UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

PUBLIC MEETING AND HEARING

TUESDAY, MAY 19, 2009

Mill Creek Elementary School

9039 Old M-72

Williamsburg, Michigan

Proposed Class I Permit

For the Hubbell B1-9 SWD Injection Well

Grand Traverse County, Michigan

Reported by: Kathleen Tulick, CSR 4806

Williamsburg, Michigan

Tuesday, May 19, 2009 - 7:00 p.m.

MR. TONG: Will this hearing come to order? Thank you. Good evening and welcome. My name is Bill Tong, and I am a geologist from EPA, the United States Environmental Protection Agency - Region 5 in Chicago, and tonight, I am serving as the hearing officer, representing EPA for this public hearing. With me are two EPA - Region 5 colleagues from the Underground Injection Control Branch; Leslie Patterson, an environmental scientist and author of the draft underground injection control permit; and Marietta Newell, an environmental protection specialist, who is acting tonight as the hearing assistant; as well as staff from the Michigan Department of Environmental Quality, Office of Geological Survey. We are here to listen to your comments regarding a permit EPA has proposed to issue to OIL Energy Company a Class I injection well located in Acme Township, Grand Traverse County, known as Hubbell B1-9.

The Class I permit, which is the subject of tonight's hearing, is being issued pursuant to the Federal Underground Injection Control Program for the State of Michigan, which may be found in the Code of

Federal Regulations at Title 40, Section 147.1151. This section was promulgated pursuant to Part C of the Safe Drinking Water Act. It incorporates the Underground Injection Control Program requirements of Part 124, 144 and 146 of the Code of Federal Regulations. The effective date of this program in Michigan was June 25, 1984.

The Underground Injection Control or UIC Program is designed to protect underground sources of drinking water by permitting only those injection wells which meet stringent technical requirements. The program is also designed to ensure public participation in the permitting process. The public is invited to comment on every proposed permit decision. EPA holds public hearings for those draft permit decisions that generate significant public interest or comments. An announcement of this public hearing was made in the Traverse City Record Eagle on April 23, 2009, which was mailed to those who provided comments.

I would like to now briefly describe the nature of the public hearing. Public hearings provide members of the public with an opportunity to publicly make the EPA aware of their views regarding an intended regulatory action. Although oral presentations are recorded word for word by a court reporter, there is no sworn

testimony or cross examination. This hearing is your opportunity to tell us officially whether you feel the terms of the permit are consistent with EPA's Underground Injection Control Program requirements, and whether the facts, as EPA has determined them, are accurate. Your comments will be heard during the designated comments period tonight; however, we will not orally respond to your comments this evening. All comments received will be reviewed and addressed in a consolidated, written response summary to be added to the permit's Administrative Record.

EPA will consider all comments in making its decision to issue or deny this UIC permit for OIL Energy Company. You may appeal any technical details or qualifications of the final permit decision only if you submit written comments on the draft permit during the public comment period or if you make a statement at this hearing tonight. If you wish to make a statement at this hearing, please be sure that you have filled out a registration form, so that we may correctly enter your name into the hearing record. Even if you do decline to make a statement, but wish to receive a copy of any response and the final permit decision, please make sure that you have indicated this on the sign-in sheet at the sign-in table.

Copies of the transcript of this hearing, as well as all written comments submitted at this proceeding, will be maintained at the EPA - Region 5 offices in Chicago, and will become part of the Administrative Record. A copy of the Administrative Record, the minutes of this hearing, and a copy of the responsiveness summary of comments received will also be available for your review at the Traverse City Area District Library, located at 610 Woodmere, Traverse City, Michigan. The public comment period has been extended through June 3, 2009, so that if you have written statements upon the conclusion of the hearing, you may also forward those to the EPA at the address that has been provided in the public notice.

First, Ray Vugrinovich of the MDEQ will read the hearing statement in the record; then Ms. Patterson will read her statement on behalf of the EPA into the record; then the meeting facilitator, Bob Wagner, will begin calling on those who have checked on the registration form that they would like to make a statement and have it transcribed by the court reporter. At this time, I will turn the floor over to my colleague from MDEQ.

MR. VUGRINOVICH: Thank you, Bill, and good evening everyone. My name is Ray Vugrinovich, and I am

a geologist specialist with the Office of Geological Survey, Michigan Department of Environmental Quality. I administer what is known as the mineral well program for the state.

The Office of Geological Survey, Michigan Department of Environmental Quality in conjunction with the US Environmental Protection Agency is holding a public hearing this evening for the purposes of receiving public comment on a permit application made by OIL Energy Corporation, 954 Business Park Drive, Suite 5, Traverse City, Michigan. This hearing is held under the authority of Part 625, Mineral Wells of the Natural Resources and Environmental Protection Act, which is Act 451 of the Public Acts 1994.

OIL has applied to the Michigan Department of Environmental Quality, Office of Geological Survey for a permit under Part 625 to allow an existing oil and gas brine disposal well known as the Hubbell B1-9 SWD to also accept industrial liquid waste. The proposed waste is brine from fruit processing.

This waste will be injected into the Dundee Limestone, which is a confined porous rock formation between about 1,907 and 2,103 feet below ground surface. The Hubbell B1-9 SWD well is located 2,618 feet from the north -- to the north, excuse me, and 506

feet to the west or from the west line of Section 9, Township 28 North, Range 9 West, Whitewater Township, Grand Traverse County, Michigan, which is about 506 east and a half mile north of the intersection of Angell and Munro Roads in Whitewater Township.

The OGS staff will not respond to questions directly during this public hearing. We will be preparing a written response, and that written response will be available both on the web site and in hard copy form to anyone requesting a copy.

Staff present tonight from the OGS include, besides myself, Mr. Rick Henderson, who is our district supervisor, Cadillac District. We have other OGS staff present. I am not going to introduce them individually, but I would like them to stand, so that you may know who they are, and if there are questions after the hearing we will be available for a short time to answer them.

Written questions or comments concerning the proposed Part 625 permit for the Hubbell B1-9 SWD well will be accepted for 15 days after close of this hearing until the close of business on June 3, 2009. They may be addressed to me at the Department of Environmental Quality, Office of Geological Survey, 525 West Allegan Street, Lansing, Michigan, 48909. We will

accept email comments. My email address is vugrinovichr@Michigan.gov.

