

# **IN RE ENVIRONMENTAL DISPOSAL SYSTEMS, INC.**

UIC Appeal Nos. 98-1 & 98-2

## ***ORDER DENYING REVIEW***

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Decided October 15, 1998

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### Syllabus

Petitioners Sandra K. Yerman and Michigan State Representative Raymond E. Basham have filed petitions seeking review of U.S. EPA Region V's decision to issue two Underground Injection Control ("UIC") permits to Environmental Disposal Systems, Inc. ("EDS"), pursuant to the Safe Drinking Water Act, as amended, 42 U.S.C. § 300f *et seq.* The permits authorize the construction and operation of two Class I injection wells in Romulus, Michigan, to be used for the commercial disposal of hazardous liquid waste from a variety of sources. Each petitioner raises numerous objections to the Region's permit decision in this matter.

Ms. Yerman's petition includes the following objections: 1) Ms. Yerman's copy of a letter from Rebecca Harvey, Chief of the Region V Underground Injection Control Branch, transmitting the final permits to EDS was not signed; 2) the final permits and the Region's response to comments document were not available for timely viewing at two public libraries in the community; and 3) the permits were not signed by Jo Lynn Traub, Director of the Region V Water Division.

Mr. Basham's petition includes the following objections: 1) the permit should include a monitoring schedule for likely waste sources; 2) EDS should be required to conduct a survey of the area surrounding the injection wells to determine what other wells may exist because information supplied by the Michigan Department of Environmental Quality ("MDEQ") was unreliable; 3) changes in the quantities or types of fluids injected into the wells should not be considered minor permit modifications, and public hearings should be held whenever such changes are made; 4) MDEQ does not have adequate staff or financial resources to properly oversee the proposed wells; and 5) Region V's Environmental Justice determination was flawed because the Region conducted its demographic analysis using data from a two-mile rather than a four-mile radius surrounding the proposed wells.

Held: *Yerman Petition*: (1) Although the letter transmitting the permits was not signed, the permit itself was signed. The letter was not integral to the permits' terms and thus cannot serve as a basis for Board review;

(2) The alleged delay in making the permits available at local libraries did not prejudice Ms. Yerman as she was given a total of 36 days to review the final permit and file her appeal, six days more than required by the applicable regulations; and

(3) The fact that the permits were not signed by the Director of the Region V Water Division does not serve as a basis for Board review because the permits were signed by the Director's authorized representative.

*Basham Petition:* (1) Mr. Basham has failed to convince the Board that the absence of a monitoring schedule for likely waste sources is erroneous or otherwise warrants review;

(2) Mr. Basham's assertion that MDEQ data on the presence of deep wells in the area were unreliable is unsupported by the record. Moreover, the Region did not rely solely on data supplied by MDEQ. Thus, the Board is not convinced that the Region's conclusion regarding the absence of deep wells in the area was erroneous;

(3) Pursuant to 40 C.F.R. § 144.41(e), "a [c]hange [in the] quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification" is considered a minor permit modification. Thus, to the extent that Mr. Basham argues that changes in the quantities or types of fluids should not be considered a minor permit modification, he is essentially challenging the validity of the UIC regulations. As a permit appeal is not an appropriate forum in which to present such a challenge, review is denied on this issue;

(4) Because Mr. Basham's concern that MDEQ does not have adequate staff or financial resources to properly oversee the proposed wells does not challenge the validity of any particular provision of the EDS permits, it fails to satisfy a basic prerequisite for obtaining Board review under 40 C.F.R. § 124.19, namely, the identification of a specific permit term that is claimed to be erroneous. Moreover, because EPA rather than the State is primarily responsible for the enforcement of UIC requirements in Michigan, Mr. Basham's objection is misdirected; and

(5) Mr. Basham's objection to the Region's Environmental Justice determination is rejected as a basis for review. As the Board has previously stated, the Region has broad discretion to determine the proper scope of a demographic study. *In re Envotech, L.P.*, 6 E.A.D. 260, 283 (EAB 1996) (quoting *In re Chemical Waste Management of Indiana, Inc.*, 6 E.A.D. 66, 80 (EAB 1995)). Mr. Basham has failed to establish that the Region's determination in this regard was erroneous or otherwise warrants review.

