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

In re:	)	
	)	Appeal No. UIC 12-01
Chevron	)	
Underground Injection Control (UIC)	)	
Permit No. MI-009-2D-0217	)	
	)	

RESPONSE TO PETITION FOR REVIEW

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I. INTRODUCTION

The United States Environmental Protection Agency, Region 5 ("EPA" "Region 5" or "the Region"), hereby responds to the Petition for Administrative Review of U.S. EPA Final Decision Regarding Permit #MI-009-2D-0217 ("Petition for Review"), dated September 16, 2012, by Norma Petrie ("Petitioner") in Appeal Number UIC 12-01. Attachment B-1.

Petitioner filed her petition with the Environmental Appeals Board ("EAB" or "the Board") seeking review of the Region's decision to issue a final Class II underground injection control ("UIC") permit to Chevron Michigan, LLC of Traverse City, MI ("Chevron") under the Safe Drinking Water Act ("SDWA"). In her two-sentence Petition for Review, Petitioner contends that Region 5 based its decision on "tenuous knowledge of the relationship between injection wells and underground drinking water," that "the EPA has an imperative to protect and defend our water sources," and that an "administrative review is in order to bring recent scientific evidence to the panel." *Id.* For the reasons set forth below, Region 5 recommends that the Board deny the Petition for Administrative Review.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-26, directed EPA to promulgate regulations containing minimum requirements for state underground injection control (UIC) programs to protect underground sources of drinking water. 42 U.S.C. § 300h.[1] Accordingly, states are required to submit UIC programs to EPA for approval. 42 U.S.C. § 300h-1.[2] EPA approves state UIC programs when they meet the agency's minimum regulatory requirements.

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[1] The EPA promulgated initial regulations to implement these statutory provisions in the early 1980s. *See* 45 Fed. Reg. 42,472 (June 24, 1980) (codified, as amended, at 40 C.F.R. Part 146) (technical well criteria and standards); 48 Fed. Reg. 14,146 (Apr. 1, 1983) (codified, as amended, at 40 C.F.R. Parts 144-146) (UIC program rules); 49 Fed. Reg. 20,138 (May 11, 1984) (codified, as amended, at 40 C.F.R. Parts 144 and 147) (EPA-administered UIC programs).

[2] *See also* 40 C.F.R. § 144.1(e) (requiring all 50 states to submit UIC programs).

One of these minimum requirements is that a person who intends to operate an underground injection well must obtain a permit for such activities, unless the well is authorized by rule. 42 U.S.C. § 300h-3; 40 C.F.R. §§ 144.1(g) and 144.31.

In states where EPA has not approved a UIC program, EPA directly implements its own UIC program and regulations. The State of Michigan ("Michigan") has not been approved to administer the UIC permit program. Accordingly, EPA has the responsibility to carry out UIC requirements, including the issuance of permits within Michigan. 40 C.F.R. §§ 144.1(e) and 147.1151.

On January 18, 2012, Region 5 received Chevron's UIC permit application, dated January 10, 2012, to operate a Class II well for the purpose of noncommercial brine disposal from production wells owned or operated by Chevron. Attachment B-2. On April 6, 2012, Region 5 received a revised permit application indicating that the lowermost underground source of drinking water (USDW) at the proposed well site was the Traverse Limestone formation with a bottom depth of 1,301 feet. Attachment B-3 at 1-2. The EPA's Statement of Basis also states that the lowermost USDW was identified at a depth of 1,301 feet below ground surface. Attachment B-4 at 1. Chevron's applications proposed to drill the well to a depth of 1,535 feet below the ground surface, injecting into the Dundee Limestone formation in Antrim County, Michigan. Attachments B-2 at 1 and B-3 at 1. The top of the injection zone for the well was proposed at 1,343 feet in the draft permit, which is the top of the Dundee Limestone formation. Attachment B-5 at 1. Thus, the separation between the USDW and the top of the Dundee Limestone injection zone for the proposed Class II well was approximately 42 feet of sedimentary rock strata. Attachments B-2, B-3 and B-4 at 2. As additional protection, Chevron

proposed to inject the brine through tubing encased in steel. Attachments B-2 at 3 and B-3 at 3. Between the steel and the tubing, Chevron proposed the placement of a liquid mixture containing a corrosion inhibitor to protect the integrity of the injection tubing and its steel casings. Attachments B-2 at 4 and B-3 at 4. Weekly liquid pressure readings would also be used to monitor the continued performance of the well. Attachments B-5 at 13 and A-1.

