,

FARHAT & STORY, P.C.
Attorneys for Respondent

Dated: April 28, 2007

By: 
Charles R. Toy (P33116)
1003 North Washington Avenue
Lansing, MI 48906-4868
(517) 351-3700

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGION 5 CLERK
2007 APR 30 PM 4:43

IN THE MATTER OF:)
) Docket No. SDWA-05-2007-0003
Environmental Disposal Systems, Inc.)
Birmingham, Michigan,) Administrative Hearing Officer:
) Marcy A. Toney
Respondent.)
) AFFIDAVIT OF PAUL McCONNELL

STATE OF MICHIGAN)
)SS.
COUNTY OF INGHAM)

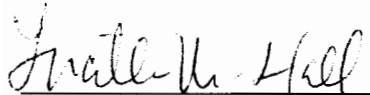
Paul McConnell, after being duly sworn, deposes and states:

1. I have a B.S. in Petroleum Engineering from the University of Oklahoma and over thirty years experience in the designing and supervision of drilling, well completions, facilities, pipelines and operations. I also hold a certification from the State of Michigan in deepwell operations.
2. My involvement with Respondent is set out in Footnote 3 of the Answer and Request for Hearing.
3. I have read and attest that each of the responses contained in the Answer and Request for Hearing are complete and accurate to the best of my knowledge, information, and belief.
4. I make this Affidavit on personal knowledge of the statements contained herein and, if called as a witness, I can testify competently as to the facts contained in this Affidavit and do so voluntarily and without duress.

Further, Affiant sayeth not.


Paul McConnell

Subscribed and sworn to before me
this 28th day of April, 2007.


Lucille M. Hall, Notary Public
Clinton County, Michigan
Acting in Ingham County, Michigan
My commission expires August 21, 2010

LUCILLE M. HALL
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF CLINTON
My Commission Expires Aug. 21, 2010
Acting in the County of Ingham

Attachment 1

BCSGCD-031 (Rev. 01/06)

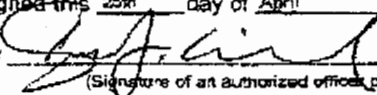
MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH BUREAU OF COMMERCIAL SERVICES	
Date Received	(FOR BUREAU USE ONLY)
This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.	
Name John A. Nitz, Esq.	
Address 12900 Hall Road, Suite 350	
City	State ZIP Code
Sterling Heights, Michigan 48313	
Effective Date:	

Document will be returned to the name and address you enter above. If left blank document will be mailed to the registered office.

CERTIFICATE OF DISSOLUTION
For use by Domestic Corporations
(Please read information and instructions on reverse side)

Pursuant to the provisions of Act 284, Public Acts of 1972 (profit corporations), or Act 162, Public Acts of 1982 (nonprofit corporations), the undersigned corporation executes the following Certificate:

1. The name of the corporation is: ENVIRONMENTAL DISPOSAL SYSTEMS, INC.
2. The identification number assigned by the Bureau is: 471073
3. The dissolution was approved: (Check one of the following)
<input type="checkbox"/> by written consent of the shareholders or members having not less than the minimum number of votes required by statute in accordance with Section 407(1) of the Act. Written notice to shareholders or members who have not consented in writing has been given. (Note: Written consent by less than all of the shareholders or members is permitted only if such provisions appears in the Articles of Incorporation).
<input checked="" type="checkbox"/> by written consent of all shareholders or members entitled to vote in accordance with Section 407(2) of P.A. 284 of 1972, or 407(3) of P.A. 152 of 1982.
<input type="checkbox"/> by agreement among the shareholders in accordance with Section 488 of P.A. 284 of 1972.
<input type="checkbox"/> by written consent of all directors pursuant to Section 528 of the Act and the corporation is a nonprofit corporation organized on a nonstock directorship basis.
<input type="checkbox"/> at a meeting of the shareholders or members, held on the _____ day of _____ at _____ (Location of Meeting)
<input type="checkbox"/> at a meeting of directors of a corporation organized on a nonprofit directorship basis held on the _____ day of _____ at _____ (Location of Meeting)

Profit Corporations and Professional Service Corporations
Signed this <u>25th</u> day of <u>April</u> , 2007
By <u></u> (Signature of an authorized officer or agent)
DOUGLAS F. WICKLUND (Type or Print Name)

Nonprofit Corporations
Signed this _____ day of _____
By _____ (Signature of President, Vice-president, Chairperson or Vice Chairperson)
(Type or Print Name) (Type or Print Title)

04/25/2007 11:39AM

Michigan Department of Labor & Economic Growth

Filing Endorsement

This is to Certify that the CERTIFICATE OF DISSOLUTION

for

ENVIRONMENTAL DISPOSAL SYSTEMS, INC.

ID NUMBER: 471073

received by facsimile transmission on April 25, 2007 is hereby endorsed

Filed on April 25, 2007 by the Administrator.

The document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Department, in the City of Lansing, this 25TH day of April, 2007.



A handwritten signature in black ink, appearing to read 'Andrew L. Mitchell'.

, Director

Bureau of Commercial Services