



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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Clerk of the Board
Environmental Appeals Board
U. S. Environmental Protection Agency
1201 Constitution Avenue, NW
WJC East Building, Room 3334
Washington, DC 20004

NOV 23 2015

Dear Erica Durr,

Enclosed please find the following documents filed by attorney for U.S. EPA Region III in the Matter of Sammy-Mar, LLC, UIC Permit Appeal No. 15-02 (Permit No. PAS2D030BCLE):

Region III's Response Brief to Petition for Review- original and two copies.

Exhibits to the Response Brief-three sets of Exhibits A through X.

Certified Administrative Record Index-original and two copies.

Certificate of Service-original and two copies.

Sincerely yours,

A handwritten signature in cursive script that reads "Cheryl L. Jamieson".

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Roger Reinhart, U.S. EPA, Region III



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

In the Matter of:)
)
)

Sammy-Mar LLC)
)

UIC Permit No. PAS2D030BCLE)
)
_____)

UIC Appeal No. 15-02

REGION III'S RESPONSE TO PETITION FOR REVIEW

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STATEMENT OF COMPLIANCE WITH WORD LIMITATION:

This Response does not exceed the page limitation established by the Environmental Appeals Board's Order of December 3, 2013.

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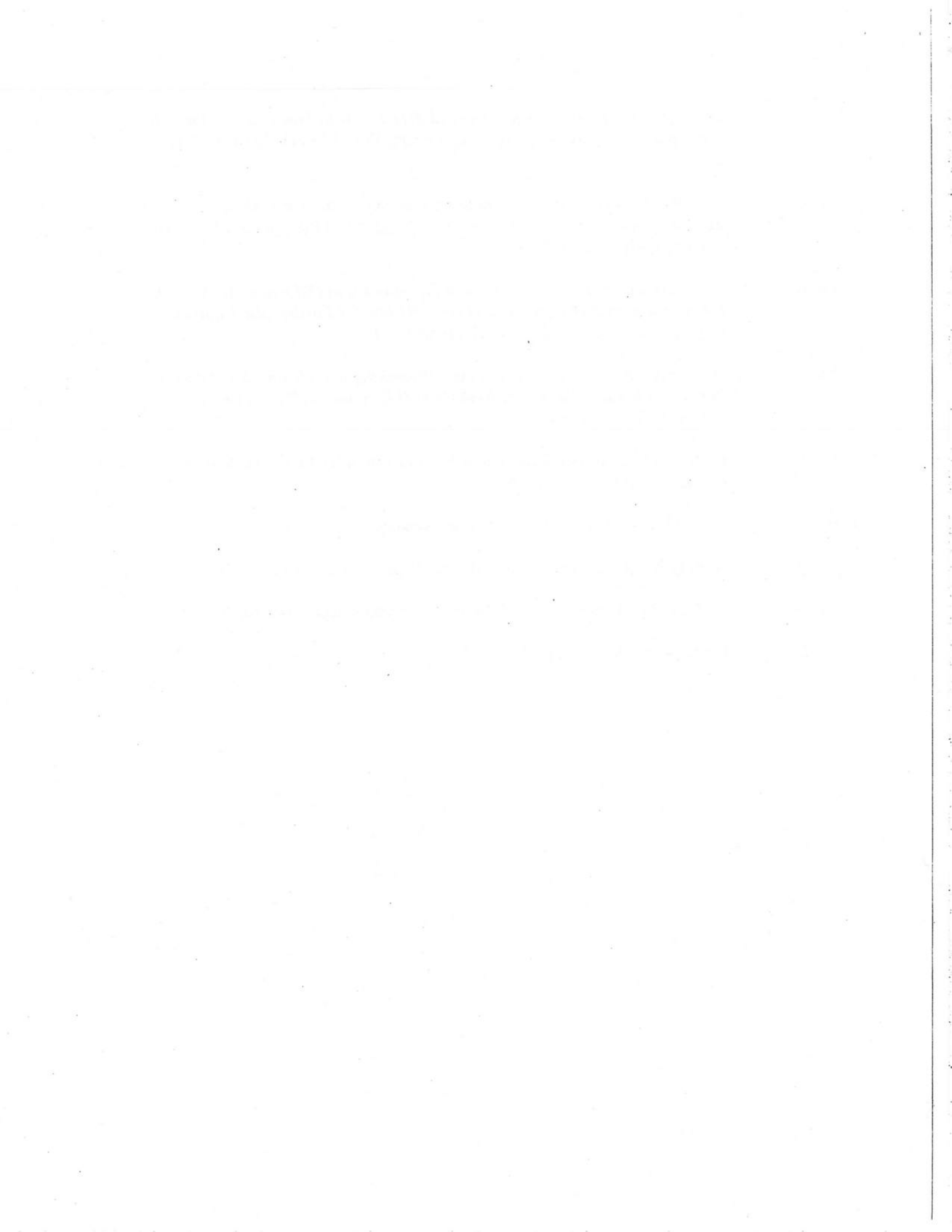
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- Ex. A Certified Index of the Administrative Record.
- Ex. B Sammy-Mar LLC Permit application and supplemental information, including Comprehensive One-Mile Topographic Map.
- Ex. C December 3, 2014 Public Notice of Draft Permit; Draft Permit; and Statement of Basis for Draft Permit.
- Ex. D January 7, 2015 Public Hearing Transcript.
- Ex. E Shawn Agosti Public Comments and His Testimony from Public Hearing Transcript.
- Ex. F Additional 2015 Public Comments for Original Public Comment Period.
- Ex. G August 9, 2015 public notice of reopening of comment period; Supplemental Statement of Basis for Draft Permit; and Amended Draft Permit.
- Ex. H 2015 Public Comments for Additional Public Comment Period.
- Ex. I Region 3 Framework for Evaluating Seismic Potential Associated with UIC Class II Permit.
- Ex. J Seismic maps of Pennsylvania (US Geological Survey and PA Department of Conservation and Natural Resources).
- Ex. K *Geology and Mineral Resources of the Southern Half of the Penfield 15-Minute Quadrangle, Pennsylvania*, Pennsylvania Geological Survey, 1971/1973 (with Plate 12).
- Ex. L National Academy of Sciences, *Induced Seismicity Potential in Energy Technologies*, National Academy Press (final), 2014, in particular Chapters 2 and 3.
- Ex. M *A White Paper Summarizing a Special Session on Induced Seismicity*, Ground Water Research & Education Foundation, February 2013.
- Ex. N *Preliminary Report on the Northstar1 Class II Injection Well and the Seismic Events in Youngstown, Ohio Area*, Ohio Department of Natural Resources, March 2012.
- Ex. O Charles Scharnberg, *Earthquake Hazard in Pennsylvania*, Pennsylvania Geological Survey, 2003.
- Ex. P Horton, *Disposal of Hydrofracking Fluid by Injection into Subsurface Aquifers*

