



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 5
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ENVIR. APPEALS BOARD

REPLY TO THE ATTENTION OF

September 14, 2005

VIA FEDERAL EXPRESS

Ms. Eurika Durr, Clerk of the Board
 U.S. Environmental Protection Agency
 Environmental Appeals Board
 1341 G Street NW, Suite 600
 Washington, D.C. 20005

Re: Sunoco Partners Marketing & Terminals, LP
 Permit Number: MI-163-3G-A002
 Appeal Number: UIC 05-01

Dear Ms. Durr:

Enclosed please find an original (signed in blue ink) and five copies of the Response to Petition for Administrative Review in the above referenced matter.

Please feel free to contact me at 312-886-6842 with any questions.

Sincerely,

Mony G. Chabria
 Associate Regional Counsel

Enclosures

cc: William C. Fulkerson
 John H. Hanson
 Dustin P. Ordway

APPEALS
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ENVIRONMENTAL APPEALS BOARD

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

IN RE:

SUNOCO PARTNERS MARKETING
& TERMINALS, LP
Underground Injection Control (UIC)
Permit No. MI-163-3G-A002

Appeal No. UIC 05-01

RESPONSE TO PETITION FOR ADMINISTRATIVE REVIEW

The United States Environmental Protection Agency, Region 5 ("Region 5" or "the Region"), hereby responds to the Petition for Administrative Review filed by Environmental Disposal Systems, Inc., ("EDS") in Appeal Number UIC 05-01.

EDS has filed its petition with the Environmental Appeals Board ("EAB" or "the Board") seeking review of certain terms and conditions of the federal permit issued by the Region to Sunoco Partners Marketing & Terminals, LP ("Sunoco") under the Safe Drinking Water Act ("SDWA"). EDS also requests that the Board set aside the permit and remand the matter to the Region to hold a public hearing to receive comments. For the reasons set forth below, the Region recommends that the EAB deny the Petition for Administrative Review.

I. INTRODUCTION

The Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and corresponding regulations require that a person who intends to operate an underground injection well must obtain a permit

for such activities, unless such well is authorized by rule. 42 U.S.C. § 300h-3; 40 C.F.R.

§§144.1(g) and 144.31.

The State of Michigan has not been authorized to administer the SDWA's underground injection control ("UIC") permit program. 42 U.S.C. § 300h-1. Accordingly, EPA has the responsibility to carry out UIC permitting requirements, including the issuance of permits within Michigan. 40 C.F.R. § 147.1151.

EDS's appeal challenges the Region's decision to issue Sunoco a permit to operate Class III wells in order to solution mine salt to enlarge existing salt caverns used for liquified petroleum gas storage. After a thirty day public comment period on a draft permit, during which two written comments were received, Region 5 issued a UIC Class III Permit to Sunoco.

The EAB received a timely Petition for Administrative Review of the permit decision from EDS on July 5, 2005, to which this document responds. On August 9, 2005, the Board issued an order granting an extension of time to September 15, 2005, for the Region to file this response to the petition.

II. STANDARD OF REVIEW

A UIC Permit, or a condition thereof, ordinarily will not be reviewed by the Board unless it is based upon a clearly erroneous finding of fact or conclusion of law, or involves an exercise of discretion or important matter of policy that warrants review. See 40 C.F.R. 124.19. The preamble to 40 C.F.R. §124.19(a) states that the Board's discretion to review permitting actions, "should be only sparingly exercised," and that "most permit conditions should be finally determined at the Regional level." 45 Fed. Reg. 33412 (May 19, 1980). The Board has

repeatedly confirmed the interpretation of its authority to review permit actions expressed in that preamble. See *In re NE Hub Partners, L.P.*, 7 E.A.D. 561, 567 (EAB 1998), citing *In re Federated Oil & Gas of Traverse City*, 6 E.A.D. 722, 725 (EAB 1997). Moreover, the petitioner carries the burden of proving that the issues raised by a petition for review satisfy the standards for review stated in 40 C.F.R. §124.19(a). *In re Envotech, L.P.*, 6 E.A.D. 260, 265 (EAB 1996).

The provisions of 40 C.F.R. § 124.19(a) set forth that any person who filed comments on a draft permit or participated in the public hearing may petition the EAB to review any condition of the permit decision. In order to merit review by the EAB, a petition for review:

shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations and when appropriate, 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.