On May 24, 2012, Region 5 issued the draft Chevron permit. Attachment B-5. Region 5 received public comment on the draft from May 29 through June 28, 2012. Petitioner provided timely written comments to Region 5 on June 4, 2012, by email and mail.[3] Attachment B-6. In her written comments, Petitioner raised six concerns to support her recommendation that Region 5 deny the permit, including: 1) general risks of drinking water contamination and associated health concerns; 2) the distance from the drinking well to the injection well; 3) risks of increased seismic activity; 4) whether there was any history of fluid and radiation leakage from similarly constructed wells; 5) the chemical composition of the injected brine; and 6) increased noise and vehicle traffic. *Id.* In an addendum to her comments, also dated June 4, 2012, Petitioner requested that Region 5 order Chevron to monitor the water quality of her drinking water well and plant foliage at her property line to act as a sound barrier. *Id.* Following the thirty-day public comment period on the Chevron draft permit, Region 5 issued UIC Class II Permit #MI-009-2D-0217 to Chevron on August 20, 2012, with the same provisions and requirements that were in the draft permit. Attachment B-7. On August 21, 2012, Region 5 mailed a five-page detailed response to Petitioner that addressed each of the issues raised in her public comments. Attachment B-8. This letter also informed Petitioner of her opportunity to petition the Board for review of any condition of the final permit decision. Attachment B-8.

[3] Petitioner's mailed public comments were received by EPA on June 7, 2012.

On September 28, 2012, the Board received a potentially untimely Petition for Review, dated September 16, 2012, from Petitioner. The Petition for Review was potentially untimely because the Board received it 38 days after Region 5 mailed its notice that it was proceeding with the issuance of a final permit. Attachment B-8 at 4. Petitioner's request for review consists of only two sentences and raises three general issues. Attachment B-1. The first sentence references the permit, and the second sentence states, it its entirety, "I believe this decision is based on tenuous knowledge of the relationship between injection wells and underground drinking water and that the EPA has an imperative to protect and defend our water sources as a matter of policy and that an administrative review is in order to bring recent scientific evidence to the panel." *Id.* Region 5 files this Response to Petition for Administrative Review in accordance with the Board's October 11, 2012 letter to Region 5.

III. STANDARD OF REVIEW

In any appeal from a permit granted under 40 C.F.R. Part 124, the petitioner bears the burden of demonstrating that review is warranted. 40 C.F.R. § 124.19; *see In re City of Palmdale*, PSD Appeal No. 11-07, slip op. at 9 (EAB Sept. 17, 2012), 15 E.A.D. ___; *In re Wash. Aqueduct Water Supply Sys.*, 11 E.A.D. 565, 573 (EAB 2004); *In re Am. Soda, LLP*, 9 E.A.D. 280, 286 (EAB 2000). To satisfy this burden, the petitioner must satisfy threshold pleading requirements, including "timeliness, standing, preservation of issues for review, and articulation of the challenged permit condition with sufficient specificity." *In re Cherry Berry B1-25 SWD*, UIC Appeal No. 09-02 at 2 (Aug. 13, 2009) (Order Denying Review) (quoting *In re Beeland Group, LLC ("Beeland II")*, UIC Appeal No. 08-02, slip op. at 8 (EAB Oct. 3, 2008), 14 E.A.D. ___; 40 C.F.R. § 124.19(a).

