

IN THE MATTER OF TERRA ENERGY LTD.

UIC Appeal No. 92-3

ORDER DENYING REVIEW

Decided August 5, 1992

Syllabus

Petitioner Joan C. Wummel has filed an appeal of an underground injection control permit issued by USEPA Region V to Terra Energy Ltd. for a disposal well. Petitioner is the owner of property in the vicinity of the well site. The petition for review raises concerns about the impact of the well on nearby lakes and wetlands, and on the value of the properties in the area.

Held: Petitioner's generalized concerns fail to satisfy her burden of demonstrating that there are any clearly erroneous findings of fact or conclusions of law or any exercises of discretion warranting review. Therefore, review is denied.

Before Environmental Appeals Judges Ronald L. McCallum, Edward E. Reich, and Nancy B. Firestone.

Opinion of the Board by Judge Reich:

This case involves an appeal of a permit issued by the Region V office of the U.S. Environmental Protection Agency to Terra Energy Ltd. of Traverse City, Michigan. The permit authorizes the construction and operation of a new injection well located in Oscoda County, Michigan. The purpose of the well is for disposal of salt water from production wells owned and operated by Terra Energy. The well, named State Elmer #C1-17 SWD, is classified as a Class II well¹

¹Class II wells are defined as:

(b) * * * Wells 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.

Continued

under the regulations implementing the Safe Drinking Water Act, as amended (42 U.S.C. § 300f *et seq.*).² The petitioner is Joan C. Wummel, an owner of property in the vicinity of the proposed well.

The petition was filed with the Environmental Appeals Board pursuant to 40 CFR § 124.19(a); 57 Fed. Reg. 5335 (Feb. 13, 1992). At the request of the Board, Region V filed a response to the petition.

Initially, it should be noted that under the rules that govern this proceeding, a UIC permit ordinarily will not be reviewed unless it is based on a clearly erroneous finding of fact or conclusion of law, or involves an important matter of policy or exercise of discretion that warrants review. *See* 40 CFR § 124.19; 45 Fed. Reg. 33412 (May 19, 1980). The preamble to § 124.19 states that “this power of review should be only sparingly exercised,” and that “most permit conditions should be finally determined at the Regional level * * *.” *Id.* The burden of demonstrating that review is warranted is on the petitioner.

The petition, in the form of a one-page letter, raises concerns about the effect of the well on property values, as well as concerns about the well’s impact on three lakes and wetlands³ in the vicinity. The petition also raises a concern about the impact of abandonment of the well if the well is not successful. Finally, petitioner requests a meeting to discuss the potential for contamination associated with the well.

Region V, in its response, asserts that the petition should be denied for failure to comply with the requirements of §§ 124.13 and 124.19. Those provisions require that any person who believes that any provision of a draft permit is inappropriate “raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position” by the end of the comment period on the draft permit. 40 CFR § 124.13. Only persons who filed such comments or participated in the public hearing may petition for administrative review under 40 CFR § 124.19(a), except to the extent that issues were not reasonably ascertainable or that issues arose from changes from the draft permit to the final permit.

40 CFR § 144.6(b).

²Regulations implementing the underground injection control (UIC) portion of the Safe Drinking Water Act relevant to this appeal are found at 40 CFR Parts 144, 146 and 147.

³While not significant to this decision, we note that the Region asserts that there are no wetlands in the vicinity of the well. Response at 2.

In this instance, petitioner filed comments with Region V during the comment period. There was no public hearing on the draft permit.⁴ In her comments,⁵ petitioner raised concerns about the well's potential impact on lakes and wetlands, and on property values. She also requested a meeting or hearing. There were no comments specific to the effects arising from possible abandonment of the well.

While we recognize that petitioner's concerns are very important to her, they do not meet the burden for showing that review of the permit is warranted. The petition expresses only generalized concerns about the potential impact of the well on the environment and property values. The Safe Drinking Water Act and implementing regulations do not authorize the Agency to deny or condition a permit to inject solely because it may adversely affect the property values of nearby properties.⁶ The statements as to environmental concerns are vague and unsubstantiated. The petition does not allege that the Region made any clearly erroneous findings of fact or conclusions of law when it decided to issue the permit for this particular underground injection well. Neither does the petition allege that the Region's decision involves an exercise of discretion or an important policy consideration that warrants review. The petition does not identify any specific permit conditions that give rise to petitioner's concerns, or that require revision to address those concerns.

Because the petitioner has not met her burden of demonstrating that review is warranted under 40 CFR § 124.19(a), the petition for review is hereby denied.

So ordered.

⁴Under 40 CFR § 124.12, a public hearing shall be held if the Region determines that there is a significant degree of public interest in the draft permit. In this instance, the Region found that there was not a significant degree of public interest and chose to respond to each comment letter individually. Response at 6. The judgment of the Region in this respect has not been shown to be erroneous.

⁵Letter from Joan C. Wummel to Richard J. Zdanowicz, Chief, UIC Section, Region V, dated April 16, 1992.

⁶The Safe Drinking Water Act and implementing criteria and standards are designed to assure that no contaminant in an underground source of drinking water causes a violation of a primary drinking water regulation or otherwise adversely affects the health of persons. See 40 CFR § 144.12(a). Also applicable to the permitting process are certain other Federal laws. See 40 CFR § 144.4. A permit condition or denial is appropriate only as necessary to implement these statutory and regulatory requirements, none of which include property values of neighboring property as a relevant consideration.