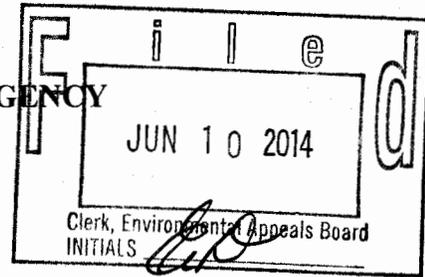


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)

Windfall Oil & Gas, Inc.)

UIC Permit No. PAS2D020BCLE)

UIC Appeal Nos. 14-04 through 14-62

**ORDER GRANTING MOTION FOR VOLUNTARY REMAND
TO ALLOW RECONSIDERATION OF PERMIT DECISION**

On February 14, 2014, the U.S. Environmental Protection Agency Region 3 (“Region”) issued an Underground Injection Control (“UIC”) permit, Number PAS2D020BCLE (“Permit”), to Windfall Oil & Gas, Inc. (“Windfall”). The Permit authorizes Windfall to construct a Class II-D injection well, the Zelman #1, and inject fluids produced in association with oil and gas production into the Huntersville Chert/Oriskany formation. The Board received fifty-seven petitions requesting review of the Permit. *See* Order Consolidating Petitions for Review at 1 n.1, 3-4 (Mar. 24, 2014) (discussing the Board’s treatment of the sixty-one filings received and ordering two petitioners to designate in writing which of multiple filings should be considered the petition for review).¹

On May 15, 2014, the Region filed a motion requesting a voluntary remand of the Permit “to reconsider the comments submitted during the public hearing and public comment period,

¹ On April 14, 2014, the Board issued an order granting the Region’s request for an extension of time until May 16, 2014 to respond to the petitions for review and to submit relevant portions of the administrative record. Order Granting Extension of Time to File Response and Requiring Supplemental Motion to Request Specific Word or Page Limit (Apr. 14, 2014); *see also* Order Granting Motion for Leave to File Response Exceeding Word or Page Limit (May 2, 2014) (granting Region’s request to file a response not to exceed seventy-five pages).

and to assure that the substantive and procedural requirements of Parts 124, 144, and 146 have been met.”² Region III’s Motion for Voluntary Remand at 1 (May 15, 2014) (“Motion”). The Region explained that, upon review of the administrative record, it determined that “certain public comments were not fully addressed or considered during the permit decision” and that “there are factual mistakes in the Response to Comments document.” *Id.* at 2. The Region plans to correct its factual errors and reconsider the public comments and then “decide whether to reissue the permit, draft a new permit for public comment or deny the permit.” *Id.*

The Board has broad discretion to grant a remand request, and it has repeatedly held that “[a] voluntary remand is generally available where the permitting authority has decided to make a substantive change to one or more permit conditions, or otherwise wishes to reconsider some element of the permit decision before reissuing the permit.” *In re Desert Rock Energy Co., LLC*, 14 E.A.D. 484, 493 (EAB 2009) (quoting *In re Indeck-Elwood, LLC*, PSD Appeal No. 03-04, at 6 (EAB May 20, 2004) (Order Denying Respondent’s Motion for Voluntary Partial Remand and Board’s Decision on the Petition for Review)). As the Board has emphasized, it “typically grants a motion [for remand] where the movant shows good cause for its request and/or granting the motion makes sense from an administrative or judicial efficiency standpoint.” *Id.* at 497.

Here, the Region has clearly expressed its intent to reconsider its decision on the permit. Administrative efficiency will be served by allowing the Region to do so. Further, none of the petitioners has filed an opposition to the Region’s motion. For all of these reasons, the Board

² The Region indicates that it is requesting a remand, pursuant to the discretionary authority of the Board, to reconsider its decision. The Region is not, at this time, unilaterally withdrawing the permit under 40 C.F.R. § 124.19(j). Motion at 2.

agrees that remand for reconsideration of the Permit decision is appropriate.