***Before Environmental Appeals Judges Ronald L. McCallum and Edward E. Reich<sup>1</sup>.***

***Opinion of the Board by Judge Reich:***

**I. BACKGROUND**

Petitioners Sandra K. Yerman and Michigan State Representative Raymond E. Basham have filed petitions seeking review of United States Environmental Protection Agency Region V's decision to issue two Underground Injection Control ("UIC") permits to Environmental Disposal Systems, Inc. ("EDS"), pursuant to the Safe Drinking Water Act ("SDWA"),

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<sup>1</sup> Environmental Appeals Judge Kathie A. Stein did not participate in this decision.

as amended, 42 U.S.C. § 300f *et seq.*<sup>2</sup> The permits authorize the construction and operation of two Class I<sup>3</sup> injection wells in Romulus, Michigan, to be used for the commercial disposal of hazardous liquid waste from a variety of sources. Both Region V and EDS have submitted responses to the petitions. *See* Region's Response to Petitions for Review ("Region's Response") and EDS's Response to Petitions for Review.

The Region issued draft permits for the injection wells on August 21, 1997, and solicited public comments from September 3 through October 24, 1997. A public hearing was held on October 9, 1997, in which both petitioners participated. *See* Exhibit ("Exh.") B to Region's Response (transcript of public hearing). The Region issued the final permits on March 18, 1998 (Exh. E to Region's Response), along with a document responding to comments received during the comment period. Response to Comments (Exh. D to Region's Response). These petitions for review followed. *See* 40 C.F.R. § 124.19 (Appeal of RCRA, UIC, and PSD Permits).

## II. DISCUSSION

Under the rules governing this proceeding, a UIC permit decision will ordinarily not be reviewed unless it is based on a clearly erroneous finding of fact or conclusion of law, or involves an important matter of policy or exercise of discretion that warrants review. 40 C.F.R. § 124.19(a). As the Board has stated on numerous occasions, the Board's power of review should be "sparingly exercised" and "most permit conditions should be finally determined at the Regional level." *In re NE Hub Partners, L.P.*, 7 E.A.D. 561, 567 (EB 1980) (quoting 45 Fed. Reg. 33,290, 33,412 (May 19, 1980)). The burden of demonstrating that review is warranted rests with the petitioner who challenges the Region's permit decision or the conditions contained in the permit. *See* 40 C.F.R. § 124.19(a); *In re Envotech, L.P.*, 6 E.A.D. 260, 265 (EAB 1996).

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<sup>2</sup> The SDWA and its implementing regulations prohibit any unauthorized underground injection. SDWA § 1421(b), 42 U.S.C. § 300h(b); 40 C.F.R. § 144.11. Except where a well is authorized by rule (which is not the case here), a new underground injection well may not be constructed unless a permit is obtained. 40 C.F.R. § 144.11.

<sup>3</sup> The UIC regulations group injection wells into five "classes" depending upon the substances to be disposed of in the well. 40 C.F.R. § 144.6. The proposed wells in this case are considered Class I hazardous waste injection wells (40 C.F.R. § 144.6(a)(1)) and are therefore subject to more stringent permitting criteria than other types of wells. *Compare* 40 C.F.R. Part 146, Subpart B (technological standards applicable to Class I nonhazardous wells) *with* 40 C.F.R. Part 146, Subpart G (technological standards applicable to Class I hazardous waste injection wells) *and* 40 C.F.R. § 144, Subpart F (financial responsibility requirements uniquely applicable to Class I hazardous waste injection wells).

Petitioners raise numerous objections to the Region's permit decision in this matter. After careful consideration of the arguments raised in the petitions for review, the Region's and EDS's responses, and the relevant portions of the administrative record underlying the permit decisions, the Board concludes that petitioners have not met the standards necessary to invoke Board review. Thus, for the reasons stated below, the petitions for review are denied.

