

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

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In the Matter of: )

Stonehaven Energy Management, LLC )

John McNerney )

Petitioner )

UIC Permit No. PAS2D010BVEN )

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Permit Appeal: UIC 12-02

**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 John McNerney (Petitioner). Pursuant to 40 C.F.R. § 124.19, Petitioner seeks review by the Environmental Appeals Board (the Board) of a permit issued by the Region to Stonehaven Energy Management Co, LLC (Stonehaven), under the Underground Injection Control (UIC) Program, 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.

For the reasons set forth below, the Petitioner has failed to meet the burden to obtain review by the Board, and therefore his 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. § 300h. 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, V, or VI. See 40 C.F.R. §§ 144.6, 146.5. The permit in this appeal is for a Class II well. Class II wells 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 Env'tl.

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 June 30, 2011, Stonehaven applied for a Class II brine disposal permit for the construction and operation of a well known as Latshaw #9, located in Cranberry Township, Venango County, Pennsylvania. Exh. 1; Exh. 5. The well is an existing production well that Stonehaven wants to convert into an injection well for disposal of brine from gas and oil production. The application for this permit included information on the well's construction, the geologic conditions surrounding the site, including shallow ground water information, how the 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 Latshaw #9 well.

Following receipt of Stonehaven's application, the Region conducted a review of the application. As part of this review, the Region evaluated the geology of the injection and confining zones, determined whether well construction was acceptable, determined whether the proposed operation and monitoring of the well was acceptable, and verified that that the plugging and abandonment plan and financial responsibility that were submitted were adequate. See Exhs. 2, 3, 4, 6 and 9 (Statement of Basis). In compliance with the mandate of the SDWA, the Stonehaven application review was done with the purpose of ensuring that if the Region granted the permit, USDWs<sup>1</sup> would be protected from endangerment from the injection operations.

Based on that review, the Region developed a draft permit, and a statement of basis. Exh. 9. Consistent with the requirements of 40 CFR § 124.10, the Region provided public notice on May 1st, 2012, in The Derrick, an Oil City, Pennsylvania newspaper, that the Region was accepting public comment on the draft permit, and that it intended to hold a public hearing on June 12, 2012. Exh. 10. 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 may have interest in the proposed project. Exh. 10. Copies of the permit application as well as the statement of basis and the public notice were sent to the Oil City Public Library for public review. Exh. 10. In addition the notice was posted on May 1st, 2012 on the Region's public notices internet site. Exh. 10.

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<sup>1</sup> 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.



The Region received about ten written comments on the draft permit, including written comments submitted by the Petitioner which the Region received on May 18 and May 24, 2012. Exh. 11. In addition, many people attended the June 12 hearing, where about twelve people provided oral testimony. Exh. 12. At the end of the hearing, the Region extended the public comment period until June 19, 2012. Exh. 12 at 33.

On September 24, 2014, EPA issued a final permit to Stonehaven for a UIC Class II injection well. Exh. 14. EPA also issued a Responsiveness Summary to Public Comment. Exh. 15. The Responsiveness Summary and Notice of Final Permit were either mailed or emailed to all who provided comments and to state officials. See 40 C.F.R. 124.15(a).

In reaching this permit decision, the Region's technical evaluation determined that the lowermost USDW at the location of the well site is about 360 feet below surface level. Exh. 9 (Statement of Basis) at 2. The Region determined that about 1,575 or more feet separate the injection zone from the lowermost USDW. Id. A confining zone at least 100 feet thick, located immediately above the injection zone, will help to contain the injected fluid within the injection zone. Id. The permit includes conditions developed to prevent the movement of fluids into USDWs and to make sure that if a problem did develop with the well, that EPA is promptly notified. Exh. 14 at 7. The well is to be constructed with surface casing and cement to a depth of approximately 410 feet. Exh. 14 at 11. The permit also includes injection volume and pressure limits, as well as monitoring requirements, to assure the proper operation of the well. Exh. 14 at 12. The permit requires monitoring wells that will allow monitoring of the fluid level in the injection zone. Id. The maximum injection pressure was calculated to prevent fracturing of the injection zone during operation. Exh. 9 (Statement of Basis) at 3; Exh. 15 at 5-6. Prior to commencing injection into this well, the permit requires that EPA inspect and mechanically test

the well to ensure that it will not leak during operation. Exh. 14 at 8. Once the injection begins, continuous monitoring of the injection pressure, annular pressure and injection volume is required. Exh. 14 at 7.

