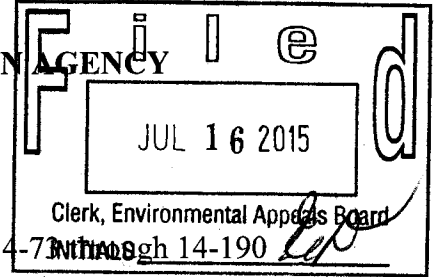


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____)
In re:)
)
Windfall Oil & Gas, Inc.)
)
)
UIC Permit No. PAS2D020BCLE)
_____)

UIC Appeal Nos. 14-73 through 14-190

ORDER DENYING MOTIONS FOR RECONSIDERATION

Before the Environmental Appeals Board (“Board”) are two motions seeking reconsideration of the Board’s June 12, 2015 Order Denying Petitions for Review entered in the above-captioned matter. *See In re Windfall Oil & Gas, Inc.*, UIC Appeal Nos. 14-73 through 14-190 (EAB June 12, 2015) (“EAB June 12 Order”). Richard L. Atkinson and Marianne Atkinson filed these motions on June 25, 2015. U.S. EPA Region 3 (“Region”) filed a response opposing both motions on June 30, 2015. For the following reasons, the Board denies each of the motions for reconsideration.

A motion for reconsideration “must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors.” 40 C.F.R. § 124.19(m). Reconsideration generally is reserved for cases in which the Board is shown to have made a demonstrable error, such as a mistake of law or fact. *In re Knauf Fiber Glass, GmbH*, PSD Appeal Nos. 98-3 through 98-20, at 2-3 (EAB Feb. 4, 1999) (Order on Motions for Reconsideration); *In re Ariz. Mun. Storm Water NPDES Permits*, NPDES Appeal No. 97-3, at 2 (EAB Aug. 17, 1998) (Order Denying Motion for Reconsideration). The reconsideration process “should not be regarded as an opportunity to reargue the case in a more convincing fashion.” *In*

re S. Timber Prods., Inc., 3 E.A.D. 880, 889 (JO 1992), *quoted in In re Knauf Fiber Glass, GmbH*, PSD Appeal Nos. 99-8 through 99-72, at 2 (EAB Feb. 10, 2000) (Order Denying Motions for Reconsideration); *see also In re Town of Ashland Wastewater Treatment Plant*, NPDES Appeal No. 00-15, at 2 (EAB Apr. 9, 2001) (Order Denying Motion for Reconsideration) (citing *Knauf*, at 2 (Feb. 10, 2000)). Federal courts employ a similar standard. *See, e.g., Publishers Res., Inc. v. Walker-Davis Publ'ns, Inc.*, 762 F.2d 557, 561 (7th Cir. 1985) (“Motions for Reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence. Such motions cannot in any case be employed as a vehicle to introduce new evidence that could have been adduced during the pendency of the [original] motion. * * * Nor should a motion for reconsideration serve as the occasion to tender new legal theories for the first time.”) (citation omitted); *Ahmed v. Ashcroft*, 388 F.3d 247, 249 (7th Cir. 2004).

Richard L. Atkinson Motion

In his original petition before the Board, Mr. Atkinson expressed concern regarding the alleged over-pressurization of the annulus of the long string casing and the “serious consequences” that could result. *See* Petition for Review, UIC Appeal No. 14-188, at 3. Because Mr. Atkinson did not raise this issue during the comment period on the draft permit, however, this issue was not preserved for review with the Board. *See* 40 C.F.R. § 124.19(a)(4)(ii) (“Petitioners must demonstrate, by providing specific citation to the administrative record, including the document name and page number, that each issue being raised was raised during the public comment period * * *.”). The Board therefore denied review. *See* EAB June 12 Order at 55 n.42. The Board stated further, as follows:

Moreover, the Permit contains casing and cementing requirements designed to prevent the movement of fluids into or between underground sources of drinking water. *See* Permit pt. III.A.2 (Casing and Cementing). In addition, the Permit prohibits injection until the permittee demonstrates that the well has mechanical integrity. *See* Permit pt. III.A.4 (Mechanical Integrity). Finally, the Permit includes provisions to prevent over-pressurization and protect USDWs.