### A. *Sandra K. Yerman Petition*

*Issue 1:* Ms. Yerman seeks to have the permits revoked because her copy of a letter from Rebecca Harvey, Chief of the Region V Underground Injection Control Branch, transmitting the final permits to EDS was not signed. However, as the transmittal letter was not integral to the permits' terms, the Region's failure to sign the letter cannot serve as a basis for obtaining Board review under 40 C.F.R. § 124.19. *See In re Federated Oil & Gas of Traverse City, Michigan*, 6 E.A.D. 722, 730 (EAB 1997) (in order to satisfy a basic prerequisite for Board review, a petitioner must identify a specific permit term that is claimed to be erroneous); *Envotech*, 6 E.A.D. at 273–74 (petitioner must establish a link to a condition of a permit in order to provide a jurisdictional basis for a grant of review). The permits themselves were signed by an EPA permitting official. Review is therefore denied on this issue.<sup>4</sup>

*Issue 2:* Ms. Yerman argues that the permits should be revoked because the final permits and the Region's response to comments document were not available for viewing at two public libraries in the community until March 26, 1998, six days after Ms. Yerman was notified that the permits had been issued. Apparently, Ms. Yerman believes that the six-day delay in transmitting the permits to these two libraries constitutes a sufficient reason to revoke the permits. We disagree.

Under 40 C.F.R. § 124.19, any person who filed comments on a draft permit or participated in the public hearing may file a petition for review with the Board within 30 days after service of the final permit decision, plus three days for service by mail (40 C.F.R. § 124.20(d)). Because notice of the final permit decision was served on March 20, 1998, the appeals period would have ordinarily expired on April 22, 1998. However, in its letter transmitting the permits, the Region stated that any appeals must be filed with the Board no later than May 1, 1998. *See* 40 C.F.R. § 124.19(a) ("The 30-day period within which a person may request review under this

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<sup>4</sup>In any case, as the Region states in its response, the original letter sent to EDS was indeed signed.

section begins with the service of notice of the Regional Administrator's action unless a later date is specified in that notice.”). Ms. Yerman does not dispute that the final permits were made available for viewing at the Romulus Public Library and the Taylor Community Library by March 26, 1998. Thus, Ms. Yerman had a total of 36 days to review the final permits and file her petition for review with the Board, six days more than required by the applicable regulations. We therefore conclude that Ms. Yerman was not prejudiced in any way by the Region's alleged delay in making the permits available for viewing. Accordingly, review is denied on this issue.

*Issue 3:* Ms. Yerman questions the appropriateness of Rebecca L. Harvey signing the permits for Jo Lynn Traub, Director of the Water Division, and asks whether this makes any difference to the Board.

As the Region makes clear in its response, at the time the permits were issued, Rebecca Harvey, Chief of the Region V Underground Injection Control Branch, had the delegated authority to sign final UIC permits as the Acting Water Division Director. *See* Memorandum from Jo Lynn Traub, Director, Water Division, to Rebecca L. Harvey, Chief, Underground Injection Control Branch, (Oct. 10, 1995) (“Designation of Acting Division Director”) (Exh. I to Region's Response). Thus, contrary to Ms. Yerman's suggestion, we find nothing improper or erroneous regarding Ms. Harvey's signature on the permits.

*Issue 4:* Ms. Yerman asserts that certain testing requirements in Attachment A to the permits (Summary of Operating, Monitoring, and Reporting Requirements) should be amended to require testing for the presence of bacteria in the injected wastes. In particular, Ms. Yerman argues that such a testing requirement should be added to the Waste Source Characterization provisions in section D.1. and the Fingerprint Analysis Provisions in Section G. Petition at 7.

Ms. Yerman appears to have raised this or a similar issue in her comments on the draft permits. Specifically, in her written comments Ms. Yerman stated:

THERE IS (PROBABLY) BACTERIA IN THE MOUNT SIMON FORMATION, IN THE ANCIENT SEDIMENTS; AND ANY BACTERIA PRESENT MUST BE TESTED IN COMBINATION WITH ALL POSSIBLE COMBINATIONS OF TOXIC WASTE TO BE INJECTED BY EDS, BEFORE ANY PERMIT CAN BE GRANTED TO EDS.