This concludes the official statement by the Department of Environmental Quality, and I will turn over the microphone to Ms. Patterson.

MS. PATTERSON: Good evening. My name is Leslie Patterson, and I'm an environmental scientist with the EPA. I'm here to listen to your comments on a Class I permit which we propose to issue to OIL Energy to inject industrial waste and brine. The EPA permit which is the subject of today's hearing is being issued under the Federal Underground Injection Control Program for the State of Michigan.

The scope of the Federal Underground Injection Control regulations is to determine the soundness of construction and operation of injection wells as they relate to the protection of all underground sources of drinking water. This is done by imposing certain technical requirements on each and every injection well which injects fluids into the ground. An underground source of drinking water is an aquifer or its portion which contains less than 10,000 milligrams per liter of total dissolved solids. This includes current sources of drinking water, as well as potential sources of drinking water.

The permit which is the subject of today's hearing is for a Class I non-hazardous industrial waste injection well. Currently, the well operates under a Class II permit and can inject fluids which OIL Energy brings to the surface during the production of oil and gas. In this case, the gas is being produced from the Antrim Formation and the brine is injected into the Dundee Limestone and Detroit River Group, which are located below the Antrim Formation.

The Hubbell B1-9 well is drilled to a total depth of 2,118 feet below ground surface. The base of the lowermost underground source of drinking water in the vicinity is the glacial drift at about 385 feet below ground surface. The injection zone where the waste will be stored is limited to the Dundee Limestone and Detroit River Group at depths between 1,913 feet and 2,110 feet below ground surface. The injection zone is separated from the lowermost underground source of drinking water by a confining zone of approximately 1,528 feet of mainly shale and limestone formations. Because fluids cannot move easily through these formations, the confining zone will prevent the injected fluids from migrating upward out of the injection zone.

The construction of the proposed injection well

includes a 8 5/8 inch surface casing set at 494 feet, which is fully cemented from that depth to the surface. A 5 1/2 inch casing extends to 2,050 feet and is also fully cemented to the surface. Injection takes place through tubing which is set within the steel casing. A device called a packer is set at the bottom of the tubing to seal off the space between the casing and the tubing. This space, called an annulus, is filled with a liquid mixture containing a corrosion inhibitor, and allows the pressure in the annulus to be monitored for any leaks. The annulus pressure will be tested prior to injection of any industrial fluids and annually thereafter. The injection pressure is limited to 651 pounds per square inch to ensure injection will not cause the movement of injection or formation fluids into underground sources of drinking water.

If EPA issues this permit, OIL Energy will be responsible for recording injection pressure, flow rate, annulus pressure, annulus fluid loss, and cumulative volume on a weekly basis and reporting it to the EPA on a monthly basis. OIL Energy will also be responsible for analyzing the injected fluids and reporting the results to EPA on a quarterly basis, and testing the pressure response of the reservoir annually. OIL Energy may only inject waste from

sources that have been approved by EPA. When considering whether to approve a waste source, EPA will consider the characteristics of the proposed waste stream, the current waste stream, the formation brine, and the injection formation, and may impose additional limitations in the permit to address a new source.

The requirements I have described for proper construction, operation and monitoring of the well provide multiple safeguards to protect underground sources of drinking water. Now it is your opportunity to tell us your comments on the proposed permit. EPA will consider all comments in making its decision to issue or deny this underground injection control permit to OIL Energy.

MR. WAGNER: My name is Bob Wagner, and I'm your facilitator tonight. My role here is to make sure your comments are directed to EPA and DEQ concerning the Hubbell well at this time. The order in which we will do that is we will take those who have indicated on the sign-in sheet that they have a desire to provide a public comment tonight verbally. For those who did not indicate that you wished to speak but perhaps have a desire to do so, there will be time after we've gone through the list to provide that time for you to speak. If you have written comments but do not wish to

speak, please give them to the hearing officer tonight before you leave.

I will call your name. Please come to the microphone. Please give your name into the microphone and also spell your last name, because that will help us keep track of your comments with your name.

So our first speaker is Brad (inaudible), do you wish to speak?

BRAD: Not at this time.

MR. WAGNER: Okay.

PUBLIC VOICE: Is this the Hubbell well only or both?

MR. WAGNER: This is for the Hubbell well only. When we are done receiving comments on the Hubbell well we will conclude this public hearing. We will then re-open the public hearing for the Cherry Berry. Thank you. Sorry about that.

Nelson Fairchild? Nelson? Okay. Bill Derman?

BILL DERMAN: I did not request oral comment.

MR. WAGNER: Okay. Thank you. Greg Reisig?

GREG RAESIG: My name is Greg Reisig, R-e-i-s-i-g. I am representing the Northern Michigan Environmental Action Council. We have 600 members in the Grand Traverse region. Our board has asked that the permit be denied until a complete environmental impact

assessment can be submitted by the OIL Company. OIL has had no experience in handling of fruit wastewater in the past and needs to provide more information on this injection well to the public and on the purposes of this injection well to the public.

By changing the Class II well to a Class I well it opens up the possibility of Bay Harbor waste being brought to this deep well as well as other wastes. So it's a big deal. We feel that all fruit wastewater, including maraschino cherry processing wastewater, should be taken to a treatment plant and properly treated, and not just injected into wells and buried below the ground.

The well, both of these wells, are located on a narrow strip of land between Elk Lake and Grand Traverse Bay, and there are many concerns about how the groundwater will be protected, even though you've indicated the different depths and so forth. Our main concern is the Yuba Creek and the Tobeco Creek that both lead to Grand Traverse Bay. Thank you for holding this public hearing. We really appreciate it.

MR. WAGNER: Thank you, Greg. Paul Hubbell? Pete DiMercurio?

PETE DIMERCURIO: My name is Pete DiMercurio, and the last name is spelled D-i-M-e-r-c-u-r-i-o. I

represent the Elk/Skegemog Lakes Association and I have a prepared statement. It is the position of Elk/Skegemog Lakes Association that we as an organization representing 650 members and riparians are in opposition to the dumping of cherry brine into wells that were originally intended and approved for a completely different purpose.

Additionally, this requested change to alternative uses, in other words, Class II to a Class I well, sets the precedence for this type of request to potentially take place again or repeatedly as the dynamics or opportunity demand and economic gain presents itself.