If upon reconsideration, the Region determines that a new draft permit should be issued or that significant conditions of the permit should be changed, it must provide an additional public comment opportunity under the applicable public participation procedures in 40 C.F.R. Part 124. *See, e.g.*, 40 C.F.R. §§ 124.6, .10, .14; *see also In re Energy Answers Arecibo, LLC*, PSD Appeal Nos. 13-05 through 13-09, slip op. at 31-32 (EAB Mar. 25, 2014), 16 E.A.D. ____ (discussing permit changes and other modifications of a permit decision that require additional public comment). In addition, regardless of whether reopening is compelled by Part 124 requirements, the Region has broad discretion under section 124.14(b) to determine whether “substantial new questions concerning a permit” merit an additional opportunity for public comment. *In re NE Hub Partners, L.P.*, 7 E.A.D. 561, 584 (EAB 1988) (“A reopening of the public comment period under section 124.14(b) largely depends on the Region’s discretion * * *.”); *see In re Dominion Energy Brayton Point, L.L.C.*, 13 E.A.D. 407, 416 & n.10 (EAB 2007) (discussing considerations that may inform a Regional Administrator’s decision on the issue of reopening the public comment period).

The Board hereby grants the Region’s motion for a voluntary remand of the Windfall Permit for reconsideration of the Permit decision. Accordingly, UIC Appeal Nos. 14-04 through 14-62 challenging the Region’s February 14, 2014 Permit decision are dismissed. After reconsideration, the Region must issue a new final permit decision. Petitioners may file a petition under 40 C.F.R. § 124.19(a) with the Board challenging the new final permit decision, and they must do so if they wish to preserve the option of seeking judicial review of EPA’s

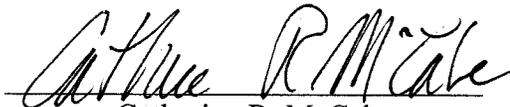
action on Windfall's permit application.³ Petitions for review must be filed within 30 days after the Region serves notice of the revised final permit decision. *See* 40 C.F.R. § 124.19(a)(3).

So ordered.⁴

ENVIRONMENTAL APPEALS BOARD

Date:

6/10/14



Catherine R. McCabe

Environmental Appeals Judge

³ The Board directs that an appeal to the Board following the Region's decision on remand is required to exhaust administrative remedies before EPA. *See* 40 C.F.R. § 124.19(1)(2)(iii).

⁴ The three-member panel deciding this matter is composed of Environmental Appeals Judges Leslye M. Fraser, Randolph L. Hill, and Catherine R. McCabe. *See* 40 C.F.R. § 1.25(e)(1).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Granting Motion for Voluntary Remand to Allow Reconsideration of Permit Decision** in the matter of Windfall Oil & Gas, Inc., UIC Appeal Nos. 14-04 through 14-62, were sent to the following persons in the manner indicated:

By First Class U.S. Mail:

David Keith
1784 Galusha Road
Brockway, PA 15824
Telephone: (814) 265-2434

Vivian L. Marshall
111 W. Long Ave. Apt. 5E
DuBois, PA 15801
Telephone: (814) 371-4623

Ralph E. Hamby
270 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 375-0170

Nancy Moore
300 Green Ridge Drive
DuBois, PA 15801
Telephone: (814) 371-9711

Nora Jenney
1222 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-5321

John Parsons
St. Michael's Terrace
111 W. Long Ave.,
Apt. 2K
DuBois, PA 15801
Telephone: (814) 590-3077

James W. Mack
Norma S. Mack
74 Sunset Drive
DuBois, PA 15801
Telephone: (814) 371-3289

Dennis Marsh
Terry Marsh
1379 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-5592

Tom Nelen
Sue Nelen
152 #2 Shaft Road
DuBois, PA 15801
Telephone: (814) 375-0448

Helen Jenney
1252 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-5647

Ken Flanders
Bev Flanders
128 #2 Shaft Road
DuBois, PA 15801
Telephone: (814) 371-8290

