

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

In the Matter of:)	
)	
Bear Lake Properties, LLC)	
)	
)	
William A. Peiffer, Jr.,)	
)	Permit Appeal: UIC 11-03
Petitioner)	
and)	
)	
Paul T. Stroup,)	
)	
Petitioner)	
)	
UIC Permits Nos. PAS2D15BWAR)	
and PAS2D16BWAR)	

REGION III'S RESPONSE TO PETITION FOR REVIEW

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INTRODUCTION

The United States Environmental Protection Agency, Region III (Region) hereby responds to the Petition for Review filed by Mr. William A. Peiffer, Jr. and Mr. Paul T. Stroup (Petitioners). Petitioners seek review pursuant to 40 C.F.R. § 124.19 of two permits issued by the Region to Bear Lake Properties, LLC (Bear Lake), under the Underground Injection Control (UIC) Program, pursuant to Part C of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h *et seq.* Attached to this response is a certified index of the administrative record for the challenged permit decisions, as well as several other exhibits, consisting of copies of certain portions of the record.

For the reasons set forth below, the Petitioners have failed to meet the burden to obtain review by the Board, and therefore their petition should be denied.

STATUTORY AND REGULATORY FRAMEWORK

Congress enacted the SDWA in 1974 to ensure that the Nation's sources of drinking water are protected against contamination and "to prevent underground injection which endangers drinking water sources." 42 U.S.C. § 300h(b). Part C of the SDWA, 42 U.S.C. §§ 300h to 300h-8, is designed to protect underground sources of drinking water from contamination caused by underground injection of fluids. Among other things, the SDWA directed EPA to promulgate permit regulations containing minimum requirements for State UIC programs. 42 U.S.C. § 300(h). In states without an approved UIC program, EPA directly implements the UIC regulations and issues permits. The Commonwealth of Pennsylvania has not received approval to implement the UIC Program of the SDWA. Therefore the Region is the permitting authority for underground injection in Pennsylvania. See 40 C.F.R. §§ 147.1951 – 147.1955.

EPA's regulations implementing the UIC program are contained in 40 C.F.R. Parts 144-148. Part 144 establishes the regulatory framework, including permitting requirements, for EPA-administered UIC programs. Part 146 sets out technical criteria and standards that must be met in permits. Certain procedural requirements applicable to UIC permits are also found in 40 C.F.R. Part 124. In addition, certain state-specific requirements applicable in Pennsylvania are set forth in 40 C.F.R. §§ 147.1951 – 147.1955.

The UIC regulations classify injection wells as Class I, II, III, IV, or V. See 40 C.F.R. §§ 144.6, 146.5. The permits in this appeal are for Class II wells, which are defined as

[w]ells which inject fluids: (1) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection; (2) For enhanced recovery of oil or natural gas; and (3) For storage of hydrocarbons which are liquid at standard temperature and pressure.

40 C.F.R. § 144.6(b).

STANDARD OF REVIEW

The Board must decline review of a UIC permit decision unless it finds that a permit condition was based on a clearly erroneous finding of fact or conclusion of law, or involved an important matter of policy or discretion that warrants review. 40 C.F.R. § 124.19; see In re Beeland Group, LLC, UIC Appeal Nos. 08-01, 08-02, & 08-03 (EAB Oct. 3, 2008), slip op. at 9-10, 14 E.A.D. _____. The discretion of the Board to review permit decisions should be exercised sparingly. See In re Beeland Group, UIC Appeal Nos. 08-01 et al, slip op. at 10, quoting the Consolidated Permit Regulations, preamble to 40 C.F.R. § 124.19, 45 Fed. Reg. 33,290, 33,412.

Petitioners have the burden of demonstrating that the issues raised in the petition warrant review. See In re Beeland Group, UIC Appeal No. 08-01 et al, slip op. at 10; In re Envtl. Disposal Sys., inc., 12 E.A.D. 254, 264 (EAB 2005). A petitioner does not satisfy this burden