40 C.F.R. §124.19(a). The EAB has interpreted this provision as requiring a petition for review to contain two components: (1) clear identification of the conditions in the permit at issue, and (2) argument that the conditions warrant review. *In re Beckman Production Services*, 5 E.A.D. 10, 18 (EAB 1994); *In re LCP Chemicals - New York*, 4 E.A.D. 661, 664 (EAB 1993). Further, the EAB has concluded that "it is not enough for a petitioner to rely on previous statements of its objections, such as comments on a draft permit; a petitioner must demonstrate why the Region's response to those objections (the Region's basis for its decision) is clearly erroneous or otherwise

warrants review." *LCP Chemicals* at 664.

III. STATEMENT OF FACTS

The issue brought before the Board in the Petition is the Region's decision to issue a Class III UIC permit to Sunoco. On June 22, 2004, Sunoco submitted an application for a UIC permit.¹ Sunoco's desire with this permit is to expand the volume of four of its underground caverns through solution mining of the natural salt formation in the caverns. Solution mining wells are Class III wells under the regulations. 40 C.F.R. § 144.6(c). Sunoco uses the underground caverns for the storage of liquified petroleum gases (LPG). The LPGs consist of propane, butane, and iso-butane.

If upheld, the permit would allow Sunoco to inject fresh water into the caverns, which are located in the Salina salt formation between 1150 and 1800 feet underground beneath the cities of Taylor and Romulus, Michigan, southwest of Detroit. The fresh water injected into the caverns will remain in place for a period of time, dissolving the salt formation and expanding the cavern. Sunoco's intention is to expand the caverns to allow for greater capacity to store LPGs.

On March 11, 2005, the Region issued a public notice regarding its intent to issue the permit to Sunoco, as required by 40 CFR §§ 124.6 and 124.10. A draft permit was made available to the public via the internet and at a local library. The public notice announced a thirty day public comment period that ended April 11, 2005. During the public comment period, the Region received written comments on the draft permit from two entities – EDS (through its

¹The permit application is attached to this Response to Petition at Attachment A. For administrative ease, some oversized maps have been omitted from this attachment.

counsel William C. Fulkerson) dated April 6, 2005, and attorney David A. Bower, on behalf of unidentified clients, dated April 5, 2005. The Region responded to Mr. Fulkerson by letter dated May 10, 2005, and to Mr. Bower by letter dated May 12, 2005. On June 6, 2005, the Region issued a permit to Sunoco, having considered and responded to all the comments raised.² On July 5, 2005, EDS filed its Petition for Administrative Review.

In its petition, EDS makes the following arguments: (1) a public hearing should have been held to receive comments, (2) the well monitoring program of the permit is inadequate, (3) cavern monitoring should have been required by the permit, and (4) the permit failed to contain requirements for the construction or materials to be used.

IV. RESPONSE TO PETITION

EDS satisfies the standing requirements to petition the EAB to review the final UIC permit issued to Sunoco on June 6, 2005. Any person who filed comments on the draft UIC permit within the public comment period or participated in the public hearing regarding the permit may petition the EAB to review any condition of the permit decision. 40 C.F.R. §124.19(a). EDS submitted written comments during the comment period. The EAB received EDS's written appeal on July 5, 2005, which was within the designated appeals deadline. Therefore, EDS has standing to petition the EAB for review of the final permit decision.

The petition filed by EDS, however, fails to establish that EAB review of Region 5's permit decision is warranted. EDS argues that the Region should have held a public hearing to

²The two comments, the Region's two responses, and the final permit are attached to this Response To Petition as Attachments B-F. A certified index of the entire administrative record is attached as Attachment G.

receive comments, but fails to make a showing that there was a significant degree of public interest in the Sunoco Class III UIC draft permit. EDS also contends that Region 5 should have included certain additional conditions in the permits, but fails to meet its burden of showing that a permit condition (or lack thereof) is based upon a clearly erroneous finding of fact or conclusion of law, or an abuse of discretion or an important policy consideration that the Board should review.