There has been much discussion about little, if any, minimal environmental impact relative to the depth of the well as it applies to the water source aquifer and the proximity to Grand Traverse East Bay and Elk Lake. We believe that the environment we live in today and retrospectively viewing the industrial damage we have historically applied to our water sources this past century, it becomes counter-intuitive that we must apply environmental (inaudible) zero some probability to industrial waste potential and the impact to our water resources by any means.

Elk/Skegemog Lakes Association's purpose is to preserve and protect the Elk/Skegemog watershed, lakes,

streams and wetlands, while applying recognition to the necessity of prudent change particularly with known technology. We applaud alternative uses of existing capacities, but in this case believe the risk in the absence of assured science (inaudible) relative to the unknown long-term consequences, not only to our health but to the environment as well. Clearly this suggested change and request is an alternative to holding ponds and dumping and spreading of cherry fruit and industrial waste on the ground with extreme negative consequences over time.

This scenario is all too familiar as it relates to ongoing Michigan Department of Environmental Quality recent and ongoing violations notice, which has severely impacted surrounding plant life, leached into the soil and adjacent creek and subsequently into Elk Lake basin. Additionally, much anxiety and apprehension has been a constant companion to the adjacent Elk Lake riparian owners for which the violation notice was reported.

We believe the alternative from Class II to Class I is not the better alternative. The exploration and feasibilty of admissible commercial treatment at septage facilities in the surrounding regional area should be further investigated and seriously considered

as the preferred alternative.

Elk/Skegemog Lakes Association opposes the Environmental Protection Agency issuing a permit for a Class I underground injection control disposal well to OIL Energy for an existing well, the Hubbell B1-9 SWD, to allow and accept non-hazardous waste from the cherry processing company.

Additionally, I know this is not appropriate, but I'm going to add it to the record, that we oppose issuing a permit for a Class II disposal well, Cherry Berry B1-25 SWD, to allow it to accept brine from oil production. Thank you again for allowing me to have this opportunity.

MR. WAGNER: Thank you, Pete. Did you want to submit the written comments?

PETE DIMERCURIO: Yes, I do.

MR. WAGNER: Rachelle Babcock?

RACHELLE BABCOCK: Thanks for having the hearing, by the way. I appreciate the opportunity. I do have some hand-ins. So, actually, I can hand them in right now.

My name is Rachelle Babcock, and I'd like it noted that I am a member of the Concerned Citizens for Acme Township. We have about 150 members and supporters in our group in Acme. Within our mission statement

environmental protection stands out. So I am here to talk about the environmental protection.

Before I get on record for my three minutes I just wanted to say that though I call attention to the contents of this permit for the Hubbell deep injection well, I am opposed to allowing injection wells anywhere near our more sensitive watershed areas.

My comments pertain to EPA draft permit MI-05511C02, a well named Hubbell, to change the classification from Class II to Class I, location Grand Traverse County. Please explain how you can be absolutely certain that there will be no commingling of the disposal waste with the water source occurring anywhere within or at roughly 2,000 feet down. Can you be absolutely certain the cement construction housing the well components will remain intact and structurally sound after years of constant weathering near the surface, and that no adverse caustic effects will result from acidic waste being pumped down through it?

At issue here are environmental protections that are absent should the worse case scenario happen. The total estimated cost of plugging and abandonment is a mere $6,000. Who pays and who is responsible for the what-ifs that can occur; what if the company goes bankrupt, what if the well itself or any pipes leading

in or out of the well leak causing environmental long-term problems to occur? I do not think there is enough monetary protection in place for the deep injection well here in the Grand Traverse area. Minimally, 15 times that amount should be held in a special escrow account for the estimated cost of plugging and abandonment. I would like to see these issues addressed before a permit is granted to OIL Energy Corp.

A worse case scenario yet is that the state hands over to the permitee, in this case OIL Energy Corp, the right to police itself. The State of Michigan DEQ should require an addendum be attached to the permit naming the State of Michigan in so charge of recordkeeping and testing practices on the Hubbell deep injection well. Furthermore, it should spell out time tables for inspections, and include the amount OIL Energy Corp be charged for the service.

Permits that allow wells or structures of an industrial nature into these highly sensitive areas and are allowed to be self-policed can end up costing us taxpayers a lot of money. No company engaged in oil drilling of this nature should be entrusted with self-controls of these vital records.

To further strengthen my comments I am handing in

a copy of a report I have. Lake Michigan Federation, the case against new Great Lakes oil and gas drilling. "Michigan Fails to Clean up Oil and Gas Pollution," dated September 2001. Thank you. I appreciate it.

MR. WAGNER: Thank you, Rachelle. Paul Brink?

PAUL BRINK: My name is Paul Brink, B-r-i-n-k. I live at 9617 Winter Road in Williamsburg in Acme Township. I guess one of my concerns about this Hubbell well being converted from one class to another is what other types of waste might be allowed to be injected there. I think the current plan is for brine from the cherry processing, but, for example, as Mr. Reisig asked, is it possible that this kiln dust material from Bay Harbor and Petoskey could be permitted to go in this well also; and if so, what is the process by which that could happen, and would there be an opportunity for a public hearing in that event?

I understand that there's a well that's being proposed for in Alba, Michigan, where this material was to be injected, and for reasons I don't fully understand, but I would like to know more about, is, apparently, the local court has issued an injunction stopping that construction of that well until a full hearing can be had in November. I would be curious to know why the judge decided to do that. And are those

same issues that are present there, would they be present here were they to put this Bay Harbor material or any other material that is currently allowed into this well? Thank you very much.

MR. WAGNER: Thank you, Paul. Bob Garvey.

BOB GARVEY: I will speak on the other.

MR. WAGNER: Okay. Chris Grobbel?

CHRISTOPHER GROBBEL: Good evening. My name is Christopher Grobbel, Grobbel Environmental Planning Solutions in Traverse City. I'm here on behalf of CCAT that you heard about before, the Concerned Citizens of Acme Township, as well as the Northern Michigan Environmental Action Council, and a number of residents that have retained my firm for review of both of these proposals. I have provided written comment that's a revised report from one that was sent in about a week ago. A couple of typos were found in the past week and so that is revised, and I would like that to be part of the record.