merely by relying on previous comments or statements. Instead, the petitioner must demonstrate why the Region's response to particular comments or objections is clearly erroneous or warrants review. See In re Beeland Group, UIC Appeal No. 08-01 et al, slip op. at 10; In re Env'tl. Disposal Sys., Inc., 12 E.A.D. at 264; In re Sunoco Partners Marketing & Terminals, LP, UIC Appeal No. 05-01 (EAB June 1, 2006) (Order Denying Review in Part and Remanding in Part) at 9. In addition, the Board generally defers to the permitting agencies on the review of technical issues. See, e.g., In re Beeland Group, UIC Appeal No. 08-01 et al, slip op. at 14; In re Sunoco Partners, UIC Appeal No. 05-01 (EAB June 1, 2006) at 9. Finally, the Board's authority to review a UIC permit does not extend beyond the goals of the UIC program to protect underground sources of drinking water (USDWs). See In re Env'tl. Disposal Sys., Inc., 12 E.A.D. at 266; see also In re Sunoco Partners, UIC Appeal No. 05-01 (EAB June 1, 2006) at 10; In re Envotech, L.P., 6 E.A.D. 260, 286 (EAB 1996) ("[T]he 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.") (emphasis in the original).

FACTUAL AND PROCEDURAL BACKGROUND

On October 29, 2010, Bear Lake applied for two Class II brine disposal permits for the construction and operation of the wells known as Bittering #1 and Bittering #4, both in Columbus Township, Warren County, Pennsylvania. The two wells are existing gas wells that Bear Lake wants to modify to operate as injection wells for disposal of brine from gas and oil production. The applications for these permits included information on each well's construction, the geologic conditions surrounding the site, including shallow ground water information, how each well would be operated and monitored, and information on both shallow drinking water wells and gas production wells that exist in the area surrounding the Bittering wells. The

applications also included a zone of endangering influence calculation based on the geological conditions at the site and the proposed operating conditions for the injection wells, as described in 40 C.F.R. § 144.6(a). The zone of endangering influence calculation determines whether there is the potential for injected fluid to migrate out of the injection zone through abandoned wells, faults or fractures into USDWs.¹ The calculation indicated that fluid migration would not occur into USDWs. See Exhs. 2 and 3, Section 1.

Following receipt of the Bear Lake's applications, the Region conducted a review of the applications. As part of this review, the Region evaluated the geology of the injection and confining zones, evaluated the area of review/zone of endangering influence calculation, determined whether well construction was acceptable, determined whether the proposed operation and monitoring of the wells were acceptable, and verified that that the plugging and abandonment plan and financial responsibility that were submitted were adequate to protect USDWs from endangerment.

Based on that review, the Region developed draft permits, and a statement of basis for each permit. Consistent with the requirements of 40 CFR § 124.10, the Region provided public notice on January 21, 2011, in the Warren Times Observer that it was accepting public comment on the draft permits, and that it intended to hold a public hearing on February 23, 2011. Exh. 7. The Region also sent the public notice to homeowners who lived within one-quarter mile of the proposed facilities as well as to state and federal agencies that might have had interest in the proposed projects. See Exhs. 2 and 3 App. B, and Exh. 10. Copies of the permit applications as

¹ An USDW is defined as an aquifer or its portion which contains less than 10,000 milligrams per liter of total dissolved solids and which is being or can be used as a source of drinking water. 40 C.F.R. § 144.3. This definition is meant to protect potential sources of underground drinking water, even if such water is not currently being consumed and would required desalination before use. Compare with the secondary maximum contaminant level for total dissolved solids recommend for public water systems under the SDWA, which is 500 mg/l. See 40 C.F.R. § 143.3.

well as the statement of basis for each permit and the public notice were sent to the Warren County Public Library for public review. In addition the notice was posted on January 21, 2011 in the Region's public notices internet site.

When the Region had to postpone the February 23 hearing, the Region published a second public notice on March 4, 2011, in the Warren Times Observer for a new hearing scheduled for March 23, 2011, at the Columbus Township Social Hall in Warren County, Pa.. Exh. 8. The notice also indicated that the public comment period had been extended to March 23. A notice containing the same information was also posted on the Region's internet site.

The Region received over 350 written comments on the draft permits. In addition, approximately 200 people attended the March 23 hearing. Twenty people provided oral testimony at the hearing.

Subsequent to the public hearing, EPA requested that Bear Lake conduct another survey of the drinking water wells and gas production wells located near the proposed injection well facilities. Exh. 11. This request was based on oral testimony that EPA received at the public hearing which indicated that the public did not believe that all drinking water wells and gas production wells had been adequately documented. Bear Lake conducted this survey and submitted the information to EPA. This information was included as part of the administrative record.

