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Congress of the United States
House of Representatives
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April 14, 2005

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Dear Gentlemen,

I write today to request that EPA immediately terminate the land ban exemption granted to Environmental Disposal Systems, Inc. (EDS) on March 25, 2004 (69 FR 15328) for a proposed hazardous waste deep injection well in Romulus, Michigan. EPA, when granting the exemption, indicated that it was only good "while the underlying assumptions are valid" (69 FR 15342). Because several underlying assumptions have proven false, it stands to reason that EPA revoke EDS' land ban exemption.

When EPA exempted EDS from the Resource Conservation and Recovery Act (RCRA) ban against disposing hazardous wastes on land, the Agency based its decision on the prediction that Sunoco Partners Marketing & Terminals, Inc. (SPMT) would not extract brine from the same underground formation, the Mt. Simon Formation, where EDS would dispose of its hazardous wastes. This prediction was based on several factors, including:

- (1) EPA's speculation that SPMT would be able to use a different, shallower formation; and,
- (2) EPA's speculation that the permit issued to SPMT by MDEQ would become void as the result of a Michigan lawsuit brought by EDS.

We now know that EPA's first assumption was wrong. SPMT has tested both the shallower and the Mt. Simon Formations. EPA and MDEQ representatives witnessed the tests and possess the results. The tests show that the Mt. Simon Foundation is suitable for the purposes of SPMT, while the shallower formation is not. We also now know that SPMT will use the Mt. Simon Formation: to date SPMT's spending for this project exceeds \$3.5 million, and these expenditures continue to grow.

Regarding the second assumption, there is no reasonable basis for EPA to conclude that EDS' judicial challenge to SMPT's permit issued by MDEQ will ultimately succeed. Although a lower Michigan court ruled against the permit, the Court of Appeals accepted the appeal of both MDEQ and SPMT. The case is currently pending before that Court.

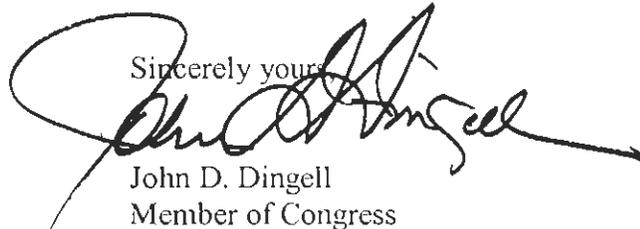
Congress has made it clear that land disposal of hazardous wastes, including the underground injection EDS proposes, is the least desirable form of hazardous waste disposal. Exemptions from the Land Disposal Restriction (LDR) program are limited to where it has been proven that hazardous wastes can be safely isolated in the injection zone. EPA may only grant exemptions from the LDR program when it has been demonstrated "to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous," (42 U.S.C.A. § 6924(d)(1); 40 C.F.R. § 148.20).

In this instance, EPA based its prediction that EDS' hazardous wastes will not migrate from the injection zone on inaccurate predictions, the first of which turned out to be false and the second neither practical nor reliable. In light of these recent developments, the most logical and prudent response would be for EPA to immediately terminate the land ban exemption until these discrepancies have been thoroughly investigated.

Thank you for your consideration. Given the sensitive nature of this request, I would appreciate a response no later than May 13. Should you have any questions, please do not hesitate to have your staff contact Katie Murtha at (202) 225-4071.

With every good wish,

Sincerely yours,

A handwritten signature in black ink, appearing to read "John D. Dingell", written over the typed name and title.

John D. Dingell
Member of Congress