IN RE BECKMAN PRODUCTION SERVICES

UIC Appeal Nos. 92-9, 92-10, 92-11, 92-12, 92-13, 92-14, 92-15, and 92-16

ORDER DENYING REVIEW

Decided January 24, 1994

Syllabus

Eight private citizens have filed separate petitions for review of EPA Region V's decision to issue to Beckman Production Services a federal Underground Injection Control (UIC) permit as provided for in Part C of the Safe Drinking Water Act, as amended, 42 U.S.C. §§ 300h through 300h-7. The permit would authorize Beckman to construct and operate a Class II well for commercial disposal of "brine" waste fluid that is "brought to the surface in connection with * * * conventional oil or natural gas production * * *." 40 C.F.R. § 144.6(b)(1).

The petitioners raise various objections to the Region's decision to issue the permit. In particular, petitioners argue that the permit should be denied because: (1) the permit does not protect against unauthorized disposal in the well; (2) the permittee operates another brine disposal well over one-quarter mile away from this well, and the proximity of the two wells may exacerbate the potential for groundwater contamination; (3) the permittee has received notice of regulatory violations relating to its operation of the other brine disposal well, and radioactive material has been detected at that well; and (4) pending litigation involving local regulations that limit use of the property on which the well is located should be resolved before EPA issues a permit to conduct commercial brine waste disposal in the well.

In response to the petitions, Region V contends that several petitioners lack standing to pursue an appeal of the final permit conditions under 40 C.F.R. § 124.19(a) because they either failed to file comments on the draft permit, or because their comments were filed several months out of time. Region V also defends its substantive reasons for issuing the final permit.

Held: First, several of the petitions for review are procedurally deficient and must be denied. The petition for review that was not timely filed is denied. The petitioners who failed to file comments or filed late comments lack standing to pursue their appeals, and their petitions for review are denied. The petitions that object to the permit on general terms lack specificity and provide no basis upon which the Board may grant review; those petitions are also denied.

Second, the substantive objections raised in the remaining petitions for review do not demonstrate that the Region committed clear error of fact or law in deciding to issue the permit, nor do they raise important matters of policy or exercise of discretion that warrant review. The record demonstrates that the Region considered and addressed each of the objections raised by the petitioners, and the petitioners have not established how the Region

erred or why review is otherwise warranted. Accordingly, review of the remaining petitions is also denied.

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

Opinion of the Board by Judge Firestone:

I. *BACKGROUND*

We have consolidated for decision eight petitions from private citizens seeking review of U.S. EPA Region V's issuance of a Class II Commercial Underground Injection Control (UIC) permit, pursuant to Sections 1421(b) and 1422(c) of the Safe Drinking Water Act, 42 U.S.C. §§ 300h(b) and 300h-1(c). The permit authorizes Beckman Production Services, Inc. (Beckman) to operate a well identified as the Pohl 1-34A, in Iosco Township, Livingston County, Michigan, for commercial disposal of produced brine from oil or natural gas production wells.[1] Petitioners are Michigan residents Leroy B. Duke (Appeal No. 92-9), Connie K. Michaud (Appeal No. 92-10), Sara E. Thomas for Sierra Club-Crossroads Group (Appeal No. 92-11), Caroline L. Fanto (Appeal No. 92-12), Olivia Verfaillie (Appeal No. 92-13), Joseph Fanto (Appeal No. 92-14), Patricia Richards (Appeal No. 92-15), and Mary Zack (Appeal No. 92-16).

Region V originally issued permit #MI-093-2D-0002 in October 1990 to Dart Oil & Gas Corporation (Dart) to utilize the Pohl 1-34A for non-commercial brine disposal. According to the record, Dart initially requested a commercial Class II permit, but a "lack of guidance" on the appropriate permitting standards prevented the Region from issuing a commercial permit to Dart. Response to Comments at 1. In February 1991 Dart asked Region V to modify the permit to authorize Dart's sister company, Beckman, to operate the well for commercial disposal of brine generated by producers other than Beckman.[2]

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[1] As used in this proceeding, "brine" or "salt water" refers to the fluid waste disposed of in a "Class II" disposal well pursuant to EPA's UIC regulations. "Brine" or "salt water" therefore means fluids "[w]hich are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production * * *." 40 C.F.R. § 144.6(b)(1). In its response to comments received on the draft permit at issue in this case, Region V explained that "[s]uch fluids are naturally occurring waters that are separated from the oil and/or gas and then returned to the rock formations from which they originated via Class [II] injection wells * * *." Region V's Response to Comments at 3. Brine wastes are excluded from the definition of "hazardous wastes" in regulations promulgated under the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. §§ 6901 *et seq.*

[2] Beckman and Dart Oil & Gas Corporation are subsidiaries of Dart Energy Corporation. *See* Response to Comments at 1.