On June 8, 2011, EPA issued final permits to Bear Lake for two UIC Class II wells: one for Bittinger #1 and the other for Bittinger #4. Exhs. 4 and 5. EPA also issued a Responsiveness Summary to Public Comment. Exh. 6. The Responsiveness Summary and Notice of Final Permit were either mailed or emailed to all who provided comments and to state officials. The Responsiveness Summary included information on permit appeal procedures.

In reaching these permit decisions, the Region's technical evaluation determined that the lowermost USDW at the location of the two wells is about 300 feet below surface level. The Region determined that about 3,900 or more feet separate the injection zone from the lowermost USDW for both injection wells. A confining zone approximately 500 feet thick, located immediately above the injection zone, will help to contain the injected fluid within the injection zone. Exhs. 4 and 5 – Statements of Basis. Consistent with the UIC regulations, the permits include conditions developed to prevent the movement of fluids into USDWs and to make sure that if a problem does develop with the wells, that EPA is promptly notified. The wells are to be constructed with surface casing cemented to the surface, tubing and packer to a depth of 402 feet for the Bittering # 1 and 506 feet for the Bittering #4, plus cemented long string casing and tubing and packer. Exhs. 4 and 5 – Permits; see also Exh. 2 and 3 –Section 7 Well Construction. The permits also include injection volume and pressure limits, as well as monitoring requirements, to assure the proper operation of each well. The maximum injection pressures were calculated to prevent fracturing of the injection zone during operation. Prior to commencing injection into these wells, the permits require that EPA inspect and mechanically test each well to ensure that they will not leak during operation. Once the injection begins, continuous monitoring of the injection pressure, annular pressure and injection volume is required. Exhs. 4 and 5 – Permits.

RESPONSE TO PETITION FOR REVIEW

The Region acknowledges that the Petitioners satisfy the standing requirements to petition the Board for review of the Bear Lake permit decisions. Any person who filed comments on the draft UIC permits within the public comment period or participated in the public hearing regarding the permits may petition the Board to review any condition of the

permit decision. 40 C.F.R § 124.19. Mr. Stroup participated in the March 23 hearing. Mr. Peiffer submitted written comments by email on March 30, 2011.

The Petition, however, does not establish that review of the permit decision is warranted. None of the arguments presented by the Petitioners describe either a permit condition based on a finding of fact or conclusion of law that is clearly erroneous, or identify a statement of policy or exercise of discretion made in this permit decision that the Board should exercise its discretion to review.

1. The permit conditions protect the USDWs, including existing water wells in Columbus Township.

The first argument Petitioners raise is that Bear Lake's permit applications did not identify all the water wells within Columbus Township. This argument alleges a deficiency in the permit applications, but Petitioners do not identify any deficiency with any particular permit conditions imposed by the Region. To warrant review, the petition must go beyond the information submitted in support of the applications to address actual permit conditions. Because Petitioners fail to do so as to this argument, the petition for review on this basis should be denied.

UIC regulations require that the permit application identify water wells located within one mile of the facility boundary. See 40 C.F.R. § 144.31(e) (7). The applicant is not required to submit information on all the water wells within the municipality where the injection well is to be located, based solely on political location without regard to the geographical relation to the injection site.

Bear Lake submitted information regarding the water wells located within one-quarter

mile and one mile around the facilities, both within Pennsylvania and New York.² Exhs. 2 and 3 Apps. A. Bear Lake also submitted more information on other water wells in Columbus Township. Exhs. 2 and 3 Apps. A. Because the identification of water wells was an issue raised during the public comment period, EPA asked Bear Lake to conduct another public record survey, to assure that wells within the one-mile boundary were identified. Bear Lake submitted revised information as a result of that second survey. Exh. 11.

The reason the UIC permit application requires the identification of water wells within one mile of the facility is to evaluate whether the injection operation could pose a risk to the drinking water wells. The permit application review also requires geologic confinement and area of review evaluations to ensure that there are no avenues for fluid migration, such as abandoned wells, faults or fractures, that would allow injected fluid to migrate into underground sources of drinking water.

According to Petitioners, the deepest drinking water well in the area was found to be drilled to a depth of approximately 250 feet. The Region identified the lowermost USDW to be at a depth of 300 feet, deeper than any existing water wells. Exhs. 4 and 5 - Statements of Basis. The injection zone, the Medina Formation, is at a depth of approximately 4200 feet and is therefore at a depth of 3900 feet below the lowermost USDW. Exhs. 4 and 5 - Statements of Basis. There is also a confining unit above the injection zone with a thickness of approximately 520 feet. In addition, an evaluation of the area of review did not reveal any abandoned wells, faults or fractures that would allow fluid to migrate out of the injection zone into USDWs.