### **RESPONSE TO PETITION FOR REVIEW**

The Region acknowledges that the Petitioner satisfies the standing requirements to petition the Board for review of the Stonehaven permit. Any person who filed comments on the draft UIC permit within the public comment period or participated in the public hearing regarding the permit may petition the Board to review any condition of the permit decision. 40 C.F.R § 124.19. Petitioner submitted written comments received on May 18 and May 24, 2012. Exh. 11. He also participated during the public meeting. Exh. 12.

The petition, however, does not establish that review of the permit decision is warranted. The Petitioner does not point to 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. Instead the petition primarily describes a series of problems that the Petitioner is apparently having on his property, located about six miles from the injection well, but which are not related to Stonehaven or the injection well permit. Because of lack of clarity in the petition, the Region can only extrapolate potential arguments from the Petition. The Region hereby responds to these potential arguments, without conceding that the petition actually raises all of them: 1) whether Stonehaven properly has identified abandoned wells near the injection well; 2) whether the injection well endangers water sources; 3) whether the injection well will cause earthquakes; and 4) whether the injection well will be plugged appropriately.

1. The permittee has properly identified abandoned wells within the area of review and is addressing those wells as required.

UIC regulations require that a permit application identify all wells, including abandoned wells, within the area of review of the injection well. See 40 C.F.R. §146.24(a)(2). An area of review for Class II injection wells is based on a predetermined radius of a minimum of one-quarter mile or through a zone of endangering influence calculation. See 40 C.F.R. §146.6. A permit applicant must also take corrective action to address any improperly abandoned or unplugged wells that are located within the area of review and 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.*

The Petitioner alleges in his petition that there are hundreds of abandoned wells near his property that have not been properly plugged. According to the Petitioner, those wells, which belong to an individual called Thompson, are not being maintained and are being used for illegal disposal. Petitioner also specifies that his property is about six miles from the Stonehaven injection well. The abandoned wells he is concerned about are far from the area of review of the Stonehaven injection well. See Exh. 16. Petitioner does not explain how the abandoned wells near his property relate to the Stonehaven injection well, or to any particular permit condition. To the extent that the petition is concerned with plugging work done by Thompson, Thompson neither owns nor has plugged abandoned wells in the area of review of the Stonehaven injection well. At best, the Region extrapolates a concern by the Petitioner that abandoned wells near the injection well must be properly identified and plugged as required.

In the case of the Stonehaven well, the area of review was determined based on a fixed-radius of one-quarter mile. Exh. 9 (Statement of Basis) at 2; Exh. 15 at 4. The Region

calculated a zone of endangering influence to evaluate the appropriateness of the fixed radius which it found acceptable. Exh. 8; Exh. 15 at 4. 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. The calculation indicated that fluid migration into USDWs would not occur.

As required by the regulations, see 40 C.F.R. §146.24(a)(2), Stonehaven reviewed public records to identify wells within the area of review. In addition the Region and Stonehaven conducted field verification of the area of review. Exh. 15 at 4. The only wells that Stonehaven identified within the area of review, that reached the receiving formation, are two production wells which Stonehaven will be using to monitor fluid level in the injection formation during operation. Exh. 1 at 8; Exh. 15 at 4. The permit requires that those monitoring wells completely isolate the Speechley formation. Exh. 14 at 7. Stonehaven also identified four other abandoned and unplugged wells in the area of review which are believed to be more shallow. Stonehaven is reentering these wells and will plug and abandon the wells in accordance with the corrective action requirement of the permit, even if the wells do not reach the injection formation. Exh. 1 at 8; Exh. 2; Exh. 3 at 2; Exh. 4 at 2; Exh. 14 at 12.