As it relates to the Hubbell well and its conversion and classification from Class II to Class I and thereby allowing it to accept both cherry processing waste and the natural gas brine that's going to the facility now, we have a number of concerns. If you look at the site, the site itself, I have been on

that site prior to that well being drilled sampling soil because of brine spills in the past at that location, locally known as the Parrody property, it slopes significantly to the northwest and then to the west into wetlands, and then is connected to Tobeco Creek.

Unfortunately, I've had a lot of experience both on Tobeco Creek trying to analyze and figure out impacts from wastes from WRS as well as been involved as an expert in the suit against WRS. We know a lot about that site. Sandy soils at the surface and loamy sand, and groundwater is at about 750 feet beneath the land surface there. We know that because of hydrogeos that have been done, and groundwater moves to the southwesterly direction.

The groundwater at this location is already heavily contaminated with brine constituents. We have iron, chloride and manganese at numbers that exceed Michigan's Part 201 generic cleanup numbers, aesthetic cleanup numbers. One of the problems, one of the many problems, with this whole regulatory area is that, you know, maybe we get one monitor well in place to determine whether spills ever occurred at this well, and we need three at least to know what the conditions are at that well, the groundwater flow direction and

gradient, and to be able reportedly separate future impact at this well, should it occur with the contamination that's already there.

These are hazardous substances. This is not something that is taken lightly by the public, and we are about, as I understand it, you are about to approve a change in classification that would make this just one of 16 existing Class I wells in the entire state, four of which are going to be in northern Michigan, two of which are going to be in very close proximity. That is a concern, because it begins to show the pattern of what's occurring here, and the possibility of additional fruit processing waste or other non-hazardous, and it represents liquid industrial waste going down these holes and the lack of protections I think that exist.

What are our primary concerns? Conveyance, pipelines coming into this system today need to be certain they aren't going to spill, and as we see changes in sources over time additional fruit processors, other types of waste and as waste begins to be trucked in, there needs to be secondary containment at a minimum to prevent any impact and spillages, which will occur.

Now, I, among other environmental professionals in

this room, have worked on a lot of pipelines that have spilled oil and gas waste, brine, that somebody was told would never spill. Now, these things do occur, and I think we need to have maximum protection at this site.

Alternatives already exist. These two wells are inherently linked, entirely linked, the one we will talk about later and the Hubbell well. If some amount of natural gas brine can't go to the Hubbell well that is being proposed to go into Acme Township at the Cherry Berry well, there are alternatives. The WRS waste should be treated. It should be pre-treated on site and sent to a proper facility. Now it's going to Muskegon. It could go to Grand Traverse County Septage Plant after proper treatment. You don't have to stick it in a well untreated and its inherent risks.

Also, OIL Energy Corporation is apparently now in the waste disposal business, and that very much concerns me as an environmental professional of the change that will be coming next. That will be a minor permit application made by DEQ and EPA without public notice or significant involvement, and that is very concerning.

I think that, in summary, that this location is within 2,000 feet of Tobeco Creek. We have a usable

aquifer very near the surface. As a matter of fact, the three residential wells to the southwest, which are already impacted by WRS, are as little as 50 feet deep, and they are already showing significant levels of trace chemicals of brine.

So we have a very vulnerable aquifer. It's what you are here to protect, and the system is set up such that all the issues fall through the cracks. We get one monitor well. We don't know where anything leaks. We have no secondary containment or leak detection on piping, which is really the issue here or significant protections on off-loading of trucks. So drive-through facilities, secondary or tertiary containment, trucks, all these things the DEQ, I hope, will consider on the Hubbell well as it's modified from Class II to Class I. It needs some upgraded protection as well. Thank you for holding the public hearing.

MR. WAGNER: Thank you, Chris. Bob or Sandy Dentin or both? I'm not sure. Bob and Sandy Dentin? Annie Hill? Annie? Robbin Bostance?

PUBLIC VOICE: Facilitator, if you call the people and they pass, will they be able to speak again?

MR. WAGNER: There will be an opportunity at the end if you wish to speak to have an opportunity then. JoAnne Beemon?

JOANNE BEEMON: Hi, my name is JoAnne Beemon. I'm from Charlevoix, Michigan, and have spent hours and hours and hours and hours a day for the last two years fighting the Alba well. We've learned a lot, and one of the things that we've learned is that what appears to us is that the regulations are made so that industry is accommodated, and the good people and the DEQ and the EPA over and over again what we are told is that they aren't saying that what is happening is the best solution. Their job is to hold the company to the regulations. It's the people's job to make the rules, and one of the things that we feel a lot like is we're being dragged behind the horse. We find out afterwards that we should have commented.

It's so complex, and the different divisions; the Water Division, the Land Division, if it's EPA, if it's DEQ, who is in charge. And the DEQ and the EPA have different charges in okaying and approving the injection wells.

At the very base of one of our concerns has been that there has never been a really thorough, thorough analysis of the industrial leachate that comes out of the kiln dust piles at Bay Harbor. In talking to the EPA and the DEQ, this Class I well could be used for Bay Harbor leachate, and in talking to the EPA and the

DEQ they separate the circle site from the water. I don't want to use water. CMS calls it water. It's leachate. It's high in arsenic, cambium, lead, selenium, a whole bunch of heavy metals. But, at any rate -- and mercury. Mercury is the problem.

But in this whole deep well injection that Michigan seems to be moving more and more towards, I guess one of the things that is my very, very main concern, and speaks to what I was starting out to say in the beginning, is that deep well injection takes care of waste that should not have been produced, and waste that should be taken care of in a different manner. And I think that if we allow industry to dispose of caustic or dispose of waste by deep well injection, then it takes away the incentive for them to handle waste correctly.

And the truth is that neither the EPA nor the DEQ know where a million gallons a week is going. No one can draw the map, and when they talk about they want to make sure that some waste doesn't mix with other waste, no one knows for sure where that waste is going. So you've got to be on your toes. Thanks.

MR. WAGNER: Thank you, JoAnne. Pat Miller?

PAT MILLER: I'll wait until later. Thank you.

MR. WAGNER: Thank you. Tom Karas?

TOM KARAS: Tom Karas, K-a-r-a-s. I object to the permit being given in its present form for a couple of basic reasons. One, I do believe that an expanded environmental impact statement needs to take place to take in all the different characteristics that have been mentioned by the folks that we've been speaking to -- that have been speaking before me.