Based on this information, the Bear Lake permits impose construction and operation conditions designed to protect the lowermost USDW from endangerment. Because the permit conditions are based on the lowermost USDW, which is deeper than any of the nearby water

² Although located in Pennsylvania the wells are close to the border with New York State.

wells, the permits are protective of the drinking water wells that exist within one mile of the facility, as well as those that exist within Columbus Township. Because the Petitioners fail to identify a permit condition which is based on erroneous facts, the Board should deny review.

2. The permit conditions protect the USDWs from endangerment, including any ground water wells within one mile of the injection facilities.

Petitioners' second argument is also an alleged deficiency in the permit application, that Bear Lake missed one water well close to the Bittinger #1 well when it identified the water wells within one mile of the injection facilities. As in the previous argument, Petitioners do not identify any deficiencies in any particular permit conditions imposed by the Region. To warrant review, the petition must go beyond the information submitted in support of the application to address actual permit conditions. Because Petitioners fail to do so as to this argument, the petition for review on this basis should be denied.

As explained above, the permits included construction and operation conditions that protect the lowermost USDW, which is deeper than any of the water wells identified by Bear Lake or the Petitioners. Because the permit conditions are based on the lowermost USDW, they are protective of any water wells that are located within one mile of the facilities. Even if the exhibits attached to the Petition (none which were submitted to the Region during the public comment period, and thus cannot be part of the permit administrative record, see, e.g. In re Dominion Energy Brayton, LLC, 12 E.A.D. 490, 518 (EAB 2006) (“[D]ocuments submitted subsequent to permit issuance cannot be considered part of the administrative record.”); In re City of Caldwell, NPDES Appeal No. 09-11 (EAB Feb. 1, 2011) (Order Denying Review) at 16), were to include a well that was missed in the survey conducted by Bear Lake, the conditions of

the permits are designed to protect all the nearby water wells. Because the Petitioners fail to identify a permit condition which is based on erroneous facts, the Board should deny review.

3. Permit conditions protect the ground water wells, at minimum, to the depth of the lowest USDW.

Petitioners' third argument, that the permit applicant did not properly identify the depth of the water wells in Columbus Township, again identifies an alleged deficiency in the permit applications, without identifying a faulty permit condition imposed by the Region. Because Petitioners fail to identify a permit condition based on an erroneous factual finding, the petition for review on this basis should be denied.

According to the Petition, the deepest water wells in Columbus Township reach 250 feet below the surface. As has been described above, the permit conditions are designed to protect the lowermost USDW that has been identified in this area, which is at 300 feet below the surface. UIC regulations require that surface casing be placed to at least 50 feet below the base of the lowermost USDW. See 40 C.F.R §147.1955(b)(1)(i). The permits require surface casing for the Bittinger #1 well down to 401 feet and for the Bittinger #4 well down to 506 feet. These conditions exceed the minimum requirements set by regulation. In contrast to these depths, the injection zone for these wells is at a depth of over 4000 feet. Therefore, the permit conditions regarding the construction of the Bittinger wells are protective of all the USDW in the area of review, including the deepest wells identified by the Petitioners.

Other permit conditions mentioned by the Petitioners, such as monitoring or mechanical integrity testing, are not dependent on the depth of water wells in the area of review. Mechanical integrity tests are pressure tests for ensuring that the casing, tubing and packer of the injection well will not leak and that fluid movement will not take place outside the wellbore. Monitoring

requirements will ensure that injected fluids remain within the injection zone. For these reasons, the Petitioners have not identified any permit conditions that should be subject to review.

4. There are no abandoned or improperly plugged wells within the zone of endangering influence of the Bittering wells, which is a one-fourth (1/4) mile radius.

In the fourth issue raised in the Petition, Petitioners argue that the Board should review the permits because Bear Lake did not properly identify all gas wells within the zone of endangering influence. Petitioners, however, misconstrue the application of the zone of endangering influence, which focuses on identifying abandoned or improperly plugged wells where corrective action is necessary, not active gas wells. Again the Petitioners raise an alleged deficiency in the permit applications, that Bear Lake incorrectly states that all active gas wells in the zone of endangering influence belong to Bear Lake, without identifying a faulty permit condition that fails the requirements of the SDWA.