Triggers Earthquake Swarm in Central Arkansas with Potential for Damaging Earthquake, Seismological Research Letters, Vol 83 March/April 2012, pp. 250-260.

- Ex. Q Frohlich, *Two-Year Survey Comparing Earthquake Activity and Injection-Well Locations in the Barnett Shale, Texas*, Proceedings of the National Academy of Science Early Edition, 2012.
- Ex. R K. Keranen *et al*, *Potentially Induced Earthquakes in Oklahoma, USA: Links between Wastewater Injection and the 2001 Mw 5.7 Earthquake Sequence*, Geology, June 2013, vol. 41, no.6, pp. 699-702.
- Ex. S U.S. EPA UIC Technical Workgroup, *Minimizing and Maximizing Potential Impacts of Induced-Seismicity from Class II Disposal Wells: A Practical Approach*, Feb. 5, 2015.
- Ex. T US EPA Office of Drinking Water, *Final Injection Well Construction Practices and Technology*, October 1982.
- Ex. U September 30, 2015, Notice of Permit Issuance.
- Ex. V Sammy-Mar LLC Final Permit effective September 30, 2015.
- Ex. W EPA Region III Response to Summary Comments September 30, 2015.
- Ex. X Petitioner Notice of Appeal.



I. INTRODUCTION

The United States Environmental Protection Agency, Region III (EPA or the Region) hereby responds to the Petition for Review filed with the Environmental Appeals Board (EAB or the Board) challenging Permit No. PAS2D030BCLE, issued by the Region to Sammy-Mar LLC (Sammy-Mar) on September 30, 2015, pursuant to 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. *See* Ex. A. For the reasons set forth below, the petitioner has failed to meet its burden of obtaining review by the Board, and therefore the petition should be denied.

II. 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 the 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 the UIC Program 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 144-147. Part 144 establishes the regulatory framework, including permitting requirements, for EPA-

administered UIC programs. (Part 145 covers State UIC program requirements, but is not relevant to this appeal). Part 146 sets out technical criteria and standards that must be met in permits. Certain procedural requirements applicable to UIC permits are found in 40 C.F.R. Part 124. In addition, state-specific requirements applicable in Pennsylvania are set forth in 40 C.F.R. Sections 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 at issue in these appeals 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). The Sammy-Mar UIC permit covers injection for the disposal of brine and other fluids extracted in association with gas and oil production.