A. EDS Failed to Show "Significant Public Interest" in the Sunoco Draft Permit

In its argument that Region 5 should have held a public hearing, EDS cites to the regulation at 40 C.F.R. § 25.3(c)(1), which describes one objective of EPA in carrying out public participation activities described in 40 C.F.R. Part 25.³ While Part 25 applies to the Safe Drinking Water Act programs, it merely sets forth minimum requirements and suggested program elements for public participation. The applicable procedural requirements for issuing UIC permits are found at 40 C.F.R. Part 124. Specifically, those regulations require the permit issuer to hold a public hearing when it finds that there is a "significant degree of public interest in a draft permit." 40 C.F.R. § 124.12(a). The Board has held that the decision to hold a public hearing under 40 C.F.R. § 124.12(a) is largely discretionary. See *In re Avery Lake Property Owners Association*, 4 BAD 251, 252 (EAB 1992); *In re City of Fort Worth*, 6 E.A.D. 392, 407 (EAB 1996). In the *Avery Lake* matter, the Board concluded that the petitioner had not shown or alleged in its petition that there was a significant degree of public interest, despite the petitioner

³40 C.F.R. § 25.3(c) states, "(t)he following are the objectives of EPA, State, interstate, and substate agencies in carrying out activities covered by this part: (1) to assure that the public has the opportunity to understand official programs and proposed actions, and that the government fully considers the public's concerns"

being an organization of property owners. The Board noted that the petition did not disclose any facts about the membership or size of the organization. *Avery Lake*, 4 E.A.D. at 252, footnote 2. In the *City of Fort Worth* matter, the Board again concluded that the petitioner did not meet its burden in showing clear error or abuse of discretion by the Region in deciding not to hold a public hearing when there was only one request for a hearing which was made by the petitioner's attorney. *City of Fort Worth*, 6 E.A.D. at 407.

In this case, EDS has neither alleged nor demonstrated a "significant degree of public interest" in the draft permit. The Region received two written comments during the public comment period – one from Petitioner EDS and one from David A. Bower, on behalf of his unspecified clients. Only Mr. Bower requested a public hearing. Although EDS did not request a public hearing, it now states that "a public hearing would have provided an opportunity to address the public's concerns about the large scale storage of this dangerous material (LPG) in the midst of an urbanized area." EDS Petition at 1-2. EDS makes no allegation or statements indicating the number of persons having an interest in this permit. Based upon the two written comments received, only one of which requested a public hearing, the Region appropriately concluded that there was not a "significant degree of public interest in the draft permit" proposed to be issued to Sunoco. As a result, the Region appropriately concluded that there was no reason to hold a public hearing on this matter. EDS's statements to the contrary are not supported by its petition or any additional information, and EDS has not met its burden of showing that the Region was clearly erroneous or abused its discretion⁴ in deciding not to hold a public hearing.

⁴Or that the Region was arbitrary and capricious as EDS claims in its petition.

B. EDS Failed to Support its Challenge of Specific Conditions of the Permit

1. EDS's Petition Lacks Specificity

As noted above, when petitioning for review of a UIC permit decision, a person must include "a statement of the reasons supporting that review, including . . . 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 [EAB] should, in its discretion, review." 40 C.F.R. § 124.19(a). The EAB interprets this regulation to require a petition to contain two components for consideration on the merits: "(1) clear identification of the conditions in the permit at issue, and (2) argument that the conditions warrant review." *In re Beckman Production Services*, 5 E.A.D. at 18; *LCP Chemicals – New York* at 664.

In its petition, EDS contests the lack of conditions requiring Sunoco to monitor the integrity of the wells and caverns and to satisfy specific well construction requirements.⁵ While EDS has met the first prong of the sufficiency test by identifying these conditions, it did not include in its petition any argument that addressed why the existing permit conditions or lack of additional conditions warranted review. This will be described more fully below.