UIC regulations require the determination of an area of review for each well to be permitted. See 40 C.F.R. §146.6. The area of review is either a predetermined radius of one-fourth (1/4) mile or a zone of endangering influence calculated as mandated in the regulation. Id. A permit applicant must identify all known wells within this area and take corrective action to address any improperly abandoned or improperly plugged wells within the area of review that penetrate the injection zone and could serve as a conduit for fluid migration. See 40 C.F.R. §144.55. The applicant must plug any such abandoned wells. Id.

For the Bittering wells permit applications, Bear Lake calculated a zone of endangering influence, which resulted in a one-fourth (1/4) mile radius. Exhs. 4 and 5 – Section 1 Area of Review. The Region reviewed and confirmed the zone of endangering influence calculation. Bear Lake Properties did not identify any abandoned wells within this zone. Exhs. 2 and 3 –

Section 2. After the public raised concerns about abandoned wells during the public hearing, Bear Lake conducted another survey and submitted additional information on nearby ground water and oil and gas wells, but did not identify other abandoned wells within the zone of endangering influence. Exh. 11. The fact that Bear Lake submitted information on other wells beyond the zone of endangering influence does not modify the zone of endangering influence calculation of one-fourth mile, which the Petitioners inexplicably and erroneously state in the Petition as being 2 miles. Furthermore, the existence of other nearby active gas production wells outside the zone of endangering influence has no bearing on the permit conditions. The purpose of the application of the zone of endangering influence is to identify abandoned wells that require remediation; it does not focus on active production wells.

Because Petitioners have identified neither an erroneous factual finding nor a permit condition based on such finding, the Board should deny review based on this issue.

5. The Region lacks authority to reject the Bear Lake permit applications based on the population growth of Columbus Township.

Petitioners argue that the Region should have taken into account the rapid population growth of Columbus Township, and that failure to do so is an exercise in discretion that warrants Board review. However, to do so would have been contrary to the authority granted under the SDWA. As the Board stated in In re Envotech, L.P., 6 E.A.D. at 268, the decision whether to grant or deny a UIC permit application can only be based on the UIC regulations. Neither the SDWA nor the UIC regulations authorize EPA to regulate injection wells beyond their impact on USDWs. See In re American Soda, L.L.P., 9 E.A.D. 280, 289 (EAB 2002). Correspondingly, the Board's authority to review UIC permit decisions extends only to the UIC program requirements and its focus in the protection of USDWs. See In re Sunoco Partners, UIC Appeal

No. 05-01 at 10. The conditions in the Bear Lake permits are intended to protect the USDWs. Separate considerations of demographic growth as argued by the Petitioners are beyond the scope of SDWA and beyond the jurisdiction of the Board. The Board should deny review based on this issue.

6. There is no geological evidence of faults or earthquake history that would justify denial of the permit applications.

Petitioners argue that the Region improperly granted the Bear Lake Property permit applications because deep underground injection has been known to cause earthquakes. EPA acknowledges that some injection operations have been associated with causing earthquakes in other areas of the United States. Where this has occurred, the evidence suggest that these earthquakes have been caused by the over pressurization of the injection zone or by the migration of injected fluids into nearby geologic faults. All of the injection-related seismic activity has occurred in geologic formations in other parts of the United States. There is no evidence that any seismic activity has or will occur in the Medina Formation or that geological faults are present in the Medina Formation, the intended zone of injection for the issued permits. Neither is there a history of nearby injection-related seismic activity. None of the dozens of injection wells permitted by the Region in Pennsylvania since 1985, including an injection well in nearby Erie County, has experienced injection-related seismic activity. Although Petitioners mentioned the Tecrony No. 1 well in nearby Clymer, NY, neither the petition exhibit nor inquiries by this Region to EPA Region II, which covers New York State, resulted in information about injection-related seismic activity in that well.³

³ Exhibit J of the petition which refers to the Tecroeny No. 1 well neither represents a permitting agency's decision nor does it provide scientific documentation of injection-related seismic activity. Because it was not introduced with the comments, the Exhibit is not part of the record. Nonetheless, the Region inquired from EPA Region II about the circumstances of this well. Neither Region II nor the New York Department of Environmental Conservation had

To prevent fracturing, which is not a goal of brine disposal wells as opposed to gas production wells that use hydraulic fracturing, the permits issued to Bear Lake require that the wells be operated at a pressure well below formation fracture pressure. The maximum surface injection pressures allowed under the permits, 1691 and 1726 psi for Bittinger #1 and #4 respectively, Exhs. 4 and 5, are much less than 2100 psi measured when these wells were originally fractured when they were drilled as gas production wells, Exhs. 2 and 3 Section 5 – Geological Data. Furthermore, as the Region explained in the Responsiveness Summary to Public Comment, the Medina Formation is currently under-pressurized due to the history of gas production activities in the area. Exh. 6. This reduced the Medina formation’s pressure and volume and increased the injection formation’s capacity (porosity) to accept injected fluids.