Ms. Yerman's Written Comments on the Draft Permits at 6 (Oct. 21, 1997) (Exh. F to Region's Response) (emphasis in original). In its response to this comment, the Region stated:

EDS will be required under the permit to perform compatibility testing between the injection wastes and the injection formation, natural fluids present in the formation, and all materials used in the well. This testing will determine if the presence of bacteria in the formation could cause any precipitation of solids in the formation that could impact the formation's ability to transmit fluids.

Response to Comments at 22 (Exh. D to Region's Response). Because Ms. Yerman's petition does not indicate why the Region's response was erroneous or otherwise warrants review, review is denied on this issue. *See Federated Oil & Gas*, 6 E.A.D. at 726-27 ("[I]n order to obtain review \* \* \*, a petitioner must demonstrate why the Region's response to a particular objection or set of objections is clearly erroneous or otherwise warrants review.") (quoting *In re Suckla Farms, Inc.*, 4 E.A.D. 686, 700 (EAB 1993)).<sup>5</sup>

*Issue 5:* In Attachment B (Closure Plan) to the permits, the cost for plugging the injection wells after closure is estimated at \$19,500. Ms. Yerman states that the Board should review this provision, presumably because she considers this amount insufficient.

As the Region states in its response, however, EDS provided a written estimate of the cost for plugging the wells in accordance with 40 C.F.R. § 144.62 (Cost estimate for plugging and abandonment). *See* Attachment B to permits at B-7. The Region further states that it "carefully reviewed [EDS's] submission and determined the cost estimate to be adequate." Region's Response at 24. Nothing in the petition for review or in the record before us indicates that the Region's determina-

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<sup>5</sup> As the Board has previously stated:

The Board generally tries to construe petitions filed by persons unrepresented by counsel in a light most favorable to the petitioners. While the Board does not expect or demand that such petitions will necessarily conform to exacting and technical pleading requirements, a petitioner must nevertheless comply with the minimal pleading standards and articulate some supportable reason why the Region erred in its permit decision in order for the petitioner's concerns to be meaningfully addressed by the Board.

*Envotech*, 6 E.A.D. at 268 n.13 (quoting *In re Beckman Production Services*, 5 E.A.D. 10, 19 (EAB 1994)).

tion in this regard was erroneous or otherwise warrants review. Review is therefore denied.

*Other Issues:* Ms. Yerman raises the following additional issues in her petition: 1) the Board should review all references in the permits to 40 C.F.R. Parts 136, 141, 261, 262, 268, "and Part 2!" Petition at 3; 2) the Board should review whether the permits should have made reference to section 3004(a) of the Resource Conservation and Recovery Act ("RCRA"); 3) the Board should review whether provision I.D. of the permits, allowing the permittee to claim certain information as confidential, complies with the applicable regulations; 4) permit condition I.E.6. (Proper Operation and Maintenance) should be removed from the permit; 5) the permittee should be required to retain records concerning the nature and composition of injected fluids for a period longer than the three years required by condition I.E.9(c) of the permits; 6) the Board should strike condition I.E.12(a) (Planned Changes) from the permits; 7) conditions I.E.12(b) (Anticipated Noncompliance) and I.E.12(c) (Compliance Schedules) in both permits should be revised to require only full compliance; 8) permit conditions I.F.1. (Closure Plan) and I.G.1. (Post-Closure Plan) should be amended to include language stating that the permittee's obligations survive the dissolution of EDS or any related entity; 9) condition I.G.8. (Notice in Deed to Property) in both permits should be amended to require that EDS record a notation on the deeds of all property surrounding the facility where wastes will have migrated; 10) condition I.G.9. (Financial Responsibility for Post-Closure Care) in both permits should be amended to include language stating that the obligation to maintain financial responsibility survives the dissolution of EDS or any related entity; 11) the permits should be revoked because condition II.B.1. (Injection Pressure Limitation) indicates that injection pressure can propagate existing fractures; and 12) the Board should review the Irrevocable Standby Letter of Credit and an amendment to the letter of credit in Attachment B (Closure Plan) to the permits because the letters may have expired and the credit amount is insufficient.<sup>6</sup>

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<sup>6</sup> Ms. Yerman also made a Freedom of Information Act request in which she requested that the Board provide copies of RCRA §§ 3004(f), (g), and (m). By letter dated May 11, 1998, the Clerk of the Board responded to this request and provided Ms. Yerman with a copy of § 3004 in its entirety, along with a list of some libraries in the Detroit metropolitan area where federal statutes and regulations might be available.