Beth Gilga
735 Shamokin Trail
DuBois, PA 15801
Telephone: (814) 583-7079

Barbara A. London
105 Olive Avenue
DuBois, PA 15801
Telephone: (814) 371-5524

Francis E. Hand
894 Highland Street Ext.
DuBois, PA 15801

Robert Marshall
Ethel Marshall
1154 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-7661

Cecil E. Gelnett
831 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-5860

Rosemary Frizzell
1359 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-5867

Lorraine Shaddock
278 Reynoldsville
Sykesville Road
Reynoldsville, PA 15851
Telephone: (814) 894-2437

Joyce Greathouse
Ronald Greathouse
1197 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-5141

Terry Lawson
Carole Lawson
1042 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-7127

Rev. James Green
Sherry Green
815 Reynoldsville
Sykesville Road
Reynoldsville, PA 15851
Telephone: (814) 894-5584

Loretta Slattery
1079 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-7476

Valerie J. Powers
1235 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 591-0697

Duane Marshall
Darlene Marshall
1070 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-7945

Brady Township
Supervisors
P.O. Box 125
Luthersburg, PA 15848
Telephone: (814) 583-7660

City of DuBois
16 W. Scribner Avenue
DuBois, PA 15801
Telephone: (814) 371-1290

Diane Bernardo
8 Tower Lane
DuBois, PA 15801
Telephone: (814) 371-4210

Travis P. Smith
315 Gearhart Lane
DuBois, PA 15801
Telephone: (814) 583-5618

Emily A. Collins, Esq.
Oday Salim, Esq.
P.O. Box 7226
Pittsburgh, PA 15213-0221
Telephone: (412) 648-1300
*Counsel for Marianne and
Richard Atkinson*

Matt Gabler
Member, 75th District
PA House of
Representatives
150-B East Wing
P.O. Box 202075
Harrisburg, PA 17120-
2075
Telephone: (717) 260-6142

Sandy Township Board of
Supervisors
P.O. Box 267
DuBois, PA 15801
Telephone: (814) 371-4220

Barb Emmer
526 First Street
DuBois, PA 15801
Telephone: (814) 375-9660

Leslie Swope
310 Olive Avenue
DuBois, PA 15801
Telephone: (814) 371-0405

John Barr
Sue Barr
1268 Tower Lane
Dubois, PA 15801
Telephone: (814) 583-5049

Judy Chewning
Jack Chewning
1707 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-5560

Monica A. Lockhart
1298 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 553-5529

Albert T. Marsh
1583 Highland Street Ext.
DuBois, PA 15801

Robert Wells
Pauline Wells
1640 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 591-0164

Shirley Wells
1625 Highland Street Ext.
DuBois, PA 15801

Reta Rice
1691 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-7829

Jonell Reay
544 Highland Street Ext.
P.O. Box 98
DuBois, PA 15801
Telephone: (814) 371-6538

Joan Spaffora
450 Spaffora Road
DuBois, PA 15801
Telephone: (814) 583-7523

Clearfield County
Commissioners
212 E. Locust Street
Clearfield, PA 16830

John T. Hook
549 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 590-0149

Donna Gardner
111 W. Long Ave. Apt. 6P
DuBois, PA 15801
Telephone: (814) 371-1968

Randall R. Baird
1273 Highland Street Ext.
DuBois, PA 15801-4543
Telephone: (814) 583-7180

Laurie Wayne
5498A Wayne Road
DuBois, PA 15801

Sharlene J. King
2158 Longwell Road
Brockway, PA 15824
Telephone: (814) 265-0191

Stephen W. Way
1790 Kiwanis Trail
DuBois, PA 15801
Telephone: (814) 375-2771

Brady LaBorde
45 Piney Lane
DuBois, PA 15801
Telephone: (814) 371-6316

Harriet J. Moyer
366 Toby Road
Kerrey, PA 15846
Telephone: (814) 885-8431

Ted Crytser
Rona Crytser
1500 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-5535

By EPA Pouch Mail:

Nina Rivera
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC20)
US EPA Region 3
1650 Arch St.
Philadelphia, PA 19103
Telephone: (215) 814-2667

Dated: JUN 10 2014

By: 
Annette Duncan
Secretary