Because the Region believed there were "significant differences" between the requirements for non-commercial and commercial Class II permits, it determined that Dart's existing permit should be revoked and reissued, rather than modified. Response to Comments at 1. Region V issued draft permit #MI-093-2D-0004 on September 12, 1991. Reissuing the permit caused all existing permit conditions to be reopened for public comment.[3] In addition to notifying the public that written comments on the draft permit were due by October 16, 1991, Region V held a public meeting on the permit in Howell, Michigan, on September 24, 1991.[4] Following the close of the comment period, Region V issued a response to the comments received, and the final permit was issued on August 25, 1992. The conditions of the final permit were unchanged from the draft.

Under the terms of the final permit, the Pohl 1-34A will inject brine wastes into the Dundee Limestone formation, at a depth of 1980 to 2140 feet. There are no producing or injecting wells within one-quarter mile of the Pohl 1-34A (the Area of Review or AOR). There is one plugged and abandoned well within the AOR. The Pohl 1-34A injection zone is separated from the lowermost Underground Source of Drinking Water (USDW) by approximately 1601 feet of sedimentary rock strata. The permit establishes very detailed well construction specifications, and imposes numerous operating, monitoring and re-

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[3] Ordinarily, when a permittee seeks to modify the terms of a permit, only the conditions to be modified are reopened for public comment. *See* 40 C.F.R. § 124.5(c)(2). In addition, under the applicable regulations "minor modifications" of UIC permits may be made without complying with the part 124 notice and comment procedures. 40 C.F.R. § 144.41. "Minor modifications" include changes in ownership or operational control, as well as certain changes in the types or quantities of fluids injected into the well. *Id.* §§ 144.41(d) & (e). It is unclear what specific differences between the commercial and non-commercial permits for this well caused Region V to determine that the modifications requested by Dart warranted revocation and reissuance under the part 124 procedures. According to the record, the brine to be accepted for commercial disposal by Beckman is from the same geologic formation as the brine to be disposed by Dart under the non-commercial permit. The total volume of injected fluid (a maximum of 4000 barrels per day) remains the same under both permits. *See* Attachments to Application for Permit #MI-093-2D-0002, at 3; Statement of Basis for Issuance of Permit #MI-093-2D-0004, at 2. The commercial permit requires the permittee to maintain a locked gate at the well, but according to correspondence in the record Dart agreed to this requirement prior to issuance of the non-commercial permit. Based on the foregoing, the differences between the commercial and non-commercial permits for this well would appear to qualify as "minor" permit modifications exempt from the part 124 procedures. *See* 40 C.F.R. § 144.41. Nevertheless, while the changes proposed here may well have qualified as minor modifications, Beckman apparently acquiesced in the permit revocation and reissuance process selected by Region V, and all permit conditions were then reopened for comment and objection by the public.

[4] The Region's Response to these appeals erroneously states that "there were no public hearings" on the draft permit. Region's Response to Appeals at 5. The administrative record, however, includes a public notice announcing the meeting, and correspondence relating to the issues addressed at the meeting.

porting requirements on Beckman. For example, wellhead injection pressure, flow rate, and cumulative waste volume must be monitored weekly and reported to Region V monthly. In addition, Beckman must maintain a daily brine manifest record indicating the source and volume of waste delivered for disposal in the well, and the manifest records must be submitted to Region V quarterly. Beckman must also furnish EPA annually with chemical analyses of the brine accepted from each waste source approved by EPA. Beckman may only dispose of brine from the twelve sources identified in the permit; additional sources may be added only by modification of the permit. Finally, in order to prevent unauthorized injection into the well, the permit requires Beckman to install padlocks at the wellhead on the master valve and to construct a padlocked gate across the road providing access to the wellhead.