The Petitioner, in discussing the abandoned wells near his property, neither identifies abandoned wells in the area of review of the Stonehaven injection well nor points out any failures to comply with the regulatory requirements pertaining to abandoned wells. Stonehaven has complied with the application requirements on information about abandoned wells, and the Region correctly relied on that information. Because Petitioner has identified neither an erroneous factual finding nor a permit condition based on such finding, the Board should deny review based on this issue.

2. The permit conditions protect the USDWs.

Petitioner also discusses in this petition concerns about contamination of underground drinking water sources caused by coal mines and existing concerns about lead in his drinking water.<sup>2</sup> Petitioner does not explain how the examples of coal mine contamination described in his petition apply to the Stonehaven injection well or how lead contamination is related to underground injection of brine. At best, the Region extrapolates a concern that the permit be protective of underground drinking water sources.

The application requirements and the permit impose conditions to assure that the permit issued be protective of USDWs. As explained above, the regulations require identification and plugging of abandoned or improperly sealed wells that reach the injection zone, so that they do not allow fluid migration out of the injection zone into any aquifers where drinking water wells are located. In addition the regulations require that the applicant identify all drinking water wells within the area of review, which the applicant identified.

The Region identified the lowermost USDW at the site of injection to be at a depth of 360 feet. Exh. 9 (Statement of Basis) at 2. The injection zone for this well, the Speechley Formation, begins at a depth of approximately 1935 feet and is therefore located at a depth of approximately 1500 feet below the lowermost USDW. Id. There is also a confining unit above the injection zone with a thickness of at least 100 feet. Id. UIC regulations require that casing to isolate the injection zone be cemented to 50 feet above the injection zone. See 40 C.F.R. §147.1955(b)(5). The permit requires this casing to be cemented to 100 feet above the injection zone, which exceeds the regulatory requirements. Exh. 14 at 11.

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<sup>2</sup> Unrelated to these permit proceedings, the Region tried to learn more about possible lead contamination in the Petitioner's drinking water. Information obtained from the Agency for Toxic Substances and Disease Registry of the federal Department of Health & Human Services indicated there is no evidence of lead contamination in the ground water from which Plaintiff's well draws. See Exh. 17.

As described, the Stonehaven permit imposes construction and operation conditions designed to protect the underground sources of drinking water down to the lowermost USDW. The Petitioner does not argue that these or any other permit condition are based on erroneous facts or application of law that would warrant Board review.

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

Petitioner argues that that the Region erred in concluding that the injection well is not in a seismically active area. He attached to his petition media articles about earthquake activity in Pennsylvania, Ohio and Canada.<sup>3</sup> Petitioner argues, the Region presumes, that the permit was improperly granted because of that erroneous conclusion.

Concerns about locating injection wells in seismically active areas have arisen because some injection operations have been associated with causing earthquakes in other areas of the United States. Many of 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 examples of injection-related seismic activity have occurred in geologic formations in other parts of the United States, such as Ohio and Arkansas. See Packet B in the Petition for Review. One of the articles included in the petition does refer to an earthquake with the epicenter in Crawford County, Pennsylvania, but that earthquake was not related to injection, and the article itself mentions that seismic activity in western Pennsylvania is very rare.