Id. In his motion for reconsideration, Mr. Atkinson concedes that the issue was not raised during the public comment period but argues that the Board should nevertheless reconsider its decision denying review. *See* [Richard L. Atkinson] Motion for Reconsideration of EAB Order Denying Petitions for Review at 1 (June 23, 2015). In support of his motion, Mr. Atkinson reiterates his assertion that the permit should include provisions to avoid over-pressurization. This assertion is insufficient to overcome the regulatory requirement in 40 C.F.R. Part 124 that issues must be preserved for review in order to be considered by the Board. Mr. Atkinson also raises a new argument that the permit should require the use of drilling mud in the annulus and a drilling mud pressure gauge to ensure that over-pressurization does not occur. *Id.* Because this latter argument was not raised either in his comments or in the petition for review, however, it too is not appropriate for consideration now. Reconsideration is not an opportunity to reargue a case in a more convincing fashion or to present new arguments or evidence that could have been presented earlier. *See In re Env'tl. Disposal Sys. Inc.*, UIC Appeal No. 07-01 (EAB July 27, 2007) (Order Denying Motions for Leave and for Reconsideration). Because Mr. Atkinson has not identified any demonstrable error in the Board's decision on his petition, the Board denies his motion for reconsideration.

Marianne Atkinson Motion

In her petition for review (UIC Appeal No. 14-187), Ms. Atkinson expressed concerns about the injection of additives such as corrosion inhibitors in addition to the injection fluids listed in the permit. *See* EAB June 12 Order at 54. The additives are listed in the permit application. *Id.* at 54-55. In responding to public comments on this issue, the Region stated that “the additives are not added to the [injection] fluid for purposes of disposal but rather to prevent corrosion in the injection well, and are often also used in production wells. The proper operation and maintenance of a Class II well can require use of such additives.” Response to Comments for the Issuance of a [Underground Injection Control (“UIC”)] Permit for Windfall Oil and Gas, Inc. at 19 (Administrative Record 46). As the Board stated, the corrosion inhibitors, referred to as “Alpha 2278” and “Alpha 3207”, are listed in Attachment “O” to the Permit application. EAB June 12th Order at 54-55. Because Petitioners failed to substantively confront the Region’s response to comments on this issue or demonstrate that the Region clearly erred or abused its discretion, the Board denied review. *Id.* at 55.

In her motion for reconsideration, Ms. Atkinson again raises concern about the alleged underground injection of corrosion inhibitors. *See* [Marianne Atkinson] Motion for Reconsideration of EAB Order Denying Petitions for Review at 1 (June 23, 2015). In addition, the motion expresses concern that Windfall could decide to use additional additives that could endanger underground sources of drinking water (“USDW”s). *Id.* at 1-2. Ms. Atkinson, however, does not establish any factual or legal error by the Board in denying review on this issue. Accordingly, there is no basis for reconsideration in this matter. Moreover, as the Board stated in its June 12th Order, the Region appropriately recognized concerns with respect to drinking water safety and explained in detail its conclusions that the permit will protect USDWs

in accordance with the requirements of the federal UIC regulations. This satisfies the Region's obligations under the law. See EAB June 12 Order at 36. Further, the permit sets forth detailed construction and operating requirements, as provided in the applicable UIC regulations, designed to achieve the overarching purpose of the Safe Drinking Water Act and the UIC regulations: to protect USDWs. *Id.* at 36-37. Nothing in the motion for reconsideration indicates that the Board erred in this determination.

For the reasons stated above, none of the arguments raised by Mr. Atkinson or Ms. Atkinson establish any error by the Board in denying review of the petitions. Accordingly, the Board denies the motions for reconsideration.

So ordered.¹

Dated: *July 16, 2015*

ENVIRONMENTAL APPEALS BOARD

By: *Leslye M. Fraser*

Leslye M. Fraser
Environmental Appeals Judge

¹ The panel deciding this matter is comprised of Environmental Appeals Judges Leslye M. Fraser and Kathie A. Stein.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Motions for Reconsideration in the matter of Windfall Oil & Gas, Inc., UIC Appeal Nos. 14-73 through 14-190, were sent to the following persons in the manner indicated.

