

Bob Wagner
cc: RD-Gaylord
WRD-SW-Gaylord

INJECTION WELL AGREEMENT

CMS Land Company (CMS) and the Michigan Department of Natural Resources and Environment (MDNRE) enter into this Injection Well Agreement (Agreement).

BACKGROUND

1. CMS is a party to an Administrative Order on Consent with the United States Environmental Protection Agency (EPA) entitled *In the Matter of Little Traverse Bay CKD Release Site* (EPA AOC), which addresses leachate formed when groundwater comes in contact with cement kiln dust located at East Park in Resort Township and the Bay Harbor Development (collectively Bay Harbor). The EPA AOC was executed on February 22, 2005 pursuant to EPA's authority under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC 9601 *et seq.*, and assigned Docket No. VW-05-C-810. This Agreement is expected to facilitate the negotiation of the "enforceable agreement" referenced in section 15.x. of the EPA AOC, which is not this Agreement and which the Parties anticipate negotiating in good faith at a later date. This Agreement, as well as the Well Evaluation and the Completion of Construction Report contemplated in this Agreement, may be considered, referenced, or incorporated when the Parties negotiate the agreement required under section 15.x. of the EPA AOC.

2. In October 2009, CMS submitted a Mineral Well Permit Application under Part 625 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.62501 *et seq.*, (Part 625 Permit) in order to evaluate the potential for deep well injection as a disposal method for cement kiln dust leachate. CMS and MDNRE have determined that the Well Evaluation and Completion of Construction Report addressed in this agreement will facilitate evaluation of this disposal method.

PURPOSE OF AGREEMENT

3. The Parties have entered into this Agreement solely to define the obligation of CMS to conduct the Well Evaluation, prepare and submit a Completion of Construction Report, and address events that could affect whether the Completion of Construction Report will be prepared. The Well Evaluation and Completion of Construction Report are intended to determine if an injection well located at Bay Harbor will meet the objective of providing complete and reliable disposal in compliance with all applicable federal and state laws for **all** leachate collected as required by section 15.x. of the EPA AOC and as may be required by any subsequent agreements with the EPA or MDNRE (the Objective).

PERMITS AND AUTHORIZATIONS

4. *Necessary Permits and Authorizations as Condition Precedent.* Completing the Completion of Construction Report (Report) will require physical site work subject to a number of permitting and authorization requirements. Preparing the Report is wholly dependent on first being able to conduct a Well Evaluation that includes but is not limited to characterization of the injection zone, characterization of the confining zone, comparison of injection pressure to the fracture pressure gradient, and successful dispersion/diffusion of injected fluids. Consequently, the Parties agree that CMS must obtain all necessary permits and work authorizations as a

condition precedent to the obligation to conduct the Well Evaluation and complete the Report described in this Agreement. In the event that CMS is unable to obtain any necessary permit or authorization to conduct the work for the Well Evaluation, or that any necessary permit or authorization is effectively suspended or revoked before the Well Evaluation is completed, it will have satisfied all its obligations under this Agreement and will have no remaining obligations under this Agreement.

5. *Necessary Permits and Authorizations.* The necessary permits and authorizations to conduct the Well Evaluation include, but are not limited to:

(a) an injection well permit issued by the Supervisor of Mineral Wells pursuant to Part 625 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.62501 *et seq.*, (Part 625 Permit);

(b) an injection well permit issued by EPA pursuant to the Underground Injection Control program of the federal Safe Drinking Water Act, 40 CFR 300h *et seq.*, (UIC Permit); and

(c) a soil erosion and sedimentation control permit issued by Emmet County pursuant to Part 91 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.9101 *et seq.*, and county ordinance; and

(d) authorization from one or more owners of surface property and subsurface injection rights to conduct the Well Evaluation at Bay Harbor in return for reasonable compensation.