I also believe that there is an element that is in the public's well-being and your well-being to also offer within this permit, and along with an environmental impact statement there should also be an economic impact statement. What is the value that is being gained from being able to dispose of waste underground? There is no complete knowledge of where this waste will migrate to. It is going into an area that should probably be known as the public sphere, and it therefore should be considered for the public good what goes into this area.

It is to the public's best understanding and knowledge to know who is gaining and to what extent. It may help everyone here to understand that this is going to affect a bottle of maraschino cherries by a cent and a half. That may be the value that would be the economic impact. But being able to put a value on this, it will help guide your decisions and may be able

to, if it goes the other way, may be able to help the public be able to be in more alignment with both the EPA and the DEQ, who I do have quite a great amount of respect for.

I've been involved in other areas, and what I come up against quite often is what you are familiar with as best available control technology. That should be a requirement when you are talking about this type of waste. There are other or there are better available control technologies for this.

Being able to put waste underground is essentially a 19th Century solution that does not have a place in our present day society. These are regulations that were put together generations ago. We have constraints on our environment right now that have far surpassed anything that these regulations and the people who put these regulations together had in mind.

I really appreciate everyone here being able to facilitate this meeting and this hearing. Thank you very much.

MR. WAGNER: Thank you for your comment. Dean Veliquette?

DEAN VELIQUETTE: I'll pass.

MR. WAGNER: Dean Ginther?

DEAN GINTHER: It's been a long while since I've

sat in bleachers and I think I'm probably injured. My name is Dean Ginther, G-i-n-t-h-e-r. I'm a resident of Antrim County. I am not here as a representative or spokesperson for any organization. I believe I'm reasonably well informed on this issue. I'm an educated social scientist. I'm committed to maintaining the beauty, clear water and economic vitality of northern lower Michigan. Most of my comments are not technical. They really pertain to social policy.

I believe a major requirement for sustaining our world is the preservation of our natural resources. If any publicly shared natural resource such as clean water is employed in an industrial process, it should be incumbent on the producer to recycle or treat any industrial byproducts. Any water released should be returned to a level of quality which is as high or higher than when it was removed from the ground in a presumably uncontaminated state.

Clearly, this is a high standard, but it is the only standard that is fully consistent with the long-term protection and welfare of the citizens of northern Michigan.

While cherry brine is not considered toxic by EPA's standards, it is an acidic byproduct which

contains variable amounts of fructose, glucose and solids, calcium chloride and amounts of other processing byproducts. If untreated cherry brine is released into the environment it can be very negative. It can very negatively affect water quality and plant life, as evidenced by prior pollution of groundwater in several locations in northern lower Michigan.

Admittedly, the risks associated with injecting cherry brine wastewater into the ground is considered minimal by some authorities. However, the risk is not zero. Recent litigation on the proposed Alba well site has revealed that there are a variety of unresolved environment and social issues associated with injecting contaminated wastewater into the underlayer of the earth.

Injecting industrial waste into the ground continues the industrial indulgence, which treats the earth as a reservoir with unlimited capacity to hold and absorb toxins and contaminants. Continuing to dump industrial waste into the earth is a practice that is not consistent with a sustainable future, and at best has unknown long-term consequences for our environment and health. If we value the world which we will leave our children and grandchildren, dumping industrial wastewater into the ground is a practice which should

no longer be tolerated.

In the case of cherry brine processing there are alternatives, although they may be more costly and less convenient for the processor. Research has been conducted since the early 1970s on treatment alternatives for cherry brine waste. While no alternative treatment is cost free or perfect, alternatives do exist and can be further refined. Ultimately, like many other concerns in our economy, the resolution of this issue depends on finding a balance among what we hold as most precious in our lives, what is economically viable and how much consumers are willing to pay for a product.

Personally, I, like many other people who reside in northern Michigan, place great value on the clean and pure water around us, on the economical legacy we leave our children, and on ensuring the health and well-being of my family and fellow citizens.

Therefore, in conclusion, I oppose the granting of approval to inject cherry brine into a relatively shallow well, into relatively shallow wells, that were originally intended for a different purpose.

Further, if this practice is permitted, as it is likely, I strongly urge that the cherry brine waste be placed in wells that are much deeper than this proposed

or selected wells, that cherry brine waste be pre-treated prior to dumping, and that any granting of approval shall be temporary with scheduled follow-up for discovery of ongoing issues, and with the expectation that optimum on-site recycling and treatment methods should be employed in the future. Thank you for the opportunity to make this statement.

MR. WAGNER: Thank you, Dean. Fred Thelander? Did I get close?

FRED THELANDER: Close. Not really. My name is Fred Thelander, T-h-e-l-a-n-d-e-r. These are just kind of impromptu comments. I'm not used to this process. I haven't been to one before, but I'll limit my comments to non-scientific.

Just a couple of concerns that I have. I don't see on the comparative water chemistry any analysis for Red Dye No. 40, which I think is used in the process, and it's not clear to me that I think that you can use either brine or alcohol in the treatment of maraschino cherries, and I don't see anything about the permit of alcohol in the waste or not.

And then I have a concern that there's really no accountability to the company as far as testing of the waste, that it's really an honor system, and I don't feel comfortable that, I don't know, they might not

apply to the permit process, but at least I'm voicing my concern that I question the wisdom of that. I understand that the current process that it's trucked to a waste treatment plant where at least it could be tested, and this is done on an honor system, and I kind of feel that that's the fox in charge of the henhouse. That's my comments. Thanks.

MR. WAGNER: Thank you. Dorothy, and I'm not sure about the last name.

DOROTHY DUNVILLE: Dunville, but I'll wait until Cherry Berry comes up.

MR. WAGNER: Okay. John Richter?

JOHN RICHTER: My name is John Richter, R-i-c-h-t-e-r. And I'm president of Friends of Jordan, and chairman of Power Coalition. Friends of Jordan has a mission to protect natural resources and preserve the environmental quality in the Jordan Water watershed. So why am I here? We have been involved in a protracted conflict with CMS Energy over a deep injection well in Alba for the last couple of years.

For the audience I have some materials out on the table out by the front door here that you are welcome to.