III. STANDARD OF REVIEW

The Board must decline review of a UIC permit decision unless it finds that a permit condition is based on a “clearly erroneous” finding of fact or conclusion of law, or involves an “important” matter of policy or discretion that warrants review. 40 C.F.R. § 124.19(a); *see In re: Beeland Group, LLC*, 14 E.A.D. 189, 195 (EAB Oct. 3, 2008). The discretion of the Board to review permit decisions should be exercised sparingly. *Id.* at 195-96 (quoting the Consolidated Permit Regulations, Preamble to 40 C.F.R. § 124.19, 45 *Fed. Reg.* 33290, 33412 (May 19, 1980)).

Additionally, a petitioner has the burden of demonstrating that the issues raised in his petition warrant review. *See In re: Beeland Group*, 14 E.A.D. at 195, 196; *In re: Env'tl. Disposal Sys., Inc.*, 12 E.A.D. 254, 264 (EAB Sept. 6, 2005). A petitioner does not satisfy this burden merely by relying on previous comments or statements. *See In re: Penn. General Energy Co., LLC*, UIC Appeal Nos. 14-63 *et al*, slip op. at 7 (Aug. 21, 2014). Instead, the petitioner must demonstrate why the Regional response to particular comments or objections is clearly erroneous or warrants review. *See In re: Beeland Group*, 14 E.A.D. at 196; *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 re Cherry Berry*, UIC Appeal No.09-02 (EAB Aug. 13, 2010), at 5. Petitioners must explain why the Region's response to comment failed to address the petitioners' concern. *See* 40 C.F.R. 124.19(a)(4); *see also In re Beeland Group*, 14 E.A.D. at 195-96. In *In re Cherry Berry*, UIC Appeal No.09-02, the Board found that the petition, which consisted of the previously submitted comments, reorganized and reprinted, often verbatim, was deficient because it failed to state why the response to comments on the draft permit was erroneous. In addition, the Board generally defers to the permit issuer on the review of technical issues. *See, e.g., In re: Beeland Group*, 14 E.A.D. at 199; *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 is limited to the boundaries of the UIC permitting program itself, which has the goal of protecting 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, 264 (EAB Feb. 15, 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 original).

IV. FACTUAL AND PROCEDURAL BACKGROUND

On July 23, 2013, the Region received an application from Sammy-Mar LLC for a UIC permit that would authorize the construction and operation of a new Class II disposal well, the Polvik No. 1, Class II-D brine disposal Injection Well, to be located in Huston Township, Clearfield County, Pennsylvania. *See* Exs. B and C. The application for this permit, which was submitted in accordance with 40 C.F.R. § 144.31, includes a description of the well’s construction; operation and monitoring; information on drinking water wells and gas production wells that exist in the area surrounding the injection well; and the geologic conditions surrounding the site, including location of a fault system in the area and shallow ground water depth.

Following receipt of Sammy-Mar’s permit application, the Region conducted a careful review of the application, which included an evaluation of the geology of the injection and confining zones. The Region also considered whether documents submitted by the permittee – including the well construction, proposed operation and monitoring plan for the well, plugging and abandonment plan, and financial assurance information -- satisfied the regulatory requirements for Class II wells. *See* Ex. C. In compliance with the mandate of the SDWA, the Sammy-Mar permit application review was performed with the purpose of ensuring that if the Region granted the permit, its conditions would protect USDWs from endangerment from the injection operations. *See* 42 U.S.C. § 300h(b)(1)(B); 40 C.F.R. § 144.12.

Based on the technical review, the Region developed a Draft Permit and a Statement of Basis. Ex. C. Consistent with the requirements of 40 C.F.R. § 124.10, the Region provided public notice of the Draft Permit on December 3, 2014, through publication in *The Courier-Express*, a DuBois, Pennsylvania newspaper, that the Region was accepting public comment on the Draft Permit, and that it intended to hold a public hearing on January 7, 2015. *Id.* In addition, at the same time, the public notice was posted on the Region's website for public notices.

The Region received numerous written comments on the Draft Permit by both regular mail and email. *See* Exs. E and F. In addition, approximately one-hundred persons attended the January 7, 2015 hearing, at which fourteen persons provided oral testimony. *See* Ex. D. At the hearing, the Region extended the public comment period until January 21, 2015. *Id.* In response to issues raised during the public comment period, the Region requested additional information from the applicant, Sammy-Mar, including but not limited to the submission of a new topographic map and certain clarifications and corrections to the previously-submitted application. The additional information submitted concerned abandoned coal mines and gas production wells which were not previously identified but that are located within one mile of the proposed injection well, information clarifying the injection fluids to be used, and information on the confining zones and underground sources of drinking water. The Region also made modifications to the Draft Permit and the Statement of Basis. Through a second public comment period that took place from August 10, 2015 through September 10, 2015, the Region provided the public with the newly-submitted information, a revised Draft Permit and a revised Statement of Basis. During both public comment periods, all of the information submitted by the applicant

was available for review at the Huston Township Municipal Building in Penfield, Pennsylvania, as well as at the EPA Regional Office located in Philadelphia, Pennsylvania.

