

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

In the Matter of:)
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GASCO Energy, Inc.)
)

UIC Appeal No: 14-191

UIC Permit No. UT22291-10328)
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_____)

REGION 8'S MOTION FOR VOLUNTARY REMAND

The United States Environmental Protection Agency (EPA) Region 8 (Region) respectfully requests the Environmental Appeals Board remand the Underground Injection Control (UIC) permit referenced above, in order for the Region to reconsider the comments submitted during the public hearing and public comment period, and to assure that the substantive and procedural requirements of 40 CFR parts 124, 144 and 146 have been met.

Background and Cause for Motion

1. On November 17, 2014, the Region issued a final permit to Gasco Energy, Inc. for an Underground Injection Control (UIC) Class II injection well.
2. The Southern Utah Wilderness Alliance (SUWA) appealed this permit to the Environmental Appeals Board on December 17, 2014.
3. Upon review of the record, the Region has determined that one of the SUWA's comments was not fully addressed during the permit decision. After correction of any factual

mistakes and reconsideration of public comments, the Region will decide whether to reissue a final permit, with or without changes, or deny the permit.

4. Pursuant to 40 C.F.R. § 124.19(j),¹ the Region may unilaterally withdraw a permit up to 30 days after the filing of a response in order to prepare a new draft permit. In addition, the Board has discretion to grant a voluntary remand beyond what is allowed under section 124.19(j). *See In re Desert Rock Energy*, PSD Appeal No.08-03 et al., 14 E.A.D. 484 (2009).

5. The Region is moving for a voluntary remand pursuant to the discretionary authority of the Board, rather than under section 124.19(j) because the Region has not yet decided whether it intends to issue a new draft permit during the remand. As it reviews the public comments and the record, the Region may decide to draft a new permit for public comment or to reopen the comment period, but if the Region finds that no substantial new questions have arisen, reissuance of the permit may not require a new public process. *See In re NE Hub Partners, L.P.*, 7 E.A.D. 561, 586-588 (1988)(discussing when reopening of public comment after a voluntary remand is appropriate); *see also In Re Dominion Energy Brayton Point, LLC*, 13 E.A.D. 407, 415-16 (2007) (discussing when reopening of the public comment period is appropriate after a remand). The Region will decide how to proceed with this permit application once it completes its revaluation of the comments in light of the record.

6. The Board will generally grant a voluntary remand when the permitting authority decides to make substantive changes to the permit or otherwise wishes to reconsider some element of the permit decision before reissuing the permit. *See In re Desert Rock*, PSD Appeal No.08-03 et al., 14 E.A.D. 484, 485-486 (2009). This allows the permit issuer to fully consider relevant issues and make a sound final decision, and it is consistent with the Board's policy to

¹ Prior to the amendments to the permit appeal regulations that were published on January 25, 2013, the subsection relating to the withdrawal by a Region of a permit under appeal was Section 124.19(d).

favor allowing the regions to make permit condition decisions. *Id.* at 16-17; *see also In re Peabody Western Coal Co.*, CAA Appeal No. 10-01, 14 E.A.D. 712, 721 (2010). A voluntary remand for this permit promotes efficiency in the permit decision-making process since it could result in resolving several of the disputed issues raised by the petitioners. This is particularly the case when the remand occurs in the early stages of litigation, as in this case, because it conserves resources.

7. Region 8 has contacted the Petitioner's attorney, Landon Newell, and SUWA does not oppose the Region's Motion for Voluntary Remand.

8. For the reasons state above, the Region respectfully requests the Board to remand the Gasco permit decision to the Region, for the Region to fully consider public comments and reconsider the permit decision. In light of the motion for remand, the Region does not intend to file a response to the petitions by the current deadline of January 16, 2015.

Respectfully submitted,



Lucita C Chin
Associate Regional Counsel
Office of Regional Counsel, EPA Region 8
1595 Wynkoop Street
Mail Code 8RC
Denver, CO 80202
Tel: (303) 312-7832
Fax: (303) 312-6859
Email: chin.lucita@epa.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Voluntary Remand of the UIC Permit were sent to the following persons in the manner indicated:

By Electronic Submission

Clerk of the Board
U.S. EPA
Environmental Appeals Board
1200 Pennsylvania Avenue, NW
Mail Code 1103M
Washington, D.C. 20460-0001

By Certified First Class U.S. Mail, Return Receipt, and electronic mail:

Stephen H.M. Bloch
steve@suwa.org
Landon Newell
landon@suwa.org
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, UT 84111

Michael Decker
mdecker@gascoenergy.com
Gasco Energy, Inc.
7979 Tufts Avenue, Suite 1150
Denver, CO 80237

Jill Fulcher
jfulcher@bwenergylaw.com
Beatty & Wozniak, P.C.
216 16th St., Suite 1100
Denver, CO 80202

Dated: 1/12/15



Lucita C Chin
Associate Regional Counsel
Office of Regional Counsel, EPA Region 8
1595 Wynkoop Street
Mail Code 8RC
Denver, CO 80202
Tel: (303) 312-7832
Fax: (303) 312-6859
Email: chin.lucita@epa.gov