Because these issues were not raised during the comment period, however, they were not preserved for review by the Board.<sup>7</sup> Accordingly, review is denied.

### B. *Raymond E. Basham Petition*

*Issue 1:* In response to a comment arguing that the permit should include more frequent monitoring for hazardous waste sources than for non-hazardous sources, and that the permit should require weekly rather than quarterly hazardous waste sampling, the Region stated:

The sampling and monitoring frequency is determined separately for each source. Some sources may be monitored quarterly, monthly, or weekly, depending on the contents of the waste and the potential variability of the source \* \* \*. Each waste stream will be carefully reviewed and the sampling and monitoring determined by the USEPA as each source is approved.

Response to Comments at 14. With regard to EPA's statement that each waste stream will be carefully reviewed before a waste source is approved, Mr. Basham asserts that because the permits include a list of likely waste sources, the permits should also include a monitoring schedule for these likely sources "to give the public some understanding of the extent of monitoring they can expect from the USEPA." Basham Petition at 1.

Although Mr. Basham is correct that the permits do not contain monitoring requirements for specific waste sources (as these sources have not yet been approved), our review of the permits indicates that, contrary to Mr. Basham's suggestion, the permits do contain provisions sufficient to

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<sup>7</sup> A petitioner must "raise all reasonably ascertainable issues and submit all reasonably ascertainable arguments supporting their position by the close of the public comment period (including any public hearing) under § 124.10." 40 C.F.R. § 124.13; *In re Brine Disposal Well, Montmorency County, MI*, 4 E.A.D. 736, 740 (EAB 1993). As the Board has previously explained, compliance with this requirement and the corresponding provision in 40 C.F.R. § 124.19 requiring a demonstration that "any issues being raised [in a petition for review] were raised during the public comment period (including any public hearing)," is necessary to "ensure that the Region has an opportunity to address potential problems with the draft permit before the permit becomes final." *Brine Disposal*, 4 E.A.D. at 740 (quoting *In re Renkiewicz SWD-18*, 4 E.A.D. 61, 64 (EAB 1992)). Any issues not previously raised may not be raised on appeal except to the extent that these issues concern changes from the draft to the final permit decision. 40 C.F.R. § 124.19(a).

inform the public of the type of monitoring expected by EPA. For example, Condition I.E. (Duties and Requirements) of the permits states, in part:

10. *Monitoring*—Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. The permittee shall use the methods described in Appendix I of 40 CFR Part 261, or an equivalent method approved by the Director, to take representative samples. Monitoring results shall be reported at the intervals contained in Part II(D), [Attachment A], and [Attachment E] of this permit.

(a) Monitoring of the nature of injected fluids shall comply with applicable analytical methods cited and described in Table I of 40 CFR 136.3 or in Appendix III of 40 CFR Part 261 or in certain circumstances by other methods that have been approved by the Director.

(b) Sampling and analysis shall comply with the specifications of the Waste Analysis Plan required in Part II(C)(3) of this permit.

Condition II.D. of the permits (Reporting Requirements) states, in part:

1. *Monthly Reports*. The permittee shall submit monthly reports of the following information no later than the end of the month following the reporting period:

(a) Results of the injection fluid analysis specified in Parts III(A) and (E) of this permit \* \* \*. In reporting fluid analyses, the permittee shall identify the waste components of the waste stream by their common name, chemical name, structure and concentration, or as approved by the director.