After the limited reopening of the Draft Permit and further consideration of the permit conditions together with the record and the public comments, the Region determined that it was appropriate to issue a final Class II Permit to Sammy-Mar. Pursuant to 40 C.F.R. Section 124.15(a), the Region mailed or emailed the Response to Summary Comments and Notice of Final Permit to all persons who provided written comments. *See* Exs. U, V and W. On September 30, 2015, the Region issued a final permit to Sammy-Mar for a UIC Class II injection well. *See* Ex. V. Petitioner filed a timely petition for review which was received by the Region on October 29, 2015, *see* Ex. X, and docketed by the EAB on November 2, 2015.

In reaching its permit decision, the Region established permit conditions through its technical evaluation that were designed to prevent the injection operations from endangering USDWs. The lowermost USDW at the location of the well site is approximately 1000 feet below surface level. *See* Ex. B at Attachment s D & E. The Region determined that approximately 6025 feet separate the lowermost USDW from the injection zone, the Huntersville Chert-Oriskany Sand formations, found at approximately 7025 feet below the surface. *Id.*

The permit requires the proposed well to have surface casing cemented back to the surface from a depth of approximately 1250 feet. *See* Ex. V at III.A.2(e). In addition to the surface casing required by the regulations, the permit requires two additional cemented water casings to protect shallow ground water and existing water wells. One water protective casing will be placed to a depth of 200 feet; the second water protective casing will be placed to a depth of 375 feet. The permit requires that both of these casings are to be cemented to the surface. *See* Ex. V at III.A.2(c) and (d). Injection will occur through tubing which will be placed inside long-

string casing. The long-string casing will run from the bottom of the well to the surface, and will be cemented back from the bottom up to 5,030 feet below surface. *See* Ex. V at III.A.(f).

The permit also limits injection volume and pressure, and contains monitoring requirements to ensure the proper operation of the well. *See* Ex. V at III.B.3 and 4. The maximum injection pressure, 2598 pounds per square inch (psi), was calculated to prevent fracturing of the injection zone during operation. *See* Ex. V at III.B.4. The permit requires that, prior to commencing injection into this well, the permittee conduct a pressure fall-off test and a mechanical integrity test to verify reservoir pressure and expected flow characteristics, and to ensure that the well as constructed does not leak or cause fluid movement outside the injection well. *See* Ex. V at II.D.2 (b) and (c). The permit also requires that prior to commencing operations the permittee submit a completion report which includes drilling and cementing records, gamma ray logs of the formations, which will confirm the formation layers, and a cement bod log, to confirm proper cementing of the casings. Ex. V at III.A.6. Once the injection begins, continuous monitoring of the injection pressure, annular pressure and injection volume is required, to verify continuous compliance with injection pressure limits and the mechanical integrity requirement. *See* Ex. V at II.B.2. The well will also be equipped with an automatic shut-off device in case a leak is detected and the annular pressure increases. *Id.* Furthermore, to ensure the proper operation of the well, the permit requires the permittee to conduct a pressure fall-off test annually and also to test the well for mechanical integrity every two years. *See* Ex. V at II.B.6.

V. RESPONSE TO PETITION FOR REVIEW

This appeal involves one petition which raises four issues that the Region views as previously raised generalized objections relating primarily to the location of the proposed well in

Clearfield County, Pennsylvania. The arguments raised by the petitioner include the following: (1) the Board, in its discretion, should review the Region's permit decision in relation to possible nearby faults and seismicity, (2) the self-reporting requirements in the permit and the regulatory requirements do not assure that the permittee will pay the cost of any damage to local drinking water wells and possible well replacement (petitioner references Response to Comments Nos. 19, 20 and 21), *id.*; (3) the well will cause increased need for emergency services, increased traffic and have a negative effect on the local economy, property values, wildlife and will discourage potential elk hunters; and (4) the well should not be located at the proposed site because it is too close to the headwaters of Anderson Creek (which feeds the Dubois Reservoir) and to two Pennsylvania state mining cleanup projects on tributaries to the Bennetts Branch of the Susquehanna River.

