

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

In re)	
)	
Penneco Environmental Solutions, LLC)	UIC Appeal No. 23-01
)	
UIC Permit No. PAS2D702BALL)	
)	
)	

ORDER REQUESTING CLARIFICATION FROM U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 3

The Environmental Appeals Board (“Board”) has determined that clarification from the U.S. Environmental Protection Agency Region 3 (“Region”) would assist the Board’s consideration of Permittee’s Motion to Dismiss. The Board orders the Region to provide the following clarifications with respect to the Region’s position on the Motion to Dismiss and on its communications related to the final permit decision with the Petitioners and the public. *See generally* 40 C.F.R. §§ 124.15, .19.

1. The Permittee represents that the Region “does not object to the granting of [the] Motion [to Dismiss].” Motion to Dismiss the Petition for Review 1 (Nov. 6, 2023) (“Motion to Dismiss”). The Region, however, has not responded to the Motion nor provided the Board with a statement of, and explanation for, its position. Such explanation would assist the Board in ruling on the Motion to Dismiss. Therefore, by the time specified in this order, the Region shall provide its position on the Motion to Dismiss, an explanation of the reasons therefor, and any supporting documentation.

2. Explain and provide reasons for when the Region considers the 30-day time period to file a petition for review to have begun in this case.
3. The Board has been provided with copies of an email sent to Petitioners dated September 21, 2023. *See* Email from Ryan Hancharick, U.S. EPA Region 3 to Petitioners (Sept. 21, 2023) (filed with Pet'rs Response in Opposition to Penneco's Motion to Dismiss the Petition for Review as exs. A-B) ("Sept. 21, 2023 Email"). Explain whether the September 21, 2023 email constitutes the Region's notice of the final permit decision required under 40 C.F.R. § 124.15(a). *See* 40 C.F.R. § 124.15(a) ("The Regional Administrator shall notify * * * each person who has submitted written comments * * * of the final permit decision."). If the Region's position is that the September 21, 2023 email is the notice of the final permit decision required under 40 C.F.R. § 124.15(a), explain how the text of the September 21, 2023 email regarding the final permit complies with the 40 C.F.R. § 124.15 mandate that the notice must include reference to the appeal procedures. *See id.* ("[The] notice [of the final permit decision] shall include reference to the procedures for appealing a decision on a * * * UIC * * * permit under § 124.19 of this part.>").
4. The September 21, 2023 email stated, "A final permit has been issued to Penneco Environmental Solutions effective October 26, 2023." *See* Sept. 21, 2023 Email. However, the permit itself states that "[t]his permit shall become effective 35 days after the date of signature." *See* Protect PT and Three Rivers Waterkeeper Petition for Review attach. 1 (Oct. 26, 2023) ("Attachment 1"). The signature on the permit is dated September 19, 2023, thus indicating an effective date of October 24, 2023. *See id.* Provide the Board with an explanation for the differing effective dates for the permit.


5. A separate response to comments document states that “[a] petition for review must be filed within thirty (30) days of the date of the notice *announcing* EPA’s decision.”
Protect PT and Three Rivers Waterkeeper Petition for Review attach. 6 at 40 (Oct. 26, 2023) (“Response to Comments”). Section 124.19 states that “[a] petition for review must be filed * * * “within 30 days after the Regional Administrator *serves notice* of the issuance of a * * * UIC * * * final permit decision.” 40 C.F.R. § 124.19(a)(3) (emphasis added). Explain how the language in the response to comments document concerning the deadline for filing a petition for review complies with the language specified in 40 C.F.R. § 124.19(a)(3).
6. The Petitioners provided a cached image of the “public notices” posted on EPA’s website on September 26, 2023. *See* Pet’rs Response in Opposition to Penneco’s Motion to Dismiss the Petition for Review ex. C (Nov. 20, 2023) (“Cached Search Public Notices”). According to Exhibit C, Penneco’s permit issuance was listed on EPA’s website, which stated, “Mid-Atlantic Region UIC Program announces the issuance of a final permit for the construction and operation of one (1) Class II-D commercial disposal injection well located in Plum Borough, Allegheny County, Pennsylvania” and “Comments Due Date: October 26, 2023,” directly underneath. *Id* at 2. However, the Region stated in its response to comments that the comment period closed on September 7, 2022. Response to Comments at 1.
 - a. Provide the Board with an explanation for the differing comment period deadlines.
 - b. Explain whether this posting on the EPA’s website is the Region’s “notice announcing EPA’s decision” referenced in the response to comments.

The Region's response to this Order must be filed on or before **Wednesday, December 20, 2023**.

So ordered.¹

ENVIRONMENTAL APPEALS BOARD

Dated: December 14, 2023

By: 
Kathie A. Stein
Environmental Appeals Judge

¹ The three-member panel deciding this matter is composed of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Kathie A. Stein.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Requesting Clarification from U.S. Environmental Protection Agency Region 3* in the matter of Penneco Environmental Solutions, LLC, UIC Appeal No. 23-01, were sent to the following persons in the manner indicated:

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Dated: Dec 14, 2023

Annette Duncan

Annette Duncan
Administrative Specialist