With respect to timeliness, a petition for review of a UIC permit decision must be filed with the Board within 30 days of issuance of the final permit decision. 40 C.F.R. § 124.19(a). The 30-day period begins with the service of notice of the permit decision, unless a later date is specified in that notice. 40 C.F.R. § 124.19(a); *see, e.g.*, *In re Envotech, L.P.*, 6 E.A.D. 260, 264-65 (EAB 1996). When EPA serves the notice by mail, service is deemed to be completed when the notice is placed in the mail, not when it is received by Petitioner. *Envotech*, 6 E.A.D. at 265 (citing *In re Beckman Prod. Serv.*, 5 E.A.D. 10, 15 (EAB 1994)). To compensate for the delay caused by mailing, three days are added to the 30-day deadline for filing a petition when the final permit decision being appealed is served on the petitioner by mail. 40 C.F.R. §§ 124.19(a) and 124.20(d); *Envotech*, 6 E.A.D. at 264-65. Additionally, when the final day of a time period falls on a weekend or legal holiday, the deadline is extended to the next working day. 40 C.F.R. § 124.20(c). Petitions are deemed filed when received by the Board, and the Board will generally dismiss petitions for review that are received after a filing deadline. *See, e.g., In re AES Puerto Rico L.P.*, 8 E.A.D. 324, 329 (EAB 1999), *aff'd sub nom. Sur Contra La Contaminacion v. EPA*, 202 F.3d 443 (1st Cir. 2000).

Beyond the issue of timeliness, the standards for a petition for review are set forth in 40 C.F.R. Part 124. A UIC permit may not be reviewed by the Board unless petitioner makes a showing that it is based upon a "clearly erroneous" finding of fact or conclusion of law, or involves "[a]n 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); *see In re Environmental Disposal Sys., Inc.*, 12 E.A.D. 254, 263 (EAB 2005).

The preamble to 40 C.F.R. Part 124 states that the Board's power of review "should only

be sparingly exercised," and that "most permit conditions should be finally determined at the Regional level." 45 Fed. Reg. 33,290, 33,412 (1980); *see Envtl. Disposal Sys.*, 12 E.A.D. at 263-64; *In re Puna Geothermal Venture*, 9 E.A.D. 243, 246 (EAB 2000); *see also In re Presidium Energy, LC*, UIC Appeal No. 09-01 at 2 (EAB July 27, 2009) (Order Denying Review). The Board has repeatedly confirmed this interpretation of its discretionary authority to grant review of permit actions. *See, e.g., 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)); *Presidium Energy*, at 2 (Order Denying Review); *Cherry Berry* at 2 (Order Denying Review); *Palmdale*, slip op. at 11. "On matters that are fundamentally technical or scientific in nature, the Board will typically defer to a permit issuer's technical expertise and experience, as long as the permit issuer adequately explains its rationale and supports its reasoning in the administrative record." *City of Palmdale*, slip op. at 9 (citing *In re Dominion Energy Brayton Point, LLC*, 12 E.A.D. 490, 510 (EAB 2006)).

A petitioner is not only required to specify objections to the permit; he or she must also explain *why* the permit issuer's previous response to comments is clearly erroneous or otherwise warrants review. *Id.* at 10. Remarking that, "[i]t is not incumbent upon the Board to scour the record to determine whether an issue was properly raised," the Board particularly imposes a burden on the petitioner to demonstrate in the petition that the issues raised therein were first raised during the public comment period on the draft permit. *Presidium Energy*, at 2 n.4 (Order Denying Review) (quoting *In re Encogen Cogeneration Facility*, 8 E.A.D. 244, 250 n.10 (EAB 1999)).

In fact, the Board has frequently declined to review permits unless the petition for review

establishes why the Region's basis for its decision and response to the petitioner's comments is clearly erroneous or otherwise warrants review. *See, e.g.*, *Presidium Energy*, at 3 n.4 (Order Denying Review); *Palmdale*, slip op. at 10. "On appeal, it is not sufficient to repeat objections made during the public comment period; rather, a petitioner must also demonstrate why the permit issuer's response to those objections (i.e., the permit issuer's basis for its decision) is clearly erroneous." *In re Dominion Energy Brayton Point, LLC*, 12 E.A.D at 509 (EAB 2006). The Board's decision in *Presidium Energy* reiterated these threshold procedural requirements, indicating that a formal request for review should: 1) identify specific permit conditions for review; 2) indicate the petitioner's participation in public comment and demonstrate that the conditions for review raised in the petition were raised during the public comment period; and 3) address the Region's responses to comments and explain why those responses are inadequate. *Presidium Energy*, at 3-4 (Order Denying Review).