Petitioner raised similar issues in his testimony at the public hearing on January 7, 2015, see Ex. D at 14-18, his comments filed during the first public comment period sent on December 21, 2014, *see* Exs. E and F, and his comments filed during the second limited public comment period on September 2, 2015. *See* Exs. E and H.

The petition for review filed by the petitioner fails because none of the issues raised specify a permit condition (or lack thereof) that is based upon a clearly erroneous finding of fact or conclusion of law, nor do they identify an alleged abuse of discretion or raise an important policy consideration that the Board should review.

A. The permit conditions control the risk of induced seismicity.

The permit establishes specific conditions which are designed to prevent induced seismicity and fractures. In addition to injecting into a reservoir with a long history of oil and gas production, to prevent induced seismicity, as well as to prevent fractures that could serve as

conduits for fluid movement, the Sammy-Mar permit limits the maximum injection pressure so as not to create fractures in the injection zone. *See* Ex. V at III.B.4. Although the UIC Class II regulations only require that the injection pressure be limited so as not to create fractures in the confining zone immediately adjacent to the lowermost USDW, *see* 40 C.F.R. §146.23(a)(1), the Sammy-Mar permit sets the maximum injection pressure at a level to prevent the propagation of any existing fractures or the creation of new fractures in the injection zone. *Id.* This is important in preventing induced seismicity because limiting the injection pressure not only limits the pressure exerted by the fluid in the reservoir, but also prevents the opening of existing natural fractures, or the creation of new fractures, that could serve as conduits for the fluid to travel to an unknown open fault. The permit also limits the volume to be injected. *See* Ex. V at III.B.3.

Petitioner requests that the Board, in its discretion, review the potential risk of seismicity by arguing that the Region is issuing the permit even though it is aware of seismic faults near the Sammy-Mar injection well. The Region recognizes that some injection wells have indeed been linked to earthquakes under limited circumstances. As described in the *Region 3 Framework for Evaluating Seismic Potential*, brine disposal wells have the potential to induce seismicity where there a fault is in near-failure state, the injected fluid reaches the fault, and the pressure exerted by the injected fluid is high enough and lasts long enough to facilitate movement across the fault line. *See* Exs. I and M at 8-9. However, these circumstances are rare and can generally be identified and prevented through appropriate permitting of injection wells. The vast majority of brine disposal wells operate without inducing seismicity. There are only a few documented events nationwide of induced seismicity, compared to over 30,000 waste water disposal wells where this type of event has not occurred. *See* Ex. L at 11. In fact, none of the injection wells permitted by EPA in Pennsylvania since 1985 have resulted in injection-related earthquakes.

Further, as explained above, the faults in the area of Pennsylvania near the Sammy-Mar well have long been recognized as being non-transmissive, which is demonstrated by the long gas production history of the area. Geologists have recognized that the presence of the faults plays a role in creating geological traps which result in successful gas production. *See* Ex. M at 123-24. Traps are then created because non-transmissive faults have sealed off the formation.

Induced seismicity can occur only when pressure is exerted that is high enough to allow a near-failure fault (*i.e.*, a fault that is under pressure to shift, but where internal friction forces prevent it) to shift. With a non-transmissive fault, even if increased pressure associated with the injection operation were to reach the fault, it would be limited to the fault's horizon in the receiving formation (the section of the fault within the Oriskany). Because the fault is sealed, under the permit's limitation on injection pressure and volumetric rate, any increase in pore pressure due to the injection would not be sufficient to overcome the frictional pressure throughout the fault. Thus, it would not be able to induce an earthquake in that fault. In contrast, in transmissive fault, any increase in pressure will be felt throughout the fault.

Petitioner refers to earthquakes caused by underground injection in Oklahoma, Arkansas, Ohio, and Texas, some of which involved unknown faults. As described in the Response to Comments for the instant permit, those instances of induced seismicity by injection have been linked to a high rate of injection (*i.e.*, high volume over a short period of time) and to high injection pressure into or right above Precambrian Basement rock, or to other low permeability formations. *See* Ex. W at 11-12. As further explained in the Response to Comments, higher pore pressure, which could act upon an open fault, results from high rate and high volume injection into low-permeability formations. *Id.* at 9-10. In contrast, in the case of induced earthquakes in Ohio, deep injection was into the low-permeability Precambrian Basement. *See*

Ex. N at 9 - 15. The wells in Arkansas were injecting into a receiving formation right above the Precambrian Basement, without being separated by a confining zone. *See* Ex. P at 1 - 3. In the case of the induced earthquakes in Oklahoma, the wells were also injecting into the formation right above the Basement rock. *See* Ex. R. In contrast to these wells outside of Pennsylvania, the Precambrian Basement at the Sammy-Mar well site is approximately 9,500 feet below the injection zone. *See* Ex. W at 8.