By First Class U.S. Mail:

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

Daniel J. Crytser
Cindy J. Crytser
1382 Highland Street Ext.
DuBois, PA 15801
(814) 591-7764

Ted Crytser
Rona Crytser
1500 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-5335

Norma Gregorio
1925 E. Main Street
Brockway, PA 15824

Bernard Pifer
2489 Pike Road
Punxsutawney, PA 15767
Telephone: (814) 427-2532

Ruth A. Reitz
1079 Skarbek Road
Punxsutawney, PA 15767
Telephone: (814) 427-4034

Rodney Pifer, Jr.
Rock Dump Road
Reynoldsville, PA 15851
Telephone: (814) 427-4044

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

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

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

Randell T. Powers
1235 Highland Street Ext.
DuBois, PA 15801

Kim Norris
186 Baker Road
DuBois, PA 15801

Kathy Champion
12735 Route 66, Apt. 1
Clarion, PA 16214

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

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

Laurie Wayne
5498A Wayne Road
DuBois, PA 15801

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

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

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

Vivian Marshall
St. Michaels Terrace
111 W. Long Ave. Apt. 5E
DuBois, PA 15801

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

Dawn Smith
9826 Tyler Road
Penfield, PA 15849
Telephone: (814) 913-1525

Robert Wells
Pauline Wells
1640 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-7685

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

Timothy H. Turner
Susan G. Turner
52 Sunset Drive
DuBois, PA 15801
Telephone: (814) 371-2310

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

Terrence Nasoni
Susan Nasoni
567 Hungry Hollow Road
DuBois, PA 15801

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

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

Rob Stewart
Edye Stewart
115 Robin Lane
DuBois, PA 15801
Telephone: (814) 591-0615

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

Terry Lawson
Carole Lawson
1042 Highland Street Ext.
DuBois, PA 15801

Loretta Slattery
1079 Highland Street Ext.
DuBois, PA 15801

Darryl Beatty
3447 Shamokin Trail
Luthersburg, PA 15848
Telephone: (814) 583-7346

Judy Chewning
1707 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 590-4433

Francis E. Hand
894 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 590-6044

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

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

Albert Marsh
Barbara A. Marsh
1583 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-5461

Shirley Wells
1625 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-5372

Harry Peoples
Brenda Peoples
382 Highland Street Ext.
DuBois, PA 15801
Telephone:
(814) 371-3539 (HP)
(814) 375-0951 (BP)

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

John Parsons
111 W. Long Ave. Apt. 2K
DuBois, PA 15801

Kenneth R. Flanders
128 #2 Shaft Road
DuBois, PA 15801
Telephone: (814) 371-8290

Sean Zimmerman
Emily Zimmerman
1317 Highland Street Ext.
DuBois, PA 15801
Telephone:
(814) 590-4941 (SZ)
(609) 276-6886 (EZ)

Monica Lockhart
David M. Kovall
1298 Highland Street Ext.
DuBois, PA 15801
Telephone:
(814) 553-5529 (ML)
(814) 553-1856 (DK)

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

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

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

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

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

Donald W. Krach
Delores Krach
1806 Carson Hill Road
DuBois, PA 15801
Telephone: (814) 583-5571

Tim Bodt
Grace Bergin
216 E. Scribner Avenue
DuBois, PA 15801
Telephone: (814) 371-2392

Justin Kaufman
Deborah Stolfer
10 South Avenue
DuBois, PA 15801
Telephone:
(814) 771-3110 (JK)

Tia Carpenter
240 Maple Avenue
DuBois, PA 15801
Telephone: (814) 590-3812

Kari Armagost
424 S. Church Street
DuBois, PA 15801
Telephone: (814) 503-8588

Michael Stockdale
Lacey Stockdale
4733 Route 310
Reynoldsville, PA 15851
Telephone: (814) 590-7098

Craig Carpin
315 N. 6th Street
Reynoldsville, PA 15851
Telephone: (814) 653-2915

Rhonda Charles
Dennis J. Charles
830 Thunderbird Road
DuBois, PA 15801
Telephone: (814) 375-5849