Finally, the Board has frequently denied review on petitions that are "merely 'based on numerous general concerns, without a single citation to a permit term or condition' – a general expression of concern is simply not sufficient to show clear error in the Region's permitting decision." *Id.* at 4 (quoting *In re Beeland Group, LLC ("Beeland I")*, UIC Appeal Nos. 08-01 and 08-03 at 11 (EAB May 23, 2008) (Order Denying Review).

IV. ARGUMENT

As explained in greater detail below, Petitioner potentially failed to file a timely Petition for Review and it should therefore be dismissed. Even if the Board looked past the potentially untimely filing, Petitioner also failed to sufficiently fulfill her burden of demonstrating that Board review is warranted under 40 C.F.R. § 124.19(a). In addition to being potentially

untimely filed, the Petition for Review completely fails to satisfy three threshold procedural requirements.[4] First, in her two-sentence Petition for Review, Petitioner fails to articulate a challenged permit condition with sufficient specificity. Secondly, Petitioner fails to indicate her participation in public comment and demonstrate that the permit conditions or issues raised in her Petition for Review were raised during the public comment period. Third, to the extent that any such issues were raised during the public comment period, Petitioner fails to demonstrate why the Region's responses to such public comments were insufficient or inadequate to address Petitioner's concerns. Therefore, Petitioner has failed to meet her threshold procedural burden of demonstrating that the Region's decision was based on a clearly erroneous finding of fact or conclusion of law, or included an exercise of discretion or an important policy consideration which the Board should, in its discretion, review, as required by 40 C.F.R. § 124.19(a).

A. Petitioner Potentially Failed to Timely File a Petition for Review and Therefore the Board Should Dismiss the Petition

Petitioner potentially failed to file a timely petition for review and accordingly the Board should dismiss the Petition for Review. The 30-day period for filing a petition with the Board begins with the service of notice of the final permit decision on the date that the notice is placed in the mail, plus an additional three days to account for any delay from mailing. 40 C.F.R. § 124.19(a); *See, e.g.*, *Envotech*, 6 E.A.D. at 264-65. Additionally, when the final day of a time period falls on a weekend or legal holiday, the deadline is extended to the next working day. 40

[4] The Region recognizes Ms. Petrie appears to be a pro se petitioner, and acknowledges that the Board endeavors to relax some of the more technical pleading standards for petitioners unrepresented by legal counsel. *Presidium Energy,* at 4-5 (Order Denying Review); *Envtl. Disposal Sys.*, 12 E.A.D. at 292; *In re Beckman Prod. Servs.*, 5 E.A.D. 10, 19 (EAB 1994). However, even when liberally construed, a petition for administrative review must still identify the elements at issue in the permit and articulate how EPA erred or exercised its discretion in a manner that warrants Board review. *Presidium Energy*, at 4-5 (Order Denying Review) (citing *In re Knauf Fiber Glass GmbH*, 8 E.A.D. 121, 127 & n.72 (EAB 1999)and *Envotech*, 6 E.A.D. at 267-69).

C.F.R. § 124.20(c). Petitions are deemed filed when received by the Board, and the Board will generally dismiss petitions for review that are received after a filing deadline. *See, e.g.*, *In re AES Puerto Rico L.P.*, 8 E.A.D. 324, 329 (EAB 1999), *aff'd sub nom. Sur Contra La Contaminacion v. EPA*, 202 F.3d 443 (1st Cir. 2000). The Region mailed Petitioner notice of the final permit decision on August 21, 2012, making the deadline for the Board to receive a petition September 24, 2012.[5] Attachment B-8. The Board received the Petition for Review on September 28, 2012, as indicated by the date received stamp on that document. Attachment B-1. Accordingly, the Petition for Review was not timely filed and should be dismissed by the Board. However, the Board may find that the Region's August 21, 2012 notice, provided the Petitioner 30 days to file from actual receipt of the notice. *Id.* at 5. Since the mail return receipt indicates that Petitioner received the notice on August 29, 2012, the Board may find that it timely received the Petition for Review on September 28, 2012. *Id.*