Another important distinction is that the Texas wells associated with induced seismicity had a high rate of injection -- about 150,000 barrels of fluid per month. *See* Ex. Q at 1-2. The rate of injection at the Sammy-Mar well is limited to 30,000 barrels per month. Ex. V at III.B.3.

Finally, the permit is consistent with the Board's decision in *In re: Windfall Oil & Gas, Inc.*, UIC Appeal Nos. 14-73, *et al.*, slip op. (June 12, 2015). In *Windfall*, the Board found that the Region had thoroughly responded to comments, in part because it discussed at length the following:

background information on induced seismic activity; known faults near the proposed well; factors affecting fluid transmission and pore pressure; comparisons of the geology and factors influencing induced seismic events in other parts of the country due to injection activities; the general suitability of the depleted oil and gas formations for underground injection; and the potential for seismic events to contribute to groundwater contamination.

Similarly, the Region considered each of the foregoing topics in connection with issuance of the instant permit. The Petitioner failed to meet its burden of demonstrating that the permit conditions do not control the risk of induced seismicity because the Petition fails to address those factors which were identified in the Response to Comments that distinguish injection wells associated with induced seismicity from the proposed Sammy-Mar injection well, or to otherwise explain why the Region's response warrants EAB review. Therefore the Board should deny review of the permit.

- B. The Permittee is only required to provide financial assurance for the cost to plug and abandon the well at cessation of operations; EPA has the authority to take action in the event of potential endangerment to USDWs.

The petitioner argues that the permittee should be required to pay for the testing of drinking water wells and replacement of such wells if contamination were to result from injection operations. However, such a Permit provision is not legally mandated. When applying for a Class II permit, the permittee is only required to provide financial assurance for the cost of plugging and abandoning its well at the time of cessation of operations. 40 C.F.R. § 144.52(a)(7); *see also* Ex. V at III. D. 1 and 2. In the instant case, the permittee has provided the required financial assurance.

In the event of potential endangerment to USDWs caused by the permittee's injection activities, EPA has broad authority to take action, regardless of the source of the endangerment, as the Agency "may deem necessary in order to protect the health of . . . persons." *See* Section 300i of the SDWA, 42 U.S.C. 1431. The actions which EPA may take include, but are not limited to, issuing emergency orders to protect the health of persons who are or may be users of such system including travelers. *Id.* Such orders may require the person or persons who caused or contributed to an endangerment to provide alternate water supplies, and EPA also has the authority to file a civil action for a possible restraining order or a permanent or temporary injunction. *Id.*

- C. The Petition requests that EPA address matters that are outside the scope of its legal authority.

Petitioner raises many other issues in his petition that are not related to injection wells or the protection of USDWs from such injection; these requests include: the effect of the installation of the well on property values, a potential increase in traffic, the potential for increased need for emergency services, a negative effect on the local economy, and the possible

endangerment of local wildlife including an elk herd which petitioner claims is in the area of the project site. The Region contends that there is no legal basis for considering these concerns in connection with the review of a UIC permit application.

The decision whether to grant or deny a UIC permit application can only be based on the authority of the UIC regulations. *In re: Envotech, L.P.*, 6 E.A.D. at 264. Neither the SDWA nor the UIC regulations authorize EPA to regulate injection wells beyond their impact on USDWs. *See In re: American Soda, LLP*, 9 E.A.D. 280, 289 (EAB June 30, 2000). 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 F Partners*, UIC Appeal No. 05-01 at 10; *see also In re: Bear Lake Properties*, UIC Appeal No. 11-03, slip op. at 19 (EAB June 28, 2012). When petitioners have raised issues under a state's regulatory authority, the Board typically has denied their requests for UIC permit review on the ground that the Board lacks the authority to adjudicate such issues. *In re: Envotech, L.P.*, 6 E.A.D. 260, 275-276 (EAB 1996) (“[T]he Board does not have authority to consider issues raised by petitioners concerning matters that are exclusively within the State's power to regulate”).

