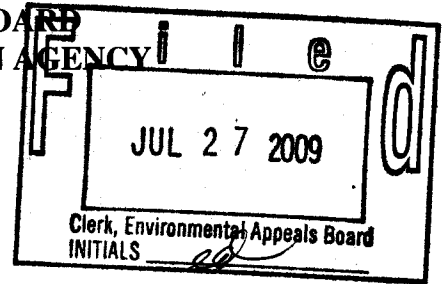


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
)

Presidium Energy, LC)
)

UIC Permit No. MI-089-2D-0004)
_____)

UIC Appeal No. 09-01

ORDER DENYING REVIEW

On May 18, 2009, Terry Novak (“Mr. Novak”) filed a one-page letter¹ stating a “formal request” for the Environmental Appeals Board to review U.S. EPA Region 5’s decision to issue to Presidium Energy, LC an Underground Injection Control (“UIC”) permit, number MI-089-2D-0004 (the “Permit”).² For the reasons explained below, we deny Mr. Novak’s request for review of the Permit.

Mr. Novak’s one-page request fails to contain the minimum information that must be included in a petition seeking review of the Region’s permitting decision. The requirements for a

¹ Terry Novak to Clerk of the Environmental Appeals Board (May 15, 2009) (hereinafter, the “Petition”).

² The regulations governing underground injection wells are found in 40 C.F.R. parts 144 to 149. Those regulations were promulgated pursuant to Part C of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. §§ 300h to 300h-8. See 42 U.S.C. § 300h(b)(1) (directing the Administrator to promulgate regulations for the protection of underground sources of drinking water). The statute requires the Administrator to promulgate regulations establishing “minimum requirements for effective programs to prevent underground injection which endangers drinking water sources.” SDWA § 1421(b)(1), 42 U.S.C. § 300h(b)(1). EPA administers the UIC program in states that have not obtained authorization to administer their own UIC program. 40 C.F.R. § 144.1(e). Michigan has not obtained authorization to administer a UIC program and therefore EPA is the authority authorized to issue UIC permits in the State of Michigan. *Id.* § 147.1151.

petition for review are set forth in 40 C.F.R. part 124. These rules only authorize a “person who filed comments on the draft permit or participated in the public hearing [to] petition the Environmental Appeals Board to review any condition of the permit decision.” 40 C.F.R. § 124.19(a). Further, “[t]he petition shall include a statement of the reasons supporting * * * review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing)” and “a showing that the condition in question is based on: (1) a finding of fact or conclusion of law which is clearly erroneous, or (2) an exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.” *Id.*³ The petitioner bears the burden of proof on these issues.⁴

³ The regulations require that “[a]ll persons * * * who believe any condition of a draft permit is inappropriate * * * must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period.” 40 C.F.R. § 124.13. The requirement that the petitioner must show that an issue was raised during the public comment period in order to preserve it for review on appeal is not an arbitrary hurdle placed in the path of potential petitioners. *In re City of Marlborough*, 12 E.A.D. 235, 244 n.13 (EAB 2005); *In re BP Cherry Point*, 12 E.A.D. 209, 219 (EAB 2005). Rather, the requirement serves an important function related to the efficiency and integrity of the overall administrative permitting scheme. *Marlborough*, 12 E.A.D. at 244 n.13. The rule’s intent is to ensure that the permitting authority has the first opportunity to address objections, and to give some finality to the permitting process. *Id.*; *In re Sutter Power Plant*, 8 E.A.D. 680, 687 (EAB 1999).

⁴ The Board’s analysis is guided by the preamble to the part 124 rules, which states that the Board’s power of review “should only be sparingly exercised” and that most permit conditions should be finally determined at the Regional level. 45 Fed. Reg. 33,290, 33,412 (May 19, 1980); *In re Env’tl. Disposal Sys., Inc.*, 12 E.A.D. 254, 263-64 (EAB 2005); *In re Puna Geothermal Venture*, 9 E.A.D. 243, 246 (EAB 2000). The petitioner bears the burden of demonstrating that review is warranted. *E.g. In re Wash. Aqueduct Water Supply Sys.*, 11 E.A.D. 565, 573 (EAB 2004); *In re Am. Soda, LLP*, 9 E.A.D. 280, 286 (EAB 2000); *In re NE Hub Partners, L.P.*, 7 E.A.D. 561, 567 (EAB 1998), *rev. denied sub nom. Penn Fuel Gas, Inc. v. U.S. EPA*, 185 F.3d 862 (3rd Cir. 1999). In particular, the petitioner bears the burden of demonstrating in its petition that the issues raised in the petition were first raised during the public comment period on the draft permit – “it is not incumbent upon the Board to scour the record to determine whether an issue was properly raised below.” *In re Encogen Cogeneration*

We have frequently dismissed petitions that failed to meet these standards. *E.g., In re Avon Custom Mixing Servs., Inc.*, 10 E.A.D. 700, 704-08 (EAB 2002) (discussing threshold procedural requirements for permit review); *In re Knauf Fiber Glass, GmbH*, 8 E.A.D. 121, 173 (EAB 1999); *see also In re Envtl. Disposal Sys., Inc.*, 12 E.A.D. 254, 263 (EAB 2005); *In re Am. Soda, LLP*, 9 E.A.D. 280, 286 (EAB 2000). In the present matter, we must deny Mr. Novak's request, which states in its entirety as follows:

This is a formal request of the Environmental Protection Agency, requesting an administrative review on the proposed injection well #MI-089-2D-0004. As per the letter that I received, I am requesting this within 30 days of the date on the proposed permit. Please advise if/when the hearing will take place.