(b) A tabulation of maximum injection pressure, maximum and minimum sight glass levels, maximum and minimum annulus pressure, injectate pH, flow rate, and minimum differential between simultaneous measurements of injection pressure and annulus pressure for each day of the month; \* \* \*.<sup>8</sup>

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<sup>8</sup> See also Permit Conditions II.D.2. (Quarterly Reports), II.D.3. (Annual Reports), and II.D.4 (Reports on Well Tests and Workovers).

Finally, Attachment A to the permits states, in part:

*G. Periodic Monitoring of Approved "Sources"*

**Oilfield Brine Wastes**

All approved oilfield brine wastes shall be monitored at a minimum for the following parameters: Sodium, Calcium, Magnesium, Barium, Total Iron, Chloride, Sulfate, Carbonate, Bicarbonate, Sulfide, Total Dissolved Solids, pH, Resistivity (ohm-meters @ 75°F), and Specific Gravity.

**Fingerprint Analysis**

All wastes that require fingerprint analysis as specified in [Permit Attachment E] shall, at a minimum, be subject to tests for the following:

pH, Total Settleable Solids, Temperature, Color, Flashpoint, Conductivity, Specific Gravity, Odor, and any other analysis deemed appropriate for characterizing the injected waste.

Permit Attachment A at A-6.

Under these circumstances, we agree with the Region that the permits are sufficient to ensure compliance with the SDWA and its implementing regulations, and to give the public an understanding of the type of monitoring expected by the Agency. Nothing in Mr. Basham's petition convinces us that the absence of additional monitoring requirements for likely waste sources is clear error or an important policy matter deserving of review. *See NE Hub Partners*, 7 E.A.D. at 581-82 (where permittee complied with the SDWA and applicable regulations, the Agency's failure to require permittee to conduct additional analyses of fluid to be injected into disposal wells was neither erroneous nor an important policy matter deserving of Board review). Review is therefore denied on this issue.

*Issue 2:* In response to a comment asking how the Agency knew that there were no other wells in the area deep enough "to allow contamination out," the Region stated:

The 2-mile Area of Review (AOR) around the well was investigated using the USEPA UIC records, the [Michigan Department of Environmental Quality] Geological Survey Division (GSD) records, and the commercially available Petroleum Information database. In addition, the

Michigan Department of Public Health and the Cities of Wayne, Inkster, Dearborn Heights, Westland, and Taylor were contacted for information on wells within their jurisdiction. There are no wells deep enough to penetrate the confining zone within the AOR. The nearest well deep enough to penetrate the confining zone is the EDS #1-20 well in Romulus. The nearest well which extends below the lowermost USDW is located about ½ mile from the proposed site. That well was a depth of 1623 feet below the surface, which is well above the confining zone of the EDS wells. However, at any time, if new information is gathered which indicates that there may be improperly constructed or plugged wells that may provide a conduit for fluid migration out of the injection zone, then the well in question will be promptly investigated and EDS will be required to ensure the problem well is fixed.

Response to Comments at 11 (Exh. D to Region's Response). Referring to this response, Mr. Basham expresses "concerns" about the ability of the Michigan Department of Environmental Quality ("MDEQ") to determine the existence of all of the wells in the area. Basham Petition at 2. Thus, according to Mr. Basham, EDS should be required to conduct a survey of the area surrounding the injection wells to determine what other wells may exist. Basham Petition at 2. For the following two reasons, we disagree.

First, Mr. Basham has failed to provide any support for the assertion that MDEQ data regarding the presence of deep wells in the AOR were unreliable. Second, the Region did not rely solely on information supplied by MDEQ. Rather, as the above-quoted response indicates, MDEQ data were among several sources of information on the existence of deep wells in the AOR. Thus, even if we were to accept Mr. Basham's assertion that MDEQ has "no information whatsoever regarding hundreds of thousands of wells in Michigan," (Basham Petition at 2) we are not convinced that the Region's conclusion regarding the absence of deep wells in the AOR was erroneous. Moreover, the Region has stated that should new evidence reveal the presence of wells that could result in the migration of fluid out of the injection zone, the wells will be investigated and EDS will be required to ensure that any problems are corrected. Response to Comments at 11. Review is therefore denied on this issue.