B. Petitioner Fails to Meet Standard for Board Review by Failing to Articulate a Challenged Permit Condition with Sufficient Specificity

Beyond filing a potentially untimely Petition for Review, Petitioner has also failed to articulate any challenged permit condition with sufficient specificity. Petitioner has merely raised general and vague concerns, which are insufficient to warrant Board review. The substance of Petitioner's letter requesting the Board's review states, in its two-sentence entirety:

> I am requesting an administrative review in accordance with 40 CFR Section 124.19, part (2) of the decision to allow Chevron to inject brine water in the vicinity of my property (Draft permit # MI-009-2-0217).
>
> I believe this decision is based on tenuous knowledge of the relationship between

[5] Thirty-three days after August 21, 2012, is September 23, 2012, however since that day was a Sunday the deadline was extended to the next working day, September 24, 2012.

> injection wells and underground drinking water and that the EPA has an imperative to protect and defend our water sources as a matter of policy and that an administrative review is in order to bring recent scientific evidence to the panel.

Attachment B-1.

Like the petitioner in *Presidium Energy*, Petitioner merely sets forth a series of general expressions of concern, which the Board in *Presidium Energy* held as insufficient to show clear error in the Region's permitting decision. *Presidium Energy*, at 3-4 (Order Denying Review); *see also Beeland I*, at 11 (Order Denying Review). The failure to articulate any challenged permit condition with sufficient specificity is fatal to an appeal. 40 C.F.R. § 124.19(a); *Cherry Berry*, at 3-4 (Order Denying Review); *Beeland I,* at 15 (Order Denying Review); *Beeland II*, slip op. at 23. Petitioner asserts her belief in the "tenuous knowledge" of the EPA with regard to injection wells and underground drinking water, but she does not discuss how such a lack of relevant expertise renders the permit decision inconsistent with SDWA, incompatible with implementing regulations, or otherwise erroneous or unlawful. Petitioner identifies EPA's responsibility to "protect and defend our water sources as a matter of policy," but she does not indicate how EPA's issuance of the Chevron UIC injection permit somehow failed to satisfy this responsibility or was otherwise erroneous or unlawful. Finally, Petitioner argues that review is required to bring "recent scientific evidence to the panel," but she offers no additional information on the nature or type of scientific evidence to which she refers, nor does she discuss how any failure to consider such evidence renders EPA's permitting decision clearly erroneous or unlawful.

A Petitioner may not request Board review merely based on numerous general concerns without a single citation to a permit term or condition. *See Beeland I*, at 11 (Order Denying

Review); *Presidium Energy*, at 3, 4 (Order Denying Review). "Simply raising generalized objections to the permit or making vague and unsubstantiated arguments falls short [of meeting the requisite standards for Board review]." *Presidium Energy*, at 5 (Order Denying Review) (quoting *In re City of Pittsfield, MA*, NPDES Appeal No. 08-19 at 6 (EAB Mar. 4, 2009) (Order Denying Review)). "The Board has repeatedly held that 'mere allegations of error' are insufficient to support review and that it will not entertain vague and unsubstantiated arguments." *In re Westborough and Westborough Treatment Plant Board*, 10 E.A.D. 297, 311 (EAB 2002) (citing *In re City of Moscow,* 10 E.A.D. 135, 172 (EAB 2001) and *In re New England Plating Co.*, 9 E.A.D. 726, 730 (EAB 2001)). As a series of general concerns about the Region's decision to grant Chevron the injection well permit, the Petition for Review provides no statement of specific reasons warranting review and fails to engage any specific portion of the UIC permit at issue. Petitioner presents no argument contending a specific Region 5 finding of fact or conclusion of law is clearly erroneous. At the same time, the general concerns contained in the Petition for Review do not indicate or argue Region 5 exercised or abused its discretion in a manner warranting Board review. Petitioner has not articulated a sufficiently specific challenge to any condition of the Chevron permit at issue; therefore Petitioner's request for administrative review should be denied for failure to satisfy the standard for granting Board review.

