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January 29, 2016

Susan Hedman, Director
US EPA Region 5
77 W Jackson Boulevard
Chicago, IL 60604-3507
hedman.susan@epa.gov

Re: Michigan Underground Injection Control (UIC) Program
Draft Primacy Application, 8/24/15
Michigan Department of Environmental Quality, Office of Oil, Gas,
and Minerals

Dear Ms. Hedman:

I write for Ban Michigan Fracking (BMF), a Michigan non-profit. Our website is www.banmichiganfracking.org.

It came to our attention recently that on August 24, 2015, Michigan Department of Environmental Quality (MDEQ) submitted a draft application to Region 5 for UIC primacy under the Safe Drinking Water Act (SDWA). We obtained a copy. For convenient reference we uploaded it to this URL on our site:
<http://banmichiganfracking.org/wp-content/uploads/2016/01/UIC-Application-Master-08-2015-DML.pdf>.

On page 40 is this statement:

XVI. PUBLIC PARTICIPATION ON APPLICATION FOR PRIMACY.

The MDEQ, OOGM provided opportunity for public participation during the development of Michigan's Class II primacy program by conducting one (1) public hearing, and posting the draft application and a request for comments on the MDEQ website. The hearing provided Michigan residents with the opportunity to directly comment on the proposed program. Input on the primacy program development was not limited to oral presentations at the hearing. Written comments were accepted and considered in the same manner as those received orally.

This is not true. As seen in my attached letter of December 23, 2014, MDEQ held what was billed as a "public meeting" on December 9, 2014. I attended it for BMF. Less than a dozen others were present.

At the beginning of the meeting an MDEQ representative announced to everyone's surprise it would include a "public hearing." In Michigan law there is a difference, as explained in my letter. MDEQ did not follow Michigan rules for public hearings, particularly about notice, so the meeting was not actually a "public hearing."

Even so, I made remarks for BMF during the "hearing," and then followed 14 days later with written comments, together with eight attachments. For the reasons stated – mainly (1) MDEQ and EPA have different definitions of "injection well," (2) MDEQ has advanced no reason why it suddenly should assume primacy some 30 years after SDWA first enabled state primacy, and (3) MDEQ didn't follow the state's public hearing rules – our letter opposed the application.

MDEQ's draft primacy application of last August omits mention of BMF's opposition. A copy of my letter and eight attachments are not an exhibit as they should have been. Accordingly I attach them now. Please make them a part of your record.

Since then, additional reasons have appeared why MDEQ should have nothing to do with SDWA enforcement.

First, The Michigan Environmental Council (MEC) reported this month that gas storage wells in Michigan are of the same type as the one that has leaked methane in the Porter Ranch neighborhood of Los Angeles since October. Michigan has more active storage fields than any state. Michigan is calling for increasing the acreage of public land leased for mineral production and underground gas storage. Some aging wells and pipes haven't been replaced since the 1940s. Odorant is not added to gas in the storage fields, making it harder to detect leaks. A disaster involving thousands of evacuations

like that at the Porter Ranch could happen here, according to an expert quoted by MEC.

Also according to MEC, MDEQ oil-and-gas chief Hal Fitch was interviewed. Saying at first that gas storage standards are “strict” and “comprehensive,” he then admitted that inspections are infrequent, and MDEQ standards really are not very good:

Those inspection reports contain “not a lot of detail, frankly,” he said. “With what’s going on in California, we’re looking at our process ourselves, to see if there’s some improvements we can make,” Fitch said. “[Storage wells] don’t get as many inspections as an oil well or a brine injection well. But we’re looking now if we should have more complete records. We’re getting good compliance as far as what’s required, but we’re evaluating whether that’s really sufficient.”

<http://michigandistilled.org/2016/01/08/californias-gas-catastrophe-raises-questions-about-michigans-vast-storage-fields/>

The second reason MDEQ should stay away from SDWA is the mishandling of the Flint water crisis. Because of it, both MDEQ chief Dan Wyant and you (effective next week) have resigned in disgrace. MDEQ's draft application names the two of you as the signers of the ultimate primacy agreement. On page 1 is provided space for an endorsement signature by Governor Rick Snyder. Like Region 5, Governor Snyder sat on his hands for most of last year, though first warned of the problems in February.

But Region 5 is also at fault. The facts are these, according to Chicago reporter Gary Wilson: Your office had memos about the Flint water in February, April, and June of 2015. Despite danger to children the region sounded no alarms. In a recent media interview noted by Wilson, you said EPA had no power itself to act, and only the state of Michigan had power. But in fact under SDWA, the region does have oversight responsibility. The region has emergency powers to intervene when the state fails. In October, several organizations filed a formal petition with your office for emergency intervention. There was no response until December. When it came, the response contended wrongly you had no legal obligation in the matter. Later in December top state officials began resigning. Now finally this month, the same day you announced your own resignation, EPA issued an emergency order. EPA is running the show now, but not from Chicago. The central office in DC put itself in charge.

<http://greatlakesecho.org/2016/01/27/epas-role-in-flint-crisis-snyders-environmental-record/>

The sum of it is that Region 5 is as bad as the MDEQ when it comes to SDWA compliance. Regardless who succeeds you, UIC injection permitting should end

throughout Michigan and all the states of Region 5.

Very truly yours,



Ellis Boal

Encl: 12-23-14, email, BMF comment on MDEQ injection primacy and its attachments:
12-05-14 12-08-14, email exchange Ellis Boal, Adam Wygant
12-09-14, notice of comment period ending 12-23-14
7-24-14, email, Ellis Boal to Dan Bock re "When is a well...." frack wells
as injection wells
MDEQ OOGM website page for "more information"
GWPG-19
MDEQ "Public Involvement Handbook," page 6
Hughes v MDEQ, 2014 WL 547648 (Mich App, 2/11/14)
"Reservoir" definition

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