6. *CMS Obligation to Pursue Injection Well Permits.* CMS agrees to pursue the Part 625 permit and UIC permit for an injection well at Bay Harbor until it obtains a final agency decision on the pending permit applications. Nothing in this Agreement obligates CMS to continue to pursue a valid Part 625 and UIC permit following a final agency decision. CMS retains the unilateral discretion to challenge or appeal, or defend against a challenge or appeal following a final agency decision concerning the Part 625 permit and the UIC permit.

CMS shall not be obliged to continue to pursue an injection well permit and will be deemed unable to obtain a necessary permit or authorization within the meaning of paragraph 4 of this Agreement if:

(a) there is a final agency decision denying either the Part 625 permit or the UIC permit; or

(b) EPA does not issue the UIC permit within three years of the Effective Date of this Agreement; or

(c) the Supervisor of Mineral Wells (MDNRE) does not issue the Part 625 permit within three years of the Effective Date of this Agreement; or

(d) Resort Township prohibits injection wells or the work required for the Well Evaluation within its jurisdiction before CMS completes the work for the Well Evaluation; or

(e) any person, entity, or agency obtains an injunction, administrative or agency order or directive, or court order preventing CMS from conducting the Well Evaluation or preparing the Report, from drilling or testing an injection well at Bay Harbor, or from acting under any permits issued in connection with the Bay Harbor injection well; provided, however, that a temporary restraining order issued by a court in relation to the Part 625 permit or the UIC permit that is actually dissolved or otherwise voided within ninety days of its entry does not constitute an inability to obtain a necessary permit or authorization. CMS will undertake reasonable efforts to oppose any request for a temporary restraining order and to set aside any temporary restraining order that has been issued by a court.

These circumstances apply only to the Part 625 or UIC permit. CMS is not obligated to demonstrate the existence of one or more of these circumstances in order to show that it was unable to obtain any other required permit or authorization under paragraph 4.

WELL EVALUATION AND COMPLETION OF CONSTRUCTION REPORT

7. *Well Evaluation.* The Well Evaluation is intended to address whether an injection well at the Bay Harbor location identified in the Part 625 and UIC permit applications will meet the Objective identified in this Agreement. As part of the Well Evaluation, CMS will drill one boring from the ground surface to the Mt. Simon formation at the Bay Harbor location identified in its Part 625 and UIC permit applications and will construct a well in that boring. CMS will conduct the work that is reasonable and necessary to determine whether the injection well will be able to meet the Objective identified in this Agreement.

8. *Injection Well Performance Standards.* The Parties understand and agree that whether the proposed injection well at Bay Harbor may be operated as a prudent and feasible long-term option for the complete and reliable disposal of Bay Harbor leachate includes factors not expressly addressed in the federal and state law requirements for injection well permits. While the Well Evaluation may produce the data required to be submitted to the Supervisor of Mineral Wells (MDNRE) or EPA for final approval of the injection well's operation under the Part 625 and UIC permit programs, the purpose of the Well Evaluation required in this Agreement is to gather the data and other information necessary to determine whether an injection well drilled and constructed at Bay Harbor meets the Objective.

9. *Timing of the Well Evaluation.* The work for the Well Evaluation shall commence within thirty days of when CMS receives the last permit or authorization required to conduct the work for the Well Evaluation if the equipment and contractors necessary to conduct the Well Evaluation are available at that time, or as soon as practicable after the equipment and contractors become available.

10. *Completion of Construction Report.* CMS will prepare a Completion of Construction Report that will describe the activities it has performed for the Well Evaluation and will address whether CMS finds that the injection well will meet the Objective described in this Agreement. CMS will identify results of the Well Evaluation, if any, that indicate the Objective cannot be met. CMS will provide any supporting information it believes necessary to support or explain its findings in the Report.

11. **Submission of the Report to MDNRE.** CMS will submit the Report to the MDNRE Office of Geological Survey within sixty days of completing the Well Evaluation.

12. **One Well Obligation.** CMS is obligated to drill and test only one well at the location described in its applications for the Part 625 Permit and UIC Permit, to conduct only one Well Evaluation concerning that well, and to prepare only one Report concerning that well. Nothing in this Agreement obligates CMS to conduct any other activities, including but not limited to additional exploratory drilling or technical work, drilling a deeper well, applying for permits for or drilling any additional injection wells at this or any other location, or preparing any additional or supplemental studies, reports, or data.