There are several families in addition to ours that live within the immediate vicinity of the proposed well. I have concerns as to the safety and potential impact on the environment. Other people in the area, that no much more than I with regards to these matters, also have strong concerns. The well is in an area that contains drinking wells, farmland, and is on a hill overlooking Grand Traverse Bay, all of which could suffer significant damage if something were to happen with the proposed well. In addition to the potential for underground leaks, there exists the potential for above ground spills and contamination, as well as impacts from the trucking in and out of the well area. A last major concern is that the well could be used for other purposes in the future over and above the brine waste water that is currently proposed. This has already happened in the adjacent Grand Traverse County where wells originally designed for brine wastewater have been used to accept wastewater from the local cherry industry (it is my understanding that the cherry waste contains toxins that we certainly would not want in our ground).

Thank you for your time and consideration in this matter.

Petition at 1. This formal request for review does not state that Mr. Novak submitted comments on the draft permit during the public comment period; it does not state that the issues raised in

Facility, 8 E.A.D. 244, 250 n.10 (EAB 1999). Finally, in order to obtain review by the Board, the petitioner "must demonstrate why the Region's response to [the petitioner's] objections (the Region's basis for its decision) is clearly erroneous or otherwise warrants review." *In re LCP Chems.*, 4 E.A.D. 661, 664 (EAB 1993); *accord In re Steel Dynamics, Inc.*, 9 E.A.D. 740, 744 (EAB 2001); *In re Newmont Nev. Energy Inv., LLC*, 12 E.A.D. 429, 472 (EAB 2005).

the letter were raised during the public comment period; it does not identify any specific permit conditions for review; and, most importantly, it does not mention the Region's responses to comments, nor explain why those responses to comments are inadequate. Mr. Novak's request is merely "based on numerous general concerns, without a single citation to a permit term or condition" – a general expressions of concern is simply not sufficient to show clear error in the Region's permitting decision.⁵ *In re Beeland Group, LLC*, UIC Appeal Nos. 08-01-08-03 at 11 (May 23, 2008) (Order Denying Review).

Because Mr. Novak is not represented by legal counsel, we endeavor to construe Mr. Novak's petition liberally. *E.g., In re Sutter Power Plant*, 8 E.A.D. 680, 687 (EAB 1999). However, "[w]hile the Board does not expect or demand that [*pro se*] petitions will necessarily conform to exacting and technical pleading requirements, a [*pro se*] petitioner must nevertheless comply with the minimal pleading standards and articulate some supportable reason why the [permit issuer] erred in its permit decision in order for the petitioner's concerns to be meaningfully addressed by the Board." *Envtl. Disposal Sys.*, 12 E.A.D. at 292 n. 26 (alteration in original; quoting *In re Beckman Prod. Servs.*, 5 E.A.D. 10, 19 (EAB 1994)). Moreover, *pro se*

⁵ Moreover, Mr. Novak's letter also refers to concerns not falling within the UIC permitting program, such as proximity of the Grand Traverse Bay and farmland, the potential for above-ground spills, and the potential impacts of trucking. The UIC permitting process is narrow in its focus and the Board's review of UIC permit decisions extends only to the boundaries of the UIC permitting program, which is limited to the protection of underground sources of drinking water. *See In re Env'tl. Disposal Sys., Inc.*, 12 E.A.D. 254, 266 (EAB 2005); *In re Am. Soda, LLP*, 9 E.A.D. 280, 286 (EAB 2000) ("the SDWA * * * and the UIC regulations * * * establish the only criteria that EPA may use in deciding whether to grant or deny an application for a UIC permit"); *NE Hub Partners*, 7 E.A.D. at 567 ("protection of interests outside of the UIC program [is] beyond our authority to review in the context of [a UIC] case"); *In re Brine Disposal Well*, 4 E.A.D. 736, 742 (EAB 1993) ("parties objecting to a federally issued UIC permit must base their objections on the criteria set forth in the [SDWA] and its implementing regulations").

petitioners must identify the permit conditions at issue and state why review is warranted. *Knauf*, 8 E.A.D. at 127 & n.72; *In re Envotech, L.P.*, 6 E.A.D. 260, 267-69 (EAB 1996). “Simply raising generalized objections to the permit or making vague and unsubstantiated arguments falls short.” *In re City of Pittsfield, MA.*, NPDES Appeal No. 08-19 at 6 (EAB Mar. 4, 2009) (Order Denying Review).

For these reasons, the Petition does not meet the requisite standards for Board review, and the Petition therefore is denied.

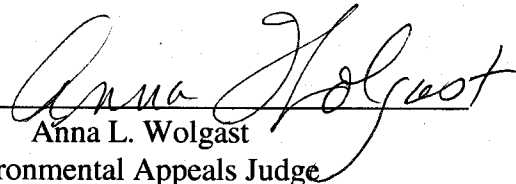
So ordered.⁶

Dated:

July 27, 2009

ENVIRONMENTAL APPEALS BOARD

By:



Anna L. Wolgast

Environmental Appeals Judge

⁶ The three-member panel deciding this matter is comprised of Environmental Appeals Judges Edward E. Reich, Charles J. Sheehan, and Anna L. Wolgast. See 40 C.F.R. § 1.25(e)(1).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review, in the matter of Presidium Energy, LC, UIC Appeal No. 09-01, were sent to the following persons in the manner indicated:

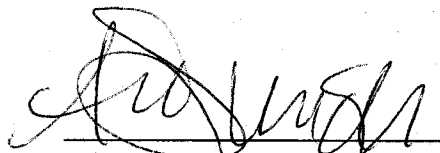
By Pouch Mail and FAX:

Joseph Williams
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Dated: JUL 27 2009



Annette Duncan
Secretary