Kenneth Doverspike
70 Barr Road
DuBois, PA 15801
Telephone: (814) 583-5766

Courtney Thompson
426 Pine Street
Curwensville, PA 16833
Telephone: (814) 553-2089

John M. Glabicki
551 North Street
Rockton, PA 15856
Telephone: (814) 583-5084

Mechele Foust
431 Treasure Lake
DuBois, PA 15801
Telephone: (814) 375-9777

Nicole Ludwig
1394 Treasure Lake
DuBois, PA 15801
Telephone: (724) 424-7541

Lynn Love
202 E. Park Avenue
DuBois, PA 15801
Telephone: (814) 375-5819

Joyce Braun
4196 Hormtown Road
Reynoldsville, PA 15851
Telephone: (814) 653-2593

James Sykes
1233 Treasure Lake
DuBois, PA 15801
Telephone: (434) 409-4485

Patty Thomas
559 Greenwood Cemetery
Road
DuBois, PA 15801
Telephone: (814) 375-5335

Julie Craig
Matt Craig
2771 Home Camp Road
Rockton, PA 15856
Telephone: (814) 481-1027

Michelene Schwabenbauer
835 Pleasant Street
Reynoldsville, PA 15851
Telephone: (814) 653-8090

R.G. Ziegler
1314 McCullough Avenue
Brockway, PA 15824
Telephone: (814) 590-2941

Wanda Lockwood
3745 W. Liberty Road
DuBois, PA 15801
Telephone: (814) 371-0294

Donna Work
309 E. Maloney Road
DuBois, PA 15801
Telephone: (814) 371-1437

William Voris
915 E. Mahoning Street
Punxsutawney, PA 15767
Telephone: (814) 952-8020

Steven Cory Clark
23 Hand Street
DuBois, PA 15801
Telephone: (814) 592-8517

Jennifer Hicks
8 Prospect Avenue
DuBois, PA 15801
Telephone: (814) 590-2864

Amanda Torrell
124 Hill Street
Sykesville, PA 15865
Telephone: (814) 591-5715

John Geneviro
Bonnie Geneviro
2195 Clay Plant Road
Brockway, PA 15825
Telephone: (814) 265-1244

Donna J. Boring
17 Carson Avenue
DuBois, PA 15801
Telephone: (814) 371-5160

Gale Wells
159 Potter Lane
DuBois, PA 15801
Telephone: (814) 583-5739

Kerri Bojalad
61 Pacific Avenue
DuBois, PA 15801
Telephone: (814) 591-9172

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

Peter L. Erickson
Dawn Erickson
59 Robin Lane
DuBois, PA 15801
Telephone:
(814) 771-4408 (PE)
(814) 583-7737 (DE)

Jonell Reay
P.O. Box 98
DuBois, PA 15801

Margaret Cyphert
141 Sher De Lin Road
DuBois, PA 15801

Brady LaBorde
Patricia LaBorde
45 Piney Lane
DuBois, PA 15801-8943
Telephone: (814) 371-6316

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

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

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

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

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

John M. Barr
1268 Tower Lane
DuBois, PA 15801
Telephone: (814) 583-5049

Tabitha Smith
8945 Route 28
Mayport, PA 16240
Telephone: (814) 591-2990

John E. Phillips
510 Wood Street
DuBois, PA 15801
Telephone: (814) 371-6706

Doug Heberling
Debbie Heberling
771 Behringer Hwy.
DuBois, PA 15801
Telephone: (814) 583-7658

Lesha Martinez
1728 Highland Street Ext.
DuBois, PA 15801
Telephone: (814) 583-5170

Wilson Fisher, Jr.
36 N. 2nd Street
Clearfield, PA 16830
Telephone: (814) 765-7541

Windfall Oil & Gas, Inc.
377 Aviation Way
Reynoldsville, PA 15851
Telephone: (814) 771-9686

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

Clearfield County
Commissioners
212 E. Locust Street
Clearfield, PA 16830
Telephone: (814) 765-2642
ext. 3001


By First Class Mail, Return Receipt Requested:

Marianne Atkinson
Richard Atkinson
221 Deer Lane
DuBois, PA 15801
Telephone: (814) 583-7926

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: JUL 16 2015

By: 
Annette Duncan
Secretary