As a result, we've come to learn a great deal about injection wells, and, particularly, if they are

destined to receive leachate from Bay Harbor. But what I'd like to address to this body here tonight, first, is there anyone from the Water Division here? EPA Water Division? Okay. Good. The first ones I've ever seen, and I've met with the EPA four times, and I'll make a point of why I think that's important as part of this comment.

We've come to believe that the Dundee Formation is not a confining formation, and, therefore, injection into that formation is not safe or foolproof as they would like you to believe. Particularly, if it involves industrial waste for a Class I well. I've spoken to several of you on this subject, so it's not a new issue, but you've all commented that what a miraculous formation the Dundee is, because it so readily accepts wastes. That stuff just goes right down the pipe and it's gone.

Well, to me that defies the laws of physics. If we have a confining formation, you should get pressure changes in a confining formation. It's not like some open big hole down there. The natural gas storage fuels have very well defined pressures and very closely monitored pressures. It's a valuable commodity. We are extremely aware of the pressures that are in these fields, but for Dundee that's not the case.

Furthermore, this same formation in that center map over there speaks volumes. That black circle around the State of Michigan I believe indicates where the Dundee outcrops to the surface, and there's this magical Bell Shale that's supposed to be the capping layer. So if it's able to outcrop to the surface, how on earth can that be a confining formation? Particularly, after the millions and millions of gallons of brine waste that have already been disposed into that formation without any noticeable pressure change on adjacent wells.

Why is that? Because it's flowing outward. Where does it go? It's anybody's guess. Has it ever leaked into an adjacent water well of a neighbor? I don't hear of any reports like that, because I think the path of least resistance is elsewhere.

Recently, there was a very noted report published by NOAA, National Oceangraphic and Atmosphere Administration, identifying sinkholes in Thunder Bay off from Alpena, and low and behold out of these vents flowed saltwater. And speculation, I'm not sure it's proven at this time, but it certainly looks like it's coming from the Dundee or Grand Traverse -- or Traverse Formation. The very same formation that is targeted for injection in not only the Alba well but these two

wells here.

In a conversation with DNR fishery folks in Charlevoix, they confirmed the presence of sinkholes in Lake Michigan and, quite likely, Grand Traverse Bay. This is kind of a new issue, but I think there's more to be discovered and explored, and I think what's going to be found is this is not a confining layer and it outcrops just as the map shows.

On top of that, almost well over 100 years ago the State of Michigan conducted exploratory -- or drilled exploratory wells. I don't know the absolute number, but I believe there's over 750 undocumented exploratory wells drilled through the aquifer into the Dundee and below to discover Michigan's geologic wells. These are undocumented, don't know really where they are, but these are all hundreds, if not thousands, of holes punched through the confining layers of the Bell Shale that are simply easy conduits for migration of injected fluids.

You know, in conclusion this is not -- well, it's not in conclusion. Let me touch on one other point, I'm sorry. The UIC rules are not accurate, and I've mentioned the Water Division when we first got started. We have run into a real inconsistency with the UIC. I think (inaudible), but they are only

concerned with the well and what's in the hole at the well. As far as outcropping in Lake Huron or over on Grand Traverse Bay, when I talked to the EPA people involved with the Alba well that's the Water Division, but I've never seen the Water Division. And are they part of this permitting process? And it becomes a shell game of whose authority is it.

The UIC ignored hundreds of our comments. You've seen the reports. They didn't follow through the constraints of the UIC rules, so we don't have to answer. Dr. Patterson, a geophysicist from Florida, made numerous, I found, very critical comments, technical ones, that should have been answered. It didn't fall under the UIC rules, so we will just sweep those aside.

So I don't mean to be offensive to you people who are representing the UIC, but I think that those measures are not adequate, and I don't think the Dundee is a safe formation, certainly not a confining one. I'm sure we will talk again. Thanks.

MR. WAGNER: Thank you, John. Gene Veliquette?

GENE VELIQUETTE: Gene Veliquette, V-e-l-i-q-u-e-t-t-e. I thank you for having the hearing, and I think we're all concerned about the environmental impact of things, but I think we should

also remain aware of the fact that we live in a very nice area. We are blessed to have gas on the floor and wind overhead and have some of the cleanest forms of energy. And when you take into consideration the rights of property owners here to extract the gas that's under this land and receive royalties on it to help pay bills to keep the farms going that you apply the same safety criteria which should be adequate in all areas and keep it safe. But let us use the natural resources that we have, and let farmers and landowners that signed up to have their gas and oil rights rented and used, let them get the benefits that they are entitled to.

MR. WAGNER: Thank you. Judy Malaski? Louis Bostick? Nicole Stibbs?

NICOLE STIBBS: Hi, good evening. My name is Nicole Stibbs, S-t-i-b-b-s. As a concerned resident of Whitewater Township I have issues with the proposed re-classification. My first issue concerns the current soil surface and groundwater conditions on the property. The Michigan DEQ continues to list this site as a contaminated area. The short-term environmental impacts of the site and the surrounding area are most evident and disturbing.

The prolonged exposure to the unethical and

precarious wastewater removal practices have left neighboring parcels with unsafe drinking water and has drastically affected the wetland ecosystem of Tobeco Creek.

It is my understanding that the majority of the detrimental impacts on our environment in relation to deep injection wells is due to spillage from loading and off-loading or transporting of waste and/or leakage from surface pipes versus the actual well. It is because of those surface level risks combined with the present environmental problems that I feel this area is not the most suitable site for this type of activity.

My second concern is the lack of local township government involved in this possible land use and zoning issues. It is my belief that this type of activity does not constitute any type of allowable agricultural activity under our current zoning ordinance. Furthermore, I do not believe this proposed re-classification conforms to the Whitewater Township master plan.

I believe this proposed activity is in direct conflict with the preservation and protection of public health and safety and with the welfare of our open spaces, farmland and lifestyle.

My third concern is that if this re-classification

is allowed it will set precedence for cherry brine wastewater removal. I support our local farmers and am an advocate for open spaces and farmland preservation. I believe that the proper alternative is to maintain that all cherry processing waste be treated on site, and then treated and disposed of at a wastewater treatment plant.

I would like to thank you for the opportunity to share my concerns with you this evening.

MR. WAGNER: Thank you. Andy Knott?

ANDY KNOTT: My name is Andy Knott, K-n-o-t-t. I work for the Watershed Center at Grand Traverse Bay. The Watershed Center's mission is to protect water quality in Grand Traverse Bay as well as the watershed that flows into the bay.