*Issue 3:* In responding to a comment on the draft permit asking whether the Region would hold a public hearing once the specific waste sources are identified and incorporated into the permit, the Region stated:

The waste to be injected cannot be identified at this time. Because the well is a commercial operation, EDS cannot determine the waste stream until specific customers are determined.

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Under the UIC regulations at § 144.41, minor modifications of the permit do not require public notice. Changing the quantities or types of fluids injected would be defined as a minor modification of the permit, as long as the new fluids do not change the classification of the well.

Response to Comments at 13.<sup>9</sup>

Mr. Basham objects to the Region's statement that a change in quantities and types of fluids injected may be considered a minor modification, and argues that the Region should therefore be required to conduct public hearings whenever such changes occur. Basham Petition at 2.

The above-quoted statement in the Region's response to comments, however, accurately reflects the language of the applicable UIC regulations. Specifically, 40 C.F.R. § 144.41 (Minor modifications of permits) states that the following permit change is considered a minor modification:

[A] [c]hange [in the] quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the Director, would not interfere with the operation of the facility or its ability to meet

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<sup>9</sup> Attachment A to the permit states:

The permittee must receive written authorization from the USEPA prior to injecting wastes from [a waste source]. Authorization shall consist of a final minor-modified permit, which shall list this "source" as an approved "source" in Part III(E) of this permit.

Permit Attachment A (Summary of Operating, Monitoring, and Reporting Requirements) at A-3.

conditions described in the permit and would not change its classification.

40 C.F.R. § 144.41(e).<sup>10</sup> Thus, to the extent that Mr. Basham argues that changes in the quantities or types of fluids should not be considered a minor permit modification, he is essentially challenging the validity of the UIC regulations. As a permit appeal is not an appropriate forum in which to present such a challenge, review is denied on this issue. *See Suckla Farms*, 4 E.A.D. at 699 (declining to review a challenge to the UIC regulations in the context of a permit appeal).

*Issue 4:* Mr. Basham expresses concern that MDEQ does not have adequate staff or financial resources to properly oversee the proposed wells. However, as this concern does not challenge the validity of any particular provision of the EDS permits, it fails to satisfy a basic prerequisite for obtaining Board review under 40 C.F.R. § 124.19, namely, the identification of a specific permit term that is claimed to be erroneous. *Federated Oil & Gas*, 6 E.A.D. at 730. Moreover, because EPA rather than the State is primarily responsible for the enforcement of UIC requirements in Michigan, Mr. Basham's objection is misdirected. *See Envotech*, 6 E.A.D. at 274 n.19.<sup>11</sup>

*Issue 5:* In reaction to community concerns that the proposed wells would have a disproportionate impact on minority communities, and in accordance with the President's Executive Order on Environmental Justice (Executive Order 12898),<sup>12</sup> the Region performed an Environmental Justice review under the draft "Region 5 Interim Guidelines for Identifying and Addressing a Potential Environmental Justice Case" (Oct. 30, 1997).

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<sup>10</sup> We note further that pursuant to 40 C.F.R. § 144.39, "for 'minor modifications' the permit may be modified without a draft permit or public review."

<sup>11</sup> We note further that Mr. Basham's contention appears to be predicated on the assumption that the Board is authorized to go beyond an assessment of the permit's validity under the SDWA and its implementing regulations, and to rule on the permit's implementation and enforcement. The Board has no such authority. *Brine Disposal Well*, 4 E.A.D. at 746.

<sup>12</sup> The Executive Order mandates that:

To the greatest extent practicable and permitted by law, \* \* \* each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, or activities on minority populations and low income populations in the United States \* \* \*.

Section 1-101. 59 Fed. Reg. 7,629 (Feb. 16, 1994).