In this case, there is no evidence that there are transmissive faults that intersect or could be influenced by the intended zone of injection for the Stonehaven permit. Exh. 15 at 3. Neither

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<sup>3</sup> These articles are not part of the record as they were provided during the comment period, but only included in the petition. 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.

is there a history of nearby injection-related seismic activity. None of the dozens of injection wells permitted by EPA in Pennsylvania since 1985 has caused injection-related seismic activity. Furthermore, the permit sets a maximum injection pressure to insure that there is no over pressurization of the injection formation. Unlike gas production wells that use hydraulic fracturing, brine disposal wells are not intended to fracture the injection formation. Also, as the Region explained in the Responsive Summary to Public Comment, the Specheley Formation is currently under-pressurized due to the history of gas production activities in the area. Exh. 15 at 3. This reduced formation pressure increases the injection formation's capacity 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); see also In re Bear Lake Properties, LLC, UIC Appeal No. 11-03, (EAB June 28, 2012), slip op. at 22 (finding that the determination regarding the risk of injection-related seismicity is a technical issue in which the permit issuer is entitled to deference). Although Petitioner points to injection-related earthquakes in other nearby states, he does not provide any technical data that bears on the formation at issue for this injection well. The Board should defer to the technical judgment of the Region.

4. The permit imposes appropriate conditions for the plugging of the injection well.

The Petitioner also elaborates in his petition about improper plugging of wells near his property. The Region takes this as a concern over the plugging of the injection well at the end of its operating life. The Petition, however, does not point out any particular problem with the plugging and abandonment plan that is incorporated into the permit.

The UIC regulations require that UIC permit applicants to submit a plugging and abandonment plan in compliance with specified requirements. See 40 C.F.R. §§ 144.31(3)(10) and 146.10. The purpose of this is to assure that the well be properly close at the end of its operating life. That plan has been reviewed by the Region and has been incorporated into the permit. Exh. 14 at 13, 15. In addition the regulations require that the permittee provide financial assurance that it will be able to implement the plan. See 40 C.F.R. § 144.63. Here Stonehaven has provided the Region with a letter of credit and standby trust agreement to guarantee the plugging of the well. Exh. 6.

5. None of the other concerns raised by the Petitioner are relevant to a UIC permit determination.

Petitioner raises many other issues in his petition that are not related to injection wells, such as fraudulent deed recording, lack of local police enforcement, problems with a land surveyor, landfill expansions, railroad wrecks, leaking oil production wells, drilling of Marcellus shale gas wells, and old infrastructure in public water supply systems. The Petitioner does not point to any relation between these issues and the appropriateness of the Stonehaven permit conditions, and the Region finds no legal basis for considering any of the Petitioner's listed concerns in the review of the UIC permit application.

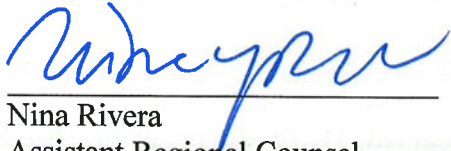


As the Board stated in In re Envotech, L.P., 6 E.A.D. at 268, the decision whether to grant or deny a UIC permit application can only be based on the UIC regulations. Neither the SDWA nor the UIC regulations authorize EPA to regulate injection wells beyond their impact on USDWs. See In re American Soda, 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 on the protection of USDWs. See In re Sunoco Partners, UIC Appeal No. 05-01 at 10; see also In re Bear Lake Properties, UIC Appeal No. 11-03, slip op. at 19. The conditions in the Stonehaven permit are intended to protect the USDWs. The issues listed by the Petitioner are beyond the scope of SDWA and beyond the jurisdiction of the Region and of the Board in issuing and reviewing a UIC permit. The Board should not grant review of the permit based on any of these miscellaneous concerns raised by the Petitioner, which are not associated in any way with the Stonehaven permit.

### CONCLUSION

The Petition for Review does not identify any permit conditions based on clearly erroneous findings of fact or conclusions of law, 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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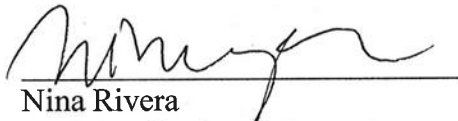
**CERTIFICATE OF SERVICE**

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

John McNerney  
2460 Old State Road  
Venus, Pennsylvania 16364

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:

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