The review of geological data and the calculations of formation fracture and injection pressure to ascertain the risk of seismic activity from injection are technical issues that rely on the scientific evaluation of the impact of the wells. With regards to technical issues of this nature, the Board traditionally defers to the permitting agency. “When issues raised on appeal challenge a Region’s technical judgment, clear error or a reviewable exercise of discretion is not established simply because petitioners document a difference of opinion.” In re NE Hub Partners, L.P., 7 E.A.D. 561, 567 (EAB 1998). Although Petitioners point to injection-related earthquakes in other nearby states, they do not provide any technical data that bear on the formation at issue for these injection wells. The Board should defer to the technical judgment of the Region.

7. Public notice for the Bear Lake permits complied with regulatory requirements.

EPA’s permit regulations require that permitting agencies give public notice of draft permits, in order to provide the public with an opportunity to comment. 40 C.F.R. § 124.10.

information that this well was connected to injection-related seismic activity.

The comment period must be at least 30 days. As described in the Factual Background section above, the Region provided notice of the draft permits on January 21, 2011. The original comment period ran until February 23, 2011, which complied with the 30-day regulatory requirement. On March 4, 2011, the Region published a notice in the Warren Times Observer and provided notice through its public notice website that it had rescheduled the public hearing and extended the comment period until March 23, 2011. At the hearing the Region extended the comment period once again until March 30, to give those present an opportunity to submit comments after the hearing. In summary, the notice and the comment period provided for the Bear Lake permits exceeded those required by the regulations.

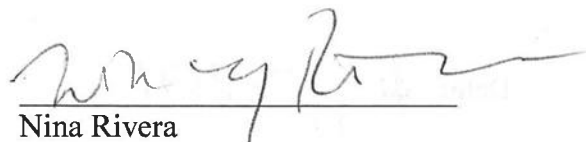
The petitioners are misinformed that public comment period was extended till April 15, 2011. The Region did accept several comments that were filed after the deadline, including comments from the Chautauqua County Department of Health. Chautauqua County is the neighboring county in New York State. The County contacted the Region requesting that it be allowed to submit comments late. Considering the fact that the Chautauqua County Department of Health is an local agency that represents the health concerns of the county citizens, the Region agreed to receive the comments of Chautauqua County after the close of the public comment period, on April 7, 2011. See Exh. 12. The Region also accepted two other comments submitted after the deadline. See Exh. 12. The Region could have chosen to ignore the comments filed after March 30. Cf. Personal Watercraft Industry Ass'n v. Dep't of Commerce, 48 F.3d 540, 542-43 (D.C. Cir. 1997) (stating that agencies are free to ignore late comments, referring to a rulemaking); Sierra Club v. Costle, 657 F.2d 298, 396-97 (D.C.Cir. 1981) (“[N]othing in the [Clean Air] Act prohibits EPA from admitting all post-comment communications into the record; nothing expressly requires it,” for rulemaking under the CAA.). The fact that the Region in its

discretion, and in favor of public participation, did review some comments filed after the deadline does not constitute an extension of the public comment period, and thus the Region was not required to provide additional public notice.

CONCLUSION

The Petition for Review does not identify any permit conditions based on clearly erroneous findings of fact, or an exercise of discretion or important policy consideration which the Board should, in its discretion, review. Therefore, the Region respectfully requests that the Board deny the petition.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I delivered a copy of the foregoing Response to Petition for Review and the attached exhibits on the date specified below, by certified mail, return receipt requested to:

Andrea L. Stapleford
Stapleford & Byham, LLC
600 Market Street
Warren, Pennsylvania 16365

I also certify that I filed the original and exhibits electronically with the Environmental Appeals Board. In addition I filed one copy of the exhibits by Next Day UPS with the Clerk of the Environmental Appeals Board at:

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


Nina Rivera
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
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Date: Aug 25, 2011