

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

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In the Matter of: )  
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Windfall Oil & Gas, Inc. )  
)

UIC Permit No. PAS2D020BCLE )  
)  
\_\_\_\_\_ )

) UIC Appeal Nos. 14-04 through 14-62  
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**REGION III'S MOTION FOR VOLUNTARY REMAND**

The United States Environmental Protection Agency (EPA) Region III (Region) respectfully requests the Environmental Appeals Board to remand the Underground Injection Control (UIC) permit referenced above and subject to these appeals, in order for the Region to reconsider the comments submitted during the public hearing and public comment period, and to assure that the substantive and procedural requirements of Parts 124, 144 and 146 have been met.

As grounds for the motion, the Region states as follows:

1. On February, 2014, the Region issued a final permit to Windfall Oil & Gas, Inc. (Windfall) for an Underground Injection Control (UIC) Class II injection well.
2. About fifty-seven (57) petitioners have appealed the Windfall permit to the Environmental Appeals Board (EAB).
3. On March 24, 2014, the Board consolidated the petitions and on April 15, 2014,

granted the Region's motion for an extension of time to file a response.

4. Upon review of the record, the Region has determined that certain public comments were not fully addressed or considered during the permit decision. It also determined that there are factual mistakes in the Response to Comment document, the correction of which requires reconsideration of the permit decision. For example, the Response to Comment document states that there are no drinking water wells in area of review, when the permit application clearly identifies several drinking water wells within the area of review and the construction requirements in the issued permit were drafted with consideration of those drinking water wells. After correction of any factual mistakes and reconsideration of public comments, the Region will decide whether to reissue the permit, draft a new permit for public comment or deny the permit.

5. Pursuant to 40 C.F.R. § 124.19(j),<sup>1</sup> the Region may unilaterally withdraw a permit up to 30 days after the filing of a response in order to prepare a new draft permit. In addition, the Board has discretion to grant a voluntary remand beyond what is allowed under section 124.19(j). *See In re Desert Rock Energy*, PSD Appeal No.08-03 et al, *slip op.* at 13 (EAB Sept. 24, 2009) 14 E.A.D. \_\_.

6. The Region is moving for a voluntary remand pursuant to the discretionary authority of the Board, rather than under section 124.19(j) because the Region has not yet decided whether it intends to issue a new draft permit during the remand. As it reviews the public comments and the record, the Region may decide to draft a new permit for public comment or to reopen the comment period, but if the Region finds that no substantial new questions have arisen, reissuance of the permit may not require a new public process. *See In re*

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<sup>1</sup> Prior to the amendments to the permit appeal regulations that were published on January 25, 2013, the subsection relating to the withdrawal by a Region of a permit under appeal was Section 124.19(d).

*NE Hub Partners, L.P.*, 7 E.A.D. 561, 586-588 (1988)(discussing when reopening of public comment after a voluntary remand is appropriate); *see also In Re Dominion Energy Brayton Point, LLC*, 13 E.A.D. 407, 415-16 (2007) (discussing when reopening of the public comment period is appropriate after a remand). The Region will decide how to proceed with this permit application once it completes its reevaluation of the comments in light of the record.

7. The Board will generally grant a voluntary remand when the permitting authority decides to make substantive changes to the permit or otherwise wishes to reconsider some element of the permit decision before reissuing the permit. *See In re Desert Rock*, PSD Appeal No.08-03 et al, *slip op.* at 13. This allows the permit issuer to fully consider relevant issues and make a sound final decision, and it is consistent with the Board's policy to favor allowing the regions to make permit condition decisions. *Id.* at 16-17; *see also In re Peabody Western Coal Co.*, CAA Appeal No. 10-01, *slip op.* at 9 (EAB Aug. 13, 2010), 14 E.A.D. \_\_\_. A voluntary remand for this permit promotes efficiency in the permit decision-making process since it could result in resolving several of the disputed issues raised by the petitioners. This is particularly the case when the remand occurs in the early stages of litigation, as in this case, because it conserves resources.

8. To attempt to ascertain whether petitioners concur or would object to this motion, the Region send a message via electronic mail to all of the petitioners who listed an email address in their petitions, which were 27 out of 57 petitioners, asking these petitioners whether they would oppose or concur with a motion for voluntary remand. The Region received responses from about 15 of these petitioners. Twelve of them stated that they did not oppose or would not object to the motion. Three others did not clearly state a position or wanted more time to consider their position with regards to the motion.

9. For the reasons state above, the Region respectfully requests the Board to remand the Windfall permit decision to the Region, for the Region to fully consider public comments and reconsider the permit decision. In light of the motion for remand, the Region does not intend to file a response to the petitions by the current deadline of May 16, 2014.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that I caused delivery of a copy of the foregoing Motion for Voluntary Remand on the date specified below, by US. mail to the addresses listed below. I also sent a copy of the motion by electronic mail to those petitioners who provided an email address in their petitions.

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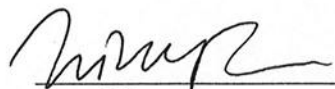
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I also certify that I filed the original electronically with the Environmental Appeals Board.

  
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