C. Petitioner Fails to Meet Standard for Board Review by Failing to Demonstrate that the Permit Issues Raised in Her Petition Were Raised During the Public Comment Period

A petitioner seeking review must demonstrate to the Board that any issues raised in the petition were raised during the public comment period. 40 C.F.R. § 124.19(a); *see Beeland I*, at 10 (Order Denying Review) (citing *In re Avon Custom Mixing Services, Inc.*, 10 E.A.D. 700, 705 (EAB 2002)). Declaring that "[i]t is not incumbent upon the Board to scour the record to determine whether an issue was properly raised," the Board has consistently declined to review issues or arguments in petitions that fail to satisfy this basic requirement. *Presidium Energy*, at 2 n.4 (Order Denying Review) (quoting *In re Encogen Cogeneration Facility*, 8 E.A.D. 244, 250 n.10 (EAB 1999)); *see In re Rockgen Energy Ctr.*, 8 E.A.D. 536, 548 (EAB 1999).

Petitioner makes no reference to public comments in her Petition for Review. Attachment B-1. In her single-sentence list of general concerns in the Petition for Review, Petitioner makes no indication of a relationship between these concerns and any previously submitted public comments. Petitioner raised six different concerns during the public comment period and, without any reference to public comments in her Petition, it is unclear which of these concerns, if any, she intended to engage as the basis for her appeal. In addition to being substantively insufficient to warrant review, Petitioner's claim as to the "tenuous knowledge" of the EPA, as well as her assertion that EPA has an "imperative to protect and defend our water sources," do not directly correspond to any of her public comments. Petitioner also asserts that review is required to bring "recent scientific evidence to the panel." Attachment B-1. However, none of the public comments submitted on the draft permit offer any "recent scientific evidence." Petitioner simply neglects to refer to any of the comments submitted to the administrative record

during the public comment period for the draft permit.

It is not EPA's burden to attempt to establish a relationship between the issues raised in a petition for administrative review and those submitted during the public comment period. The Board has particularly imposed this burden on the petitioner; in submitting a petition for review on a permitting decision, a petitioner must demonstrate that the issues he or she raises were first submitted to the administrative record during the public comment period on the draft permit. *Presidium Energy*, at 2 (Order Denying Review); *Encogen Cogeneration Facility*, 8 E.A.D. at 250 n.10; *see Rockgen Energy Ctr.*, 8 E.A.D.at 548.

Petitioner's failure to demonstrate that the issues she presents in her Petition for Review were submitted during the public comment period on the Chevron draft permit is fatal to her appeal. The Board should thereby deny her Petition for Review for failure to satisfy the standard for granting administrative review.

D. Petitioner Fails to Meet Standard for Board Review by Failing to Demonstrate that EPA's Responses to Comments on the Draft Permit Were Insufficient or Inadequate

A petitioner must not only indicate that the objections to the permit in the petition for review were submitted to the administrative record during the public comment period, but he or she must also explain why the permit issuing agency's response to those objections was clearly erroneous or otherwise warrants review. *Palmdale*, slip op. at 10; *In re Teck Cominco Alaska, Inc.*, 11 E.A.D. 457, 494-95 (EAB 2004); *Westborough*, 10 E.A.D. at 305, 311; *Envotech*, 6 E.A.D. at 268. "On appeal, it is not sufficient to repeat objections made during the public comment period; rather, a petitioner must also demonstrate why the permit issuer's response to those objections (i.e., the permit issuer's basis for its decision) is clearly erroneous." *Dominion*

Energy, 12 E.A.D at 509.