⁵Although it is not always clear in reading the public comments and EDS's petition, please note that the Region has assumed for purposes of this response that the arguments raised relate to the Region's permit decision allowing Sunoco to inject fresh water to expand salt caverns. To the extent that EDS's arguments relate to concerns about Sunoco's future storage of LPGs, the Region contends that such storage is not authorized or regulated by the permit at issue in this matter and any arguments related to such storage should be rejected by the Board. As recently as last week, the Board has confirmed that it lacks the authority to adjudicate issues raised by petitioners which are outside the scope of the UIC program and will deny requests to do so. See *In re Environmental Disposal Systems, Inc.*, UIC Appeal Nos. 04-01 & 04-02, slip op. at 18 (September 6, 2005).

a. Well Monitoring

With regard to the well monitoring program, EDS's petition makes a conclusory statement that it was clearly erroneous for the Region not to "include specific requirements for the inspection of casing and tubing and repair and replacement or updating of wellhead equipment in the permit." EDS Petition at 2. Beyond this statement, EDS makes statements that Mechanical Integrity Test (MIT) requirements of the permit are not "adequate to ensure the casing strings and cavern roof are maintaining proper integrity to prevent migration of fluids"⁶ and that it was erroneous for the Region not to incorporate Sunoco's inspection plans as a permit requirement. EDS petition at 2. EDS provides no arguments or rationale in support of these statements. As a result, the Board should deny EDS's Petition for Review of these permit conditions.

b. Cavern Monitoring

With regard to the storage caverns, in its petition, EDS again makes a conclusory statement that the Region was clearly erroneous in failing to include cavern integrity monitoring. EDS states that "cavern roof monitoring in the vicinity of the wells and at least annual mechanical integrity testing should be required." EDS Petition at 2. Again, no rationale is put forth by EDS as to why a lack of such requirements is erroneous. The Board should find that EDS has not met the burden of demonstrating grounds for review on this issue.

c. Construction Requirements

In its petition, EDS states that the Region's decision not to include specific construction

⁶The text of EDS's petition actually states that EDS asserts that the MIT requirements are adequate. The Region assumes this to be an error in typing.

requirements for equipment such as packers and tubing was clearly erroneous. EDS states that it is concerned about corrosion from exposure to saturated brines and that "[a]n industry recognized method of addressing potential corrosion issues is to specify the well construction materials."

EDS Petition at 3. While here EDS has put forth a reason for its conclusion, it is not supported in any way. EDS does not present any documentation of industry practice or industry expert opinion on the potential for corrosion from saturated brines or the appropriate type of construction materials. Again, the Board should find that EDS has not met its burden of showing grounds for review.

2. EDS's Petition Fails to Satisfy the Heavy Burden Placed on Challenges to Permit Conditions Which Are Technical in Nature

In the unlikely event that the Board finds that EDS's petition contains sufficient argument that a permit condition warrants the Board's review, the Region submits that EDS has not met the heavy burden placed on petitioners who challenge permit conditions which are technical in nature.

The permit conditions (or lack thereof) contested by EDS are technical in nature. The need for, type, and frequency of monitoring of wells and caverns and the construction requirements of wells are determinations which require a scientific and/or engineering evaluation of the characteristics of the well. With regard to technical issues of this nature, the EAB has ruled that:

in permit appeals "[t]he Board traditionally assigns a heavy burden to persons seeking review of issues that are quintessentially technical." *In re Ash Grove Cement Co.*, 7 E.A.D. 387, 403 (EAB 1997). When issues raised on appeal challenge a Region's technical judgments, clear error or a reviewable exercise of discretion is not established simply because petitioners document a difference of

opinion or an alternative theory regarding a technical matter.

In re NE Hub Partners, L.P., 7 E.A.D. at 567-568. Moreover, the Board has stated, “[i]n general, *absent compelling circumstances*, the Board will defer to a Region’s determination of issues that depend heavily upon the Region’s technical expertise and experience. *In re Envotech, L.P.*, 6 E.A.D. at 284 (emphasis added).

As described above, for each permit condition challenged in EDS’s petition, EDS puts forth very little to no support for its arguments. EDS merely disagrees with the Region’s determinations on these issues. EDS has not met the heavy burden or presented the compelling circumstances necessary for the Board to examine the Region’s determination on these technical issues.

3. The Region’s Permit Decision is Well Supported

Should the Board decide that EDS has presented sufficient argument that the Board should examine the merits of the Region’s technical decision, the Board should find that the Region’s determination is well supported.