Environmental Justice Determination (Attachment B to Region's Response to Comments). In his petition, Mr. Basham asserts that the Region's review was flawed because in conducting its demographic analysis the Region used data from a two-mile rather than a four-mile radius surrounding the proposed EDS wells. Basham Petition at 3. In particular, Mr. Basham states that the EDS wells "will cause a stigma for the entire community" and will have a negative impact on property values beyond a two-mile radius. *Id.*

According to the Region, a two-mile radius for the demographic analysis was used "because of the nature of the injection well operations and the effect the injection wells may have on the surrounding community." Environmental Justice Determination at 3. More particularly, the potential effects considered by the Region included odor and air pollution, surface and groundwater pollution, noise, increased vehicular traffic, and decreased property values. *Id.* at 3-4. The Region's Environmental Justice review concluded as follows:

U.S. EPA determined that EDS's application for a UIC permit does not qualify as an Environmental Justice case. First, the minority populations within the census block group of the facility (1%) and within two miles of EDS's proposed site (9%) are less than Michigan's minority population of 18%. Second, the low income population within the census block group (20%) and within two miles of EDS's proposed site (26.8%) is less than Michigan's low income population of 28%.

Environmental Justice Determination at 5.

As the Board has previously explained:

The proper scope of a demographic study to consider such impacts is an issue calling for a highly technical judgment as to the probable dispersion of pollutants through various media into the surrounding community. This is precisely the kind of issue that the Region, with its technical expertise and experience, is best suited to decide.

*Envotech*, 6 E.A.D. at 283 (quoting *In re Chemical Waste Management of Indiana, Inc.*, 6 E.A.D. 66, 80 (EAB 1995)). Accordingly, we reject Mr. Basham's assertion that the two-mile area in which the Region conducted its demographic analysis was too small. *Id.* (rejecting challenge to two-mile demographic analysis).

*Issue 6:* Finally, Mr. Basham states that he agrees with the comments summarized by the Region in “Comment 56” on pages 23–24 of the Response to Comments document regarding the disproportionate impact of the proposed wells. In particular, Mr. Basham, citing the Region’s Environmental Justice Guidelines, argues that the Region should consider the “aggregate impact of the proposed commercial hazardous waste disposal facility along with the existing Detroit Metropolitan Airport, numerous airport-related trucking firms, three petroleum tank farms, asphalt plant and the major interstate highway.” Basham Petition at 3.

In its response to this comment, the Region stated that it had conducted an Environmental Justice review and concluded that operation of the proposed wells would not result in a disproportionate impact on minority communities. The Region stated, in part:

USEPA remains committed to ensuring, to the greatest extent practicable and permitted by law, that the implementation of its regulatory program does not disproportionately impact minority and low-income communities. \* \* \* Based on [the Environmental Justice Review], U.S. EPA determined that EDS’s application for [a UIC] permit does not qualify as an environmental justice case.

Response to Comments at 24.<sup>13</sup> As Mr. Basham has not stated why the Region’s response to comments on this issue was erroneous or otherwise warrants review, review is denied on this issue. *See Federated Oil & Gas*, 6 E.A.D. at 726–27.<sup>14</sup>

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<sup>13</sup> We note that in its Environmental Justice Determination, the Region considered the existing pollution sources noted by Mr. Basham and concluded that the proposed wells would not have a significant effect on the surrounding community beyond a two-mile radius. In particular, the Region concluded, in part, as follows:

#### **5) Decreased Property Values**

The proposed site is located in a heavily industrialized area. The area already hosts other industrial facilities including several airport-related trucking firms, three petroleum tank farms and an asphalt plant. Additionally, the runway of the Detroit International Airport and a major interstate are located within a two-mile radius. Since all of the existing facilities have the potential for visible emissions, noise and odors, the existing facilities will likely have a greater effect on property values than the EDS facility. Furthermore, the effect on property values beyond two miles from the site would be negligible.

Environmental Justice Determination at 4. Mr. Basham’s petition fails to convince us that the Region’s determination in this regard was erroneous.

<sup>14</sup> Mr. Basham has also argued that the permits should specify what types of violations would impact human health and the environment. As this issue was not raised during the comment period, however, it was not preserved for review. *See supra* note 7.

**III. CONCLUSION**

For the reasons stated above, the petitions for review are denied in all respects.

So ordered.