OTHER TERMS AND CONDITIONS

13. **Other Entities.** The Parties understand and agree that CMS may use related corporate entities, contractors, and consultants to engage in the activities required under this Agreement, including but not limited to having the Beeland Group, LLC, obtain the permits needed to conduct the Well Evaluation, which shall satisfy this Agreement as if CMS had conducted those activities itself.

14. **Consideration.** The Parties acknowledged that good and valuable consideration has been exchanged in the execution of this Agreement and the performance of its terms.

15. **No Limitation on CMS.** Nothing in this Agreement shall limit CMS's right or ability to evaluate, pursue, or use any other options for disposal of leachate collected at Bay Harbor. Nor shall this Agreement preclude CMS from seeking to obtain or renew any other permits. This Agreement shall not be interpreted as a promise by or obligation on the part of CMS to own or operate an injection well for the disposal of leachate at Bay Harbor or any other location.

16. **Enforcement and Remedy for Breach of Agreement.** The sole remedy for breach of this Agreement shall be its specific performance. Nothing in this Agreement shall give rise to or allow a claim, demand, or cause of action for damages, fees, penalties or costs of any kind by either Party.

17. **No Third-Party Reliance or Enforcement of Agreement.** This Agreement was executed solely for the benefit of the Parties. No third party may rely on or enforce this Agreement in any forum or in any manner.

18. **No Verbal Amendment or Assignment.** This Agreement shall not be amended or assigned without the express, written agreement of both Parties as further described in paragraph 19.

19. **Subsequent Consideration, Reference, or Incorporation.** The Parties may consider, reference, or incorporate this Agreement, the Well Evaluation, and the Report in a subsequent agreement, order, or other document. However, considering, referencing, or incorporating this Agreement, the Well Evaluation, or the Report shall not alter this Agreement in any way, including but not limited to provisions concerning the One Well Obligation, the Objective, conditions precedent to performance, enforcement and breach, duration, and third party reliance. Nor shall considering, referencing, or incorporating this Agreement, the Well Evaluation, or the

Report in a subsequent agreement, order, or other document add new or additional requirements to this Agreement, nor extend provisions that would have expired or concluded on their own terms. The Parties agree that the only manner in which the provisions of this Agreement may be altered in any manner is in a writing in which they identify the provisions of this Agreement that they intend to alter, add, or extend in exchange for additional consideration.

20. **Counterparts and Copies.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument. Copies of this Agreement are enforceable by the Parties to it as if they were originals.

21. **Effective Date.** This Agreement shall be effective upon signing by both CMS and MDNRE with approval as to form by the Michigan Department of Attorney General.

22. **Duration of Agreement.** This Agreement shall remain in effect until CMS submits the Completion of Construction Report to MDNRE or CMS is unable to obtain one or more of the necessary permits or authorizations to conduct or complete the Well Evaluation and sends written or electronic notice to MDNRE of such.

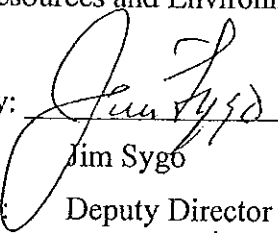
23. **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to this subject matter and supersedes any and all previous agreements and contemporaneous oral agreements with respect to the same subject matter.

24. **Authority to Enter Agreement.** The Parties represent that they have authority to enter into make binding this Agreement and that their representatives signing this Agreement have been authorized to do so.

AGREED BY:

Michigan Department of Natural
Resources and Environment

By:


Jim Sygo

Its: Deputy Director

Dated: 11/3/2010

CMS Land Company

By:


Michael C. Sniegowski

Its: Vice President

Dated: 10/28/2010

APPROVED AS TO FORM BY:

Michigan Department of Attorney General

By:


Alan Hoffman

Its: Special Assistant Attorney General

Dated: 11/1/10

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