In examining this issue, it is important to note that the Board has repeatedly stated that 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, and in establishing the conditions under which deep well injection is authorized.” *In re Envotech, L.P.*, 6 E.A.D. 260, 264 (EAB 1996) (emphasis in original). See also *In re Hub Partners, L.P.*, 7 E.A.D. 561, 567 (EAB 1998); *In re Brine Disposal Well*, 4 E.A.D. 736 (EAB 1993) (“It has therefore repeatedly been held that parties objecting to a federally issued UIC permit must base their objections on the criteria set forth in the Safe Drinking Water Act and its implementing regulations.”)

Section 1422(c) of the SDWA requires EPA to issue regulations setting forth "minimum requirements for effective programs to prevent underground injection which endangers drinking water sources," to be implemented by EPA in states that are not yet authorized to administer their own UIC programs. 42 U.S.C. § 300h-1(c). EPA has issued regulations designed to protect Underground Sources of Drinking Water (USDW) from contamination from deep well injection. These regulations are set forth at 40 C.F.R. Parts 124, 144, 146, and 147. Recently, the Board confirmed that "its authority to review UIC permit decisions extends to the boundaries of the UIC permitting program itself, with its SDWA-directed focus on the protection of USDWs, and no further." *Environmental Disposal Systems, Inc.*, at 17. The Region contends that the permit issued to Sunoco in this matter protects USDWs from contamination, by setting forth specific construction, operating, monitoring, and reporting requirements which are consistent with the referenced regulations.

The permit specifically prohibits "the movement of fluid containing any contaminant into underground sources of drinking water" Sunoco Permit, Part I, A. Sunoco is restricted to the injection of fresh water by the permit. Permit, Part I, E, 19. The wells must be cased and cemented to prevent the movement of fluids into or between USDWs. Permit, Part II, A, 2. The permit provides for a maximum wellhead pressure so as to assure that pressure during injection does not initiate new fractures or propagate existing fractures in the injection zone, and provides that "[i]n no case shall injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an underground source of drinking water." Permit, Part II, B, 1. The permit requires Sunoco to establish and maintain mechanical integrity of this well in accordance with 40 C.F.R. § 146.8, and to cease injection if a loss of mechanical

integrity occurs or becomes evident during a test or operation. Permit, Part I, E, 18. Sunoco is required to monitor injection pressure, injected volume, produced volume, specific gravity, and the chemical composition of the injected fluid and report to the Region quarterly. Permit, Part III. The permit also requires Sunoco to allow the Region to inspect the wells, copy records, and conduct sampling and monitoring to assure compliance with the permit. Permit, Part I, E, 7.

Region 5 has appropriately reviewed Sunoco's permit application and concluded that the requirements of the SDWA regulations have been met. The comments submitted by EDS and Mr. Bower were considered in this process. Region 5 responded to these comments and concluded that the permit conditions requested by EDS and Mr. Bower to be added to the final permit (and now indicated by EDS as lacking from the final permit) were not necessary to accomplish the objective of the SDWA and the UIC regulations – to protect USDWs from contamination. Each permit condition contested by EDS is explored further below.

a. Well Monitoring

The UIC regulations governing Class III wells specify monitoring requirements at 40 C.F.R. § 146.33(b). The requirements include monitoring of the nature of the injected fluids, injection pressure, flow rate or volume, and fluid level in the injection zone. The requirements also include demonstration of mechanical integrity (pursuant to 40 C.F.R. § 146.8) once every five years during the life of a salt solution mining well. 40 C.F.R. § 146.33(b). As described above, these requirements were included in the draft permit and have been retained in the final permit.

In its comments on the draft permit, EDS indicated concern over the lack of monitoring of the "strata above the injection zone to ensure that LPG has not migrated behind the casing

cement upward." The Region's response to EDS's comments indicated that concerns over well monitoring are sufficiently addressed by the mechanical integrity test (MIT) requirements of the permit. The response indicated that these tests are required initially and every five years thereafter. Part I of the MIT pressure tests the casing and tubing to identify any leaks. Part II of the MIT demonstrates whether there is any fluid movement behind the casing (which could impact USDW). The Region's response to EDS also described inspections which Sunoco will undertake on a 10-year basis and emergency equipment in place to detect abnormal conditions and activate appropriate responses. EDS's petition merely asserts that MIT requirements are not adequate and Sunoco's inspections should be a permit requirement. EDS points to no regulatory requirement or scientific/technical basis for this Class III well to have other well monitoring requirements. The Region considered the issue raised by EDS with regard to well monitoring and appropriately concluded that the MIT requirements of the regulations, as incorporated into Sunoco's permit, adequately protect UDSWs. The Board should conclude that there is no evidence to suggest that the Region's decision on this permit condition was clearly erroneous.

