

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

In Re:	:	
	:	
	:	Permit Appeal
Penneco Environmental Solutions, LLC	:	UIC 23-01
	:	
	:	
UIC Permit No. PAS2D702BALL	:	
	:	
	:	
	:	

**MOTION FOR RECONSIDERATION
OR IN THE ALTERNATIVE
MOTION FOR A JOINT PROCEEDING**

Two concurrent petitions for review challenging the same Underground Injection Control (UIC) permit are before the Board: Appeal UIC 23-01, filed by two organizations, and Appeal UIC 24-04, filed by two individuals. Both appeals, filed by the same attorney, seek to overturn the UIC permit Region 3 issued to Penneco Environmental Solutions on September 23, 2023, for a single Class II well in Plum Borough, Pennsylvania. On April 12, 2024, the Board denied the Region’s motion to consolidate these appeals. The Region now requests that the Board reconsider the Region’s Motion for Consolidation.

If the Board denies the Region’s request to consolidate the appeals, then the Region asks that, should the Board decide to hold oral argument for both appeals, the Board convene a joint proceeding for the two appeals. In addition, the Region asks that the Board issue decisions for the two appeals simultaneously.

After the Board denied the Region's Motion for Consolidation, all parties to both appeals have, with one possible exception, completed filing the briefs contemplated by 40 C.F.R. § 124.19 or otherwise allowed by the Board's caselaw. The Region and Permittee have filed Responses to the Petitions in both appeals. The Petitioners in each appeal have filed their respective Replies to the Responses. In both appeals the Region has filed a motion for leave to file a sur-reply. In UIC Appeal 23-01 the Petitioners have filed a response in opposition to the Region's sur-reply motion. The Petitioners in UIC Appeal 24-02 may file a similar response to the Region's sur-reply motion. With the filings finished or almost finished, it is evident how much the interests and issues in both appeals have in common.

Both appeals raise eight issues that are almost identical and are based upon almost exactly the same arguments. For example, both Petitions allege the Region violated the Pennsylvania State Constitution's Environmental Rights Amendment and the Pennsylvania Clean Streams Law by issuing the Final Permit (Issues B and E respectively in both Petitions). Both Petitions argue that the activities under the permit require a permit under the Federal Clean Water Act and will endanger waterways in violation of the Clean Water Act (Issue D in both Petitions). The Petitions only differ slightly because the Petition for UIC Appeal 24-02 adds some additional support for some of the eight issues and introduces one new issue not in the prior Petition. (Issuing the Permit denied the Petitioners' right to equal protection under the law.)

Consolidating the two appeals would conserve the resources of both the Board and the parties. Consolidation would mean only preparing for one possible oral argument instead of

two. Consolidation would result in a single decision and the Board would avoid any potential conflicts of law on deciding the same issues and remove a potential for dueling opinions and orders. One decision would provide a consistent result and give clear directions to the Agency or for the parties to appeal, depending on the disposition of these matters. Therefore, in the interests of preserving administrative decision-making resources, promoting efficiency, and ensuring consistent decision making, the Region requests that the Board consolidate its review of the two Petitions. *See In re Berry Petroleum Co.*, 16 E.A.D. 263, 265 n.1 (EAB 2013).

The Region recognizes that the Board may decide to not grant the Motion for Reconsideration. In that case, if Board decides to hear oral arguments, the Region asks that the Board hold a joint argument proceeding and reach a decision on both appeals simultaneously. Holding a joint proceeding might assist the Board in reaching consistent decisions on the eight issues that are common to both appeals. Timely simultaneous decisions on the petitions would be in the interest of all parties for a swift resolution of the appeals.

The undersigned has contacted counsel for both the Petitioners and the Permittee. Counsel for the Petitioners represent that they neither concur nor object to this motion. Counsel for the Permittee represent that it concurs with the motion.

Respectfully submitted,
/s/ Philip Yeany

*(signed per Revised EAB Order re: Electronic Filing
in non-Part 22 Proceedings, 8/12/13)*

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