Even if Petitioner had met her burden of identifying that issues on appeal were first raised during public comment, Petitioner is also required to demonstrate that the Region failed to adequately respond to such issues in response to public comments. Petitioner neither references public comments nor the Region's response to public comments in her Petition for Review. She does not engage in any discussion of the adequacy of the Region's response to public comments or contend that the Region's responses were clearly erroneous or otherwise warrant review.

To the extent that Petitioner's public comments may be construed to have raised the issues Petitioner now invokes in her Petition for Review, Region 5 affirms that it did, in fact, respond to each of the six concerns petitioner raised during the public comment period on the Chevron draft UIC permit. Attachments B-6 and B-8. Petitioner's June 4, 2012 public comment raised the following concerns: 1) the general risks of drinking water contamination and associated health concerns; 2) the distance from the drinking well to the injection well; 3) the risks of increased seismic activity; 4) whether there was any history of fluid and radiation leakage from similarly constructed wells; 5) the chemical composition of the injected brine; and 6) increased noise and vehicle traffic. Attachment B-6. In an addendum to her comments, Petitioner requested that Region 5 order Chevron to monitor the water quality of the drinking water well and plant foliage at her property line as a sound buffer. *Id.*

In its response to Petitioner's comments, EPA diligently addressed each of Petitioner's concerns separately. Attachment B-8. With regard to the first issue of groundwater contamination, EPA provided a detailed but succinct description of the multiple safeguards in place to prevent, minimize, and internally contain leaks within the well. In terms of the second

issue of distance between drinking water wells and injection wells, EPA explained that, in accordance with federal regulation under SDWA, the disparities in depth between the drinking water well and the injection well were sufficient to ensure that possible contamination was prevented. *Id.* In response to the third issue, EPA provided Petitioner an explanation of the relationship between injection pressures and seismic activity, indicating that the maximum injection pressures in the permit were set at levels well below those required to precipitate significant seismic activity. *Id.* Fourth, in providing a brief history of injection well leakage, EPA recounted that there had been no documented failures resulting in contamination of underground sources of drinking water since the implementation of UIC regulations. *Id.* In response to Petitioner's fifth request for a detailed account of the chemicals in the injection brine, EPA explained that an analysis of all chemicals was not required by federal regulations for Class II underground injection wells.[6] *Id.* Finally, EPA indicated that Petitioner's concerns with increased noise and traffic were also outside the scope of the regulations associated with the UIC permit. *Id.* In response to Petitioner's June 4, 2012 Addendum request that EPA order Chevron to monitor the water quality of the drinking water well and plant foliage at the edge of her property, EPA explained that it is outside the scope of its authority to compel a permit applicant to undertake such monitoring measures. *Id.*

With each of its responses to the individual comments posed by Petitioner, EPA carried out its responsibilities under SDWA. While Region 5 thoroughly responded to each comment, it also indicated that none of the issues Petitioner raised warranted a denial, change, or non-issuance of the UIC permit to Chevron. Petitioner neither cited to any public notice comments,

[6] Additionally, because the brines proposed to be injected hold such similar chemical make-ups to the ground waters naturally occurring at the proposed depths of the Class II injection well, a detailed chemical analysis was also not necessary. Attachment B-8.

nor did she even acknowledge the Region's responses to public comments. Petitioner has thereby failed to fulfill her burden of demonstrating why EPA's response to comments was inadequate. Accordingly, the Board should deny the Petition for Review for failure to satisfy the standard for granting administrative review.

E. The Three General Issues Petitioner Raises Are Substantively Insufficient to Warrant Board Review

While EPA believes that Petitioner has failed to submit a timely petition that satisfies the minimum threshold procedural requirements for administrative review as discussed above, we nonetheless provide a brief response to each of the general issues raised in the Petition for Review. None of the three concerns collectively raised in Petitioner's one-sentence petition statement shows that EPA's decision was based on a "clearly erroneous" finding of fact or conclusion of law, or involved "[a]n 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); *see Envtl. Disposal Sys.*, 12 E.A.D. at 263.