The Watershed Center has several strong concerns about the proposal to re-classify the Class II to Class I deep injection well for the disposal of cherry processing waste. These concerns are primarily regarding the proposed well's potential impacts on both surface and groundwater.

The site is adjacent to the Tobeco Creek, which flows through the Tobeco wetland complex before flowing into Grand Traverse Bay approximately two miles downstream. The site is also about one mile from Elk/

Skegemog Lakes. There are also near surface groundwater aquifers under the site that are drinking water sources for nearby residents.

Based on the permitting information provided there has been no examination of the potential impacts to surface and groundwater from a potential surface or near surface spill or leak from the well operation. Groundwater pollution could impact both drinking water and surface waters where groundwater is discharged.

There has also been no detailed hydrologic study of groundwater flow to determine the potential impacts to nearby aquifers, residential wells or surface waters. There is also no facility plant or spill containment plant provided in the permitting information. Because of the potential negative impacts on surface and groundwater it is essential that adequate spill containment structures be constructed as part of this facility.

There's also no examination of alternatives provided in the permit. There are alternatives. Specifically, treating the waste on site or sending the waste to the Grand Traverse Regional Septage Plant. These alternatives should be examined.

Lastly, it appears there's a trend to permit wells as a Class II oil and gas brine disposal, as was done

in the past with this well, and then re-classify the well to accept other wastes that may pose greater hazards to water resources. This is a concern, because once the well is permitted that re-classification could be granted more easily with less public knowledge.

EPA has a duty under the Safe Drinking Water Act to protect groundwater aquifers. Because of the potential threats to both subsurface and surface water resources, including Tobeco Creek, Elk/Skegemog Lakes, and Grand Traverse Bay, we urge the EPA to deny the Hubbell injection well permit. Thank you.

MR. WAGNER: Thank you, Andy. Bill Bustance?

BILL BUSTANCE: It's Bill Bustance, B-u-s-t-a-n-c-e. I find it peculiar that some people from Washington or so are making decisions about -- I'm a neighbor, and that on a good day I would say that well is about a five iron from my house, and the history of this well is, I guess, what I don't -- what I think you people don't realize is that if the neighbors never would have pitched a fit, if the MDEQ wouldn't have went in there and stopped the Hubbell Corp or the Cherry, LLC from dumping millions of gallons on there, I mean, you guys wouldn't be sitting here. If they were getting away with what they were getting away with before we caught them, they wouldn't

need you here.

But they got caught, and they got caught dumping millions of gallons on the same site that they put a well on. We've got that documented and we've sent you the documentation. I want you to look at it. It's on YouTube. And just with the history of what's gone on here, I just couldn't understand how somebody from a federal agency could come in and uphold our own neighborhood and what we've worked on.

I mean, the same site, it's ironic, there's a pipeline that goes from the factory all the way over to the Parrody property right now, and that pipeline was put in there years ago with capital investment to dump stuff from here to here. And it worked for a long time, and then the DEQ found it after years of everybody wondering where the odor was coming from.

We finally found out. The DEQ shut it down. We got them into court. This smells better. And so we just find it ironic that the same system to move stuff that used to go on top of the ground could somehow be legally connected through Washington to go under the ground. It makes no sense. There are issues with the neighbors that are not yet resolved. The issues with the state are not yet resolved. I mean, to me it's inappropriate that government at any level for you to

approve this.

Leslie, my wife, talked to you when this well was going in, and you said the chances of them being able to dump cherry brine were almost -- it wouldn't happen. Well, apparently, you were wrong. Everybody makes mistakes. We don't want to see one mistake on top of the next. Thank you.

MR. WAGNER: Thank you. William Rennie?

WILLIAM RENNIE: I would like to pass at this time.

MR. WAGNER: Karen Ferguson?

KAREN FERGUSON: I'm Karen Ferguson, and I'm a resident of Whitewater Township. I'm also an attorney that specializes in planning and zoning and environmental law. I live on the other side of the township, but my daughter has attended Wind Pony summer camps and preschool, and that is located very close to this site that is polluted and has contaminated groundwater already.

I strongly urge you to deny this application and any subsequent applications to re-classify this well to accept other hazardous wastes such as the kiln dust waste from Petoskey. The environmental risks far outweigh any private benefit to WRS or OIL Energy. Chris Grobbel's report sets out the likely

environmental risk to drinking water, the aquifer, Tobeco Creek and the wetlands.

There is this long history of this being a poorly managed site that has led to significant litigation that I'm sure the neighbors have spoken with you about tonight. The application lacks any protections, so that the operation could protect groundwater. There's no protection listed for leaking or corrosion of pipes. There's no protection listed or details provided for groundwater in the loading, transport and conveyance operations. There's no secondary containment protections.

There are feasible and prudent alternatives to polluting the environment with these contaminants. Don't change the classification. OIL already has a viable use of this well. WRS has a feasible and prudent alternative; and that is, treat the waste, take it to the Grand Traverse County Waste Treatment Plant. Local courts here have upheld that as a feasible and prudent alternative to disposing of untreated waste on site. There have been several cases, different types of wastes, but they prefer that as an alternative to what is being proposed here.

Again, I strongly urge you to deny this application, and I have put my comments in writing.

Thank you.

MR. WAGNER: Thank you. At this time is there anyone here who has indicated they wished to speak and whose name was on the sign-in sheet but whose name I did not call? Okay.

JACK NORRIS: I would like to speak, but (inaudible) so we had no way of getting our name on that.

MR. WAGNER: You can stay right there.

(Note from court reporter: Mr. Norris was very difficult to hear and his statement is transcribed to the best of my ability)

JACK NORRIS: My name is Norris, Jack Norris, N-o-r-r-i-s. I am an environmentalist of sorts. I've been around here a long time. See here on the (inaudible).

THE COURT REPORTER: I'm not getting that.

JACK NORRIS: I have several questions I would like to put, and if I could have permission to submit them to you in writing, not now, not these papers, no, I'll send them to you. I have the e-mail address.

One of the expected constituents of the fluid intended for injection, now, I know their sheet is showing some analyses, but there's no indication of what the level of detection was. So I'm just saying

they are not detected doesn't tell me what the levels really was. I would like you to go deeper into that.

