

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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In the Matter of:))
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Savoy Energy, L.P.) **UIC Appeal No.: 16-02**
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UIC Permit No.: MI-091-2D-0004))
_____)

MOTION OF EPA REGION 5 FOR VOLUNTARY REMAND

The United States Environmental Protection Agency (“EPA”), Region 5 (“Region”), respectfully requests the Environmental Appeals Board remand the Underground Injection Control (“UIC”) permit referenced above and subject to these appeals, in order for the Region to hold a public a hearing, and ensure that the substantive and procedural requirements of 40 C.F.R. parts 124, 144, and 146 have been met. As grounds for the motion, the Region states as follows:

1. On March 1, 2016, the Region issued a final permit decision to Savoy Energy, L.P. (“Savoy”) for an Underground Injection Control Class II injection well.¹
2. On April 4, 2016, petitioner Raisin Charter Township filed a petition with the Board seeking review of the final permit (Permit Appeal UIC 16-01).
3. Raisin Charter Township’s petition included an attached letter of support from the River Raisin Watershed Council. That letter of support has been docketed as a separate petition for review of the final permit (Permit Appeal UIC 16-02).

¹ The Region issued a final permit decision on February 25, 2016, that incorrectly explained the effective date. The Region corrected the error on March 1, 2016, and now treats March 1 as the date of the final permit decision.

4. On April 14, 2016, petitioner Summerfield Township also filed a petition with the Board seeking review of the final permit (Permit Appeal UIC 16-03).

5. Upon review of the record, the Region has determined that comments requesting a public hearing were not fully addressed during the permitting decision process. The Region now wishes to cure this defect by holding a public hearing, after which the Region will decide whether to reissue the permit with a supplemental response to comments, draft a new permit for public comment, or deny the permit.

6. Pursuant to 40 C.F.R. § 124.19(j), the Region may unilaterally withdraw a permit up to 30 days after filing a response to a petition for review, 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), by virtue of its inherent authority to manage its docket in the most meaningful and efficient manner possible. *Revisions to Procedural Rules to Clarify Practices and Procedures Applicable in Permit Appeals Pending Before the Environmental Appeals Board*, 78 Fed. Reg. 5281, 5283 (Jan. 25, 2013) (to be codified at 40 C.F.R. parts 124 and 270). *See also* 40 C.F.R. § 124.19(n) (“[T]he Environmental Appeals Board may do all acts and take all measures necessary for the efficient, fair, and impartial adjudication of issues arising in an appeal”); *In re Peabody Western Coal Co.*, CAA Appeal No. 10-01, 14 E.A.D. 712 (EAB Aug. 13, 2010).

7. 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, 493 (EAB May 21, 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 that favors allowing the regions to make permit condition decisions. *Id.* at 495-96; *see also In re Peabody Western Coal Co.*, 14 E.A.D. 721. A voluntary remand of this permit promotes efficiency in the permit decision-making process since it would grant petitioners at least partial relief and may allow the Region to resolve other concerns petitioners have raised. This is particularly true in cases where the remand occurs in the early stages of litigation, as in this case, because it conserves resources.

8. The Region has attempted to contact the River Raisin Watershed Council by email and telephone, to determine whether the Council objects to or concurs with this motion, but the Council has not responded as of this filing.

9. For the reasons stated above, the Region respectfully requests the Board to remand the Savoy permit decision to the Region, in order for the Region to hold a public hearing and reconsider the permit decision after reviewing any additional public comments. In light of the motion for remand, the Region does not intend to file a substantive response to the petitions by May 4, 2016, which is 30 days after the appeals by River Charter Township and River Raisin Watershed Council were docketed with the Board.²

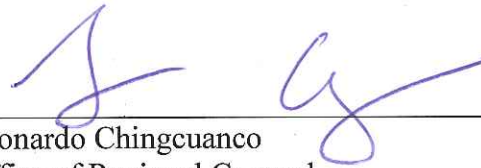
² Remand of the permit to the Region would obviate the need to address procedural defects in the appeals. Nonetheless, the Region identifies those defects here, as petitioners are not at this time represented by counsel.

1. Although Raisin Charter Township filed its appeal on April 4, 2016, the Region was not properly served until April 15, 2016, and has yet to receive proof of service as required under 40 C.F.R. § 124.19(i)(4).
2. Because the Watershed Council's letter of support has been docketed as an independent petition, the Region notes that the Watershed Council submitted no comments during the public comment period and lacks standing to appeal. 40 C.F.R. § 124.19(a)(2).
3. The Region has yet to receive proper service or proof of service from Summerfield Township, as required under 40 C.F.R. § 124.19(i)(3) and (4). Further, the deadline for appeals was on April 4, 2016, 30 days after issuance of the final permit. 40 C.F.R. § 124.19(a)(3).

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that 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. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, NW
Mail Code 1103M
Washington, D.C. 20460-0001

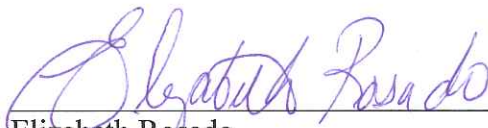
By Certified First Class U.S. Mail, Return Receipt, and electronic mail:

Jack Rokos, Operations Manager
Savoy Energy, L.P.
P.O. Box 1560
Traverse City, MI 49685

John Calhoun, Chairman
River Raising Watershed Council
320 Springbrook Avenue, Suite 102
Adrian, MI 49221

Date

5/04/2016


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