Spill response and permitting of gas production wells are matters regulated by the state, in this case the Pennsylvania Department of Environmental Protection, but not EPA. *See generally* Pennsylvania's Oil and Gas Act, 58 Pa. Cons. Stat. §§ 3201 *et seq.*; 25 Pa. Code §§ 78.55, 78.66 and 91.34 (on spill controls). EPA does not review or evaluate whether the proposed well complies with the state drilling requirements – the state permit is issued only after the permittee has a federal UIC permit. *See* 25 Pa. Code § 78.18 (requiring a state permit for drilling a disposal well, for which an EPA UIC permit is a requirement). Zoning, local traffic, local emergency preparedness, etc. are traditionally local matters, which are not subject to review

by the Board. *See, e.g., In re: Env'tl. Disposal Systems*, 12 E.A.D. at 295 (questions of geographic siting of wells and transportation issues flow from state and local laws, thus are not subject to Board review); *In re: Puna Geothermal Venture*, 9 E.A.D. 243, 256, 258, 260, 270 (EAB June 27, 2000) (remanding permit that included permit requirements outside the scope of UIC program such as well setback, emergency response plan, notification to emergency responders, as well as an explicit requirement of compliance with state and local laws).

EPA's lack of authority over local matters does not mean that Sammy-Mar does not have to comply with applicable state or local laws or regulations. *See In re: Envotech, L.P.*, 6 E.A.D. at 275. The permit clearly states that it "does not convey property rights or mineral rights of any sort or any exclusive privilege; nor does it authorize any injury to persons or property, any invasion of other private rights, or any infringement of State or local laws or regulations." *See Ex. V* at 2. However, EPA does not have the authority to deny a federal UIC permit based on the requirements of local and State laws.

While EPA does not have authority over local matters, it did perform its required coordination with other federal agencies related to cross-cutting issues. As a part of the public notice process, EPA provided copies of the Statement of Basis and the draft permit to the U.S. Fish & Wildlife, the Nature Conservancy, the Pennsylvania Fish & Boat Commission, the Pennsylvania Game Commission, and the Allegheny National Forest for their review and comment. *See Ex. W*, Response to Comment No. 22. No adverse issues or concerns were raised by any of these organizations. In addition, EPA conducted a search for possible endangered species in the project area and found none in Clearfield County.

The conditions in the Sammy-Mar 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 reviewing a UIC permit. The Board should not grant review of the permit based on any of these miscellaneous concerns raised by the petitioner.

The petitioner is also concerned about the permit conditions that require the permittee to self-report noncompliance to EPA, arguing that self-reporting is ineffective. The Board has also denied review of petitions based on fears of future noncompliance. *See, e.g., In re City of Caldwell*, NPDES Appeal No. 09-11 (Feb 1, 2011), slip op. at 14 (claims based on questions about future compliance are speculative and do “not call into question the permit terms”). Petitioners are in essence arguing that the permit should not be issued because the permittee will not comply with the self-reporting provisions of the permit, which is, as deemed by the Board in *In re City of Caldwell*, speculative. In any case, the Region does not rely solely on self-reporting for its oversight authority over Class II disposal wells in Pennsylvania. The Region inspects every Class II disposal well in Pennsylvania at a minimum annually, in addition to reviewing the permittee’s annual reports.

D. The Permit conditions are sufficiently protective of USDWs.

Petitioner argues that the well should not be located at the proposed site because it is too close to the headwaters of Anderson Creek which feeds the Dubois Reservoir and also too near to two Pennsylvania state cleanup projects on tributaries to Bennetts Branch of the Susquehanna River. EPA’s information suggests that these waters will not be impacted by the injection. Once fluid is injected into the well under pressure it will not come back to the surface and affect surface waters due to the geologic confining zones, the permitted injection pressure, and the requirements for monitoring of pressure conditions within the injection well. *See Ex. W, Response to Comments, No. 14.*

CONCLUSION

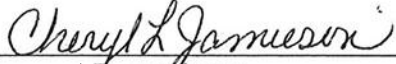
Although the petitioner raises generalized concerns about the issuance of this permit in its authorized location, the petitioner has failed to show that the Sammy-Mar permit conditions are based on clearly erroneous findings of fact, or an exercise of discretion or important policy consideration which the Board should, in its discretion, review. To warrant review by the Board it is not sufficient simply to repeat objections made during the comment period; instead a petitioner must demonstrate why the permit issuer's response to those objections is clearly erroneous or otherwise warrants review.

As previously stated, the permit conditions control the risk of induced seismicity. The Permit is compliant with applicable regulations because it requires the permittee to provide financial assurance for the cost to plug and abandon the well at cessation of operations. EPA retains authority to take action in the event of potential endangerment to USDWs. The additional issues raised by the petitioner are outside the scope of EPA's legal authority. The conditions in the permit are sufficiently protective of USDWs.