b. Cavern Monitoring

Comments on the draft permit from EDS and Mr. Bower expressed concern over possible caving of the roof of the cavern. The EDS comments inquired as to the measures taken to ensure the integrity of the cavern ceiling. The permit requires that "[c]avern characteristics including pressure shall be monitored at all times and fluid movement controlled to facilitate safe cavern operations" and notes that "[b]rine concentrations and scheduled sonar tests will determine the actual cavern growth rate and volume." Permit, Part III, Attachment D. Also, the MIT requirements are in place to assure that fluids are not migrating outside the caverns and are the

appropriate regulatory requirements for detecting fluid movement. Part II of the MIT would detect any fluid leaking from the cavern. Moreover, the geology indicates that upward movement of brine or LPG toward the USDW would be very unlikely due to a distance of approximately 1000 feet, including 60 feet of shale, between the cavern and the USDW. See Attachment F to Sunoco's Permit Application. Although the Region considered the comments raised during the public comment period, the Region's position is that the MIT and the cavern monitoring of Attachment D are sufficient to protect USDWs from contamination given the physical separation between the cavern and the USDW. The Board should find that the Region's decision not to require additional cavern monitoring is supported by the record, and that EDS has not demonstrated that such decision was clearly erroneous.

c. Construction Requirements

In its petition, EDS asserts that the Region's decision not to include construction requirements for equipment such as packers and tubing was clearly erroneous. Neither Mr. Bower, nor EDS, made reference to construction requirements, or packers or tubing, in their comments filed during the public comment period. Both EDS and Mr. Bower only raised general concerns over corrosion. The EDS petition improperly converts those concerns into a basis for its petition by stating that an industry recognized method of addressing corrosion issues is to specify well construction materials. One of the requirements of 40 C.F.R. § 124.19(a), for a sufficient petition for review, is that the petitioner must demonstrate "that any issues being raised were raised during the public comment period" 40 C.F.R. § 124.19(a). The Region contends that this issue was not raised during the public comment period and should not be considered by the Board.

Still, EDS's concerns about the specification of well construction materials are addressed by the fact that the Sunoco wells in question are already constructed. The UIC permit in this matter allows for cavern expansion through existing wells. The Region has reviewed the technical specifications for the wells and is familiar with the construction of the wells, including the casing and cement. Based upon its knowledge of the well construction and the reassurance of well integrity provided by the MIT requirements referenced above, the Region concluded that corrosion of the well casing is not of concern and further specification of construction materials is not necessary to address concerns over corrosion.⁷ Furthermore, a Class III well typically does not have packers, since fluids are injected and removed from the same well. Therefore, the general construction requirements of Part II of the permit (and its internal reference to the construction details of the permit application) are appropriate for this well. Should the Board conclude that this issue of construction materials was raised during the public comment period, the Board should find that EDS has not demonstrated that the Region's decision regarding construction requirements was clearly erroneous.

V. CONCLUSION


Appeal Number UIC 05-01 fails to (1) make a showing that there was significant public interest in the draft permit such that the Board should remand this matter for the Region to hold a

⁷Please note that in its response to comments on the issue of the possibility of corrosion, the Region believed the comment to be concerned with potential corrosion during storage of LPGs rather than during the fresh water injection activities covered by the permit and focused its response on the conditions during storage operations. As noted in Footnote 5, if EDS's concern is related to corrosion potential during LPG storage (which is not covered by the permit in question), the Board should not hear such concerns.

public hearing and (2) present a finding of fact or conclusion of law which is clearly erroneous, or an exercise of discretion or an important policy consideration which the EAB should, in its discretion, review. Region 5 therefore respectfully requests that the Board deny the petition for review.

Respectfully submitted:

Dated: September 14, 2005


Mony Chabria
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Response to Petition for Administrative Review was sent on this 14th day of September, 2005 in the following manner to the below addressees:

By Federal Express:


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Clerk of the Board, Environmental Appeals Board
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Washington, D.C. 20005

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