I'm wondering if I could have a more detailed explanation of the area of review or the area of concern. In one case, it's given as a quarter mile, and the other case is called a two square mile area or something like that, and I would like to appreciate why the difference and how that's determined and why it's so short.

The applicant, apparently, intends to put wastewater into the Dundee Limestone layer. Of course, as soon as it gets to the Dundee Limestone layer, which is a vascular free-flowing highly porous formation, it will displace what's already there. It will run over and down and out of the lake.

Among the other fluids that would be dislodged is the staining component that has now been found that is a very valuable mineral asset. And I wonder, does the applicant have the right to displace that mineral asset of his neighbors under land he doesn't own? Is it okay for him to displace the minerals underlying his neighboring lands? It's like that's an improper thing to do, but I would like to have that explained.

Then I wonder, if this is allowed, is State of Michigan the one to control the operation or is it the

EPA? I would like it clear on that.

And I wonder too, why the safety issue is so short? I don't have the figure in my mind now, but the time that's allowed to go by once there's an interruption of some kind, a failure in the operation, the amount that the gallonage of waste could flow is a long, long way and the length of time that goes by before any reporting is required.

I wonder, what other wastes are anticipated to be put down this well in the future with minor applications of the permit?

Then I guess my last question here is, apparently, the Dundee Limestone formation, which we know is, when you people have accepted the voracity figure of 00.1, that means that a tenth of the wall around any hole dug in it consists of pores. So it's a free-flowing system, as Rick has explained, a column of holes over the Dundee with (inaudible) no distance, which means that it's flowing out somewhere. And we now know that it's flowing into many places along the fault line there that runs from about here over to Rogers City or Alpena.

And there are measurements that are going to be taken, that are being taken now near Lake Huron, to find out what the volume of water and (inaudible) is,

and I have been told, although I don't have any proof or study, about a similar thing happening in Lake Michigan, offshore at Petoskey and here in the bay. So I really would like to know more about the circle of containment provided by the Dundee.

And I thank you very much for this opportunity to ask these questions and to speak out.

MR. WAGNER: Thank you, Jack. At this time is there anyone who cares to put a comment on the record that has not had a chance to do so? Anyone? Barb, do you have one more comment you would like to put on the record?

BARBARA BRADFORD: Mm-hmm. Good afternoon. My name is Barbara Bradford, B-r-a-d-f-o-r-d, and I live in Bellaire. I am a friend of or part of the Friends of Jordan.

Alaska has mineral rights that belong to the people. They get paid each year for their share of their mineral rights. Michigan has a record of using the minerals. The storage of bad materials is our reward. We are surely known as the cesspool of Michigan. We get approved for everything, no bigger commissioned cause to have. Look at what we're left with. We get the leftovers. We get what people down state tell us we don't want to look at, we don't want

to see, we don't want to have on our property, and we see it from the north coming down. And it's just because we're in the center, and we're an area that is a lower income, and this area is the same thing.

It's rural. It's farm, because the people gave up everything. When the people down state made big money, these people suffered and took care of farmland because it was important to them, and now it's looked at as, oh, there's the spot, let's go put it there.

I think that as much as you approve the fluids as drinkable when they are done, I wonder how many of you would be willing to sit with a glass of it in front of you in front us and drink it. I don't think you would be that brave. I really don't think anybody would be that brave to call it drinkable.

I think that we're living farther out on the edge. Every time we're looking at businesses, it's like let's have clean coal, it's fossil fuel, and then let's get rid of the CO2, we will put it down the well. We're having a cocktail down there, it's a cocktail, and it's a cesspool cocktail, and you people are responsible for allowing it. The laws are made, I'll grant you, and you people follow the law, but, for God's sake, do you question, do you question what your ability is when you are given a chore or is it just leadership following?

I worry about it. I worry, because we're getting older, and you kids just didn't have the same amount of bad thought that we grew up with, because we didn't have all the advantages that you have, but here's today advantages and you are watching kids that are struggling making their daily wages that we would have died to have one week's paycheck of yours.

The EPA and DEQ should make a standard that every permit must be self-contained waste treatment plants on site at their cost. Explain to me why that isn't done.

Maraschino cherry brine has chemicals not listed on your chemical sheet. I believe it's lye or lime that goes in when they are making maraschinos. That's a waste product. Trees are sprayed with all kinds of materials in their season of growth. Those chemicals are part of that waste product. They are going down the well. It's not just saltwater. Let's not confuse what brine is. Brine is saltwater, but when you add all the other elements to it, it ceases to be brine and becomes an inert product. Protection of the agents, that's what we need, protection from the agents, the agents going down the wells.

You also are forgetting the sinkholes that are all over Williamsburg. Maybe some of you weren't born or

maybe you were very young, but in the very, very early '70s the sinkholes were huge in this very vicinity you are talking about, and the sulfur smell was horrible, and on the edge of M-72 was one of the biggest caverns you ever wanted to look at, and it was here in this community. And you will sit there and tell us the wells are okay and safe?

I don't know if you are aware of the problems, but I would like you to address them. Go back into the '70s and look at what happened with the sinkholes. They just caved in. The smells were horrible. People left their homes. Things were wrong. Things were wrong. And if you can continue to put the wells in the same place, do you know that you are not wrong? Do you really know?

Trespassing of mineral rights was a big issue for us in the Alba well with Judge Tom Power. He said in your own space you could take all of the materials you wanted to and put it in your space. If there was a way down below that you could tell me it's totally contained in your space, but when you put it down your well and you keep putting it down and you keep putting it down, it's going somewhere. It's going in your neighbor's space, and that's a trespass, and I would like you to honor Judge Tom Power. Thank you.

MR. WAGNER: Thank you. At this time let the record show that no one else has indicated a desire to speak.

MR. TONG: Thank you. Again, if you have written comments but did not wish to speak, please give them to me before you leave here tonight or forward them in writing to us prior to the deadline of June 3, 2009. This concludes the hearing. Thank you for coming.

MS. PATTERSON: If you are staying, the next public hearing will be starting in just a few minutes.

(At 8:30 p.m. hearing concluded)

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STATE OF MICHIGAN)
COUNTY OF GRAND TRAVERSE)

I certify that this transcript, consisting of 54 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case on May 19, 2009.

Date: _____ _____

Kathleen Tulick, CSR 4806
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