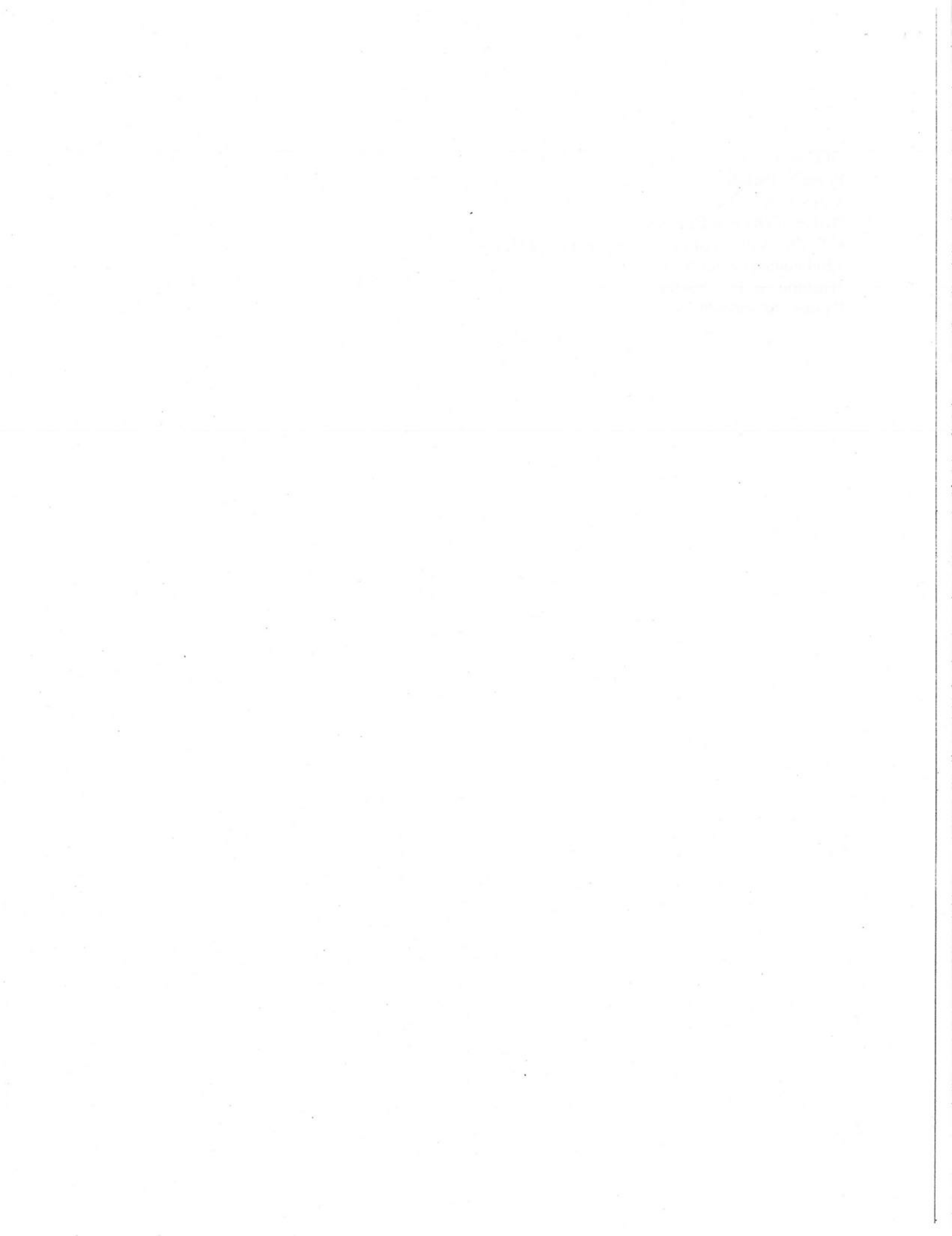
Therefore, the Region respectfully requests that in the instant case, that the Board deny the petition.

Respectfully submitted,

Date NOV 23 2015,


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CERTIFICATE OF SERVICE

I hereby certify that I delivered a copy of the foregoing Region III's Response to Petition for Review in the Matter of Sammy-Mar, LLC, UIC Permit Appeal No. 15-02, accompanied by a copy of the Certified Administrative Record Index, and a computer disk containing the copies of the listed exhibits, on the date specified below, by overnight delivery service - UPS Next Day Air to:

Mr. Shawn Agosti
187 Horseshoe Drive
Penfield, PA 15801

I also certify that I filed the original and two copies of each of the following: Region III's Response to Petition for Review in the Matter of Sammy-Mar, LLC, UIC Permit Appeal No. 15-02 with the certified index of the administrative record and the attachments to the response brief by overnight delivery service - UPS Next Day Air, to the Environmental Appeals Board at the following address:

Clerk of the Board
Environmental Appeals Board
U.S. Environmental Protection Agency
1201 Constitution Avenue, NW
WJC East Building, Room 3334
Washington, DC 20004

Date: NOV 23 2015



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