Petitioner first asserts that the final decision to grant Chevron the UIC permit was based upon tenuous knowledge of the relationship between injection wells and underground drinking water. Attachment B-1. As is evident in the record, the permit, and the Region's detailed Response to Petitioner's Comments, EPA undertook the requisite analysis and review throughout the process of granting the Chevron UIC permit for a Class II injection well in Antrim County, MI to ensure the environmental practicability and safety of the injection well. The regulations at 40 C.F.R. §§ 144.31 and 146.24 set forth the criteria and information EPA must consider before making a Class II UIC permitting decision. In accordance with those requirements, the Region's

review of the permit application included, but was not limited to: the location of the nearest USDW; the structural integrity of the proposed well; the construction plan for installing the well; the make-up of the soil surrounding the well; the depth of the well and the various soil compositions; the type of fluid to be injected; monitoring and reporting requirements; and emergency and closure plans for the well. Attachment B-2 and B-3.

Second, Petitioner asserts that EPA has an imperative to protect and defend our water sources. Attachment B-1. EPA acknowledges that it does have the responsibility to protect and defend drinking water sources. Under SDWA, EPA is charged with regulating compliance with minimum requirements it deems necessary. 42 U.S.C. § 300h. The Board has clearly stated that, "EPA's inquiry in issuing a UIC permit is limited solely to whether the permit applicant has demonstrated that it has complied with the federal regulatory standards for issuance of the permit." *Beckman Prod. Serv.*, 5 E.A.D. at 23. Region 5 conducted a thorough review of the permit application and all public comments and, finding that the permit applicant had demonstrated compliance with the relevant federal regulations, Region 5 issued the permit in accordance with the law. EPA thereby satisfied its duty to protect and defend the country's drinking water sources.

Third, Petitioner asserts that administrative review is warranted for the purpose of bringing recent scientific evidence to the panel. Attachment B-1. Petitioner presents no scientific evidence in the Petition for Review, and no such evidence appears in the public comments. In order to review scientific evidence, Petitioner must be able to indicate such evidence was admitted into the record, and she must also present it in the Petition for Review. As discussed above, Petitioner has satisfied neither of these procedural requirements.

When petitioning for review of a UIC permit decision, a person must include "a statement of the reasons supporting 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 Environmental Appeals Board should, in its discretion, review." 40 C.F.R. § 124.19(a). None of the three general concerns raised by Petitioner in her Petition for Review is substantively adequate to support a finding that the Region's permitting decision was clearly erroneous or otherwise warrants administrative review. Petitioner's request for review should accordingly be denied by the Board.

V. CONCLUSION

Appeal Number UIC 12-01 was potentially untimely and does not satisfy the threshold procedural requirements to warrant the Board granting review. Petitioner failed to file a timely petition, failed to articulate a challenged permit condition with sufficient specificity, failed to indicate her participation in public comment and demonstrate that the permit conditions or issues raised in her Petition were raised during the public comment period, and, to the extent that any such issues were raised during the public comment period, failed to demonstrate why EPA's responses to such public comments were insufficient or inadequate to address Petitioner's concerns. Petitioner has thereby failed to file a timely petition and meet the threshold procedural burden of demonstrating that EPA's decision was based on a clearly erroneous finding of fact or conclusion of law, or included an exercise of discretion or an important policy consideration

which the Board should, in its discretion, review, as required by 40 C.F.R. 124.19(a). Region 5 therefore respectfully requests that the Board deny the Petition for Review.

Respectfully submitted,

Dated: November 30, 2012

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Response to Petition for Review, Appeal No. UIC 12-01
Chevron, Underground Injection Control (UIC) Permit No. MI-009-2D-0217

Certificate of Service

I, Donald E. Ayres, certify that today I filed EPA's Response to Petition for Review, its Attachments, and this Certificate of Service with the Environmental Appeals Board using the Central Data Exchange (CDX) electronic filing system.

I also served identical copies of the electronically-filed Response to Petition for Review, its Attachments, and this Certificate of Service by certified mail, return-receipt requested, to the following:

Norma Petrie
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on the 21st day of November, 2012

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