Following issuance of the final permit, eight persons filed petitions for review of Region V's permit decision. For the reasons explained below, three of the petitions (petitions of Mary Zack, Sara Thomas, and Olivia Verfaillie) do not meet the threshold timeliness and standing prerequisites for administrative review set forth in 40 C.F.R. part 124, and those petitions must therefore be denied. The petitions of Caroline Fanto and Joseph Fanto satisfy the timeliness and standing prerequisites for review, but as discussed below the petitions are otherwise so lacking in specificity that they cannot be sustained.

The petitions of Patricia Richards, Connie Michaud, and Leroy Duke fulfill the standing and timeliness requirements of part 124, and raise four substantive objections to issuance of the permit. Petitioners argue that: (1) the permit does not provide for adequate security against illegal dumping at the Pohl 1-34A well; (2) the Pohl 1-34A is too close to another brine disposal well (the "Daymon" well) operated by Beckman, and thus increases the potential for groundwater contamination;[5] (3) Beckman has been cited for regulatory violations relating to its operation of the Daymon well, and radioactive material has been detected at the Daymon well;[6] and (4) litigation between the Township of Iosco and Dart over the Township's authority to regulate use of the

[5] At the time of Beckman's request for a commercial permit for the Pohl 1-34A well, Beckman was a co-operator of another Class II brine disposal well known as the "Daymon 1-3" located just slightly over one-quarter mile away from the Pohl 1-34A. Beckman operated the Daymon well with its sister company, Dart Oil and Gas, and two individuals, pursuant to permit #MI-093-2D-0001 issued to Robert and Ruth Daymon.

[6] In June 1991 Robert Daymon was served with an administrative Notice of Noncompliance for failure to run a mechanical integrity test on the well, and failure to submit monthly monitoring reports and quarterly fluid analyses for the well. *See* Letter to Congressman Bob Carr from Region V,

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Pohl 1-34A site should be resolved before EPA issues a permit to Beckman to dispose of brine wastes in the well.[7] None of the objections raised in these three petitions supports a conclusion that the Region's decision to issue the permit was clearly erroneous, or otherwise warrants review, and the petitions must therefore be denied.

II. *DISCUSSION*

Under the rules governing this proceeding, a UIC permit decision will ordinarily 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 C.F.R. § 124.19; 45 Fed. Reg. 33,412 (May 19, 1980). The preamble to Section 124.19 states that this Board's 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 rests with the petitioner. *See In re Avery Lake Property Owners Ass'n*, UIC Appeal No. 92-1, at 3 (EAB, Sept. 15, 1992); *In re Brine Disposal Well*, UIC Appeal Nos. 92-4, 92-5, 92-6, and 92-6A, at 5 (EAB, July 22, 1993).

August 5, 1991. In addition, in August 1992 the operators of the Daymon well, including Beckman, were subject to an administrative enforcement action for unauthorized injection in the well. The record contains scanty detail concerning these enforcement actions, but according to the Region's response to these appeals it appears that the charge of unauthorized injection relates to a dispute among the Daymons, Dart and Beckman, and the two individual co-operators concerning authority to operate the well. Region's Response to Appeals at 10. A draft Administrative Order appended to the Region's Response indicates that the Daymons assigned authority to operate the well to the two individual operators, and then later revoked that authority. Region's Response to Appeals, Exhibit N. Beckman and the other operators allegedly continued to inject into the well following the revocation of authority. *Id.* The Region construed this to mean that operation of the well was unauthorized, and it proposed a fine of $125,000.00 against all operators for the unauthorized injection. *Id.* The record does not disclose the outcome of the enforcement proceeding.

In July 1992 a radiological survey conducted by the Michigan Department of Natural Resources (MDNR) revealed elevated radiation levels at the Daymon site, including the presence of radium-226 above normal background levels. Although MDNR concluded that the elevated radiation levels did not represent an imminent health hazard, it recommended excavation of approximately 6.5 cubic feet of dirt and sludge material from a site near the well's truck pumping station. Region's Response to Appeals, Exhibit O. As discussed in Part II.D.3. of this opinion, the buildup of radioactive material at brine disposal wells is not unusual, because the brine may contain radium, a decay product of uranium found in some geological formations from which brine is taken.

[7] According to a letter to Region V from counsel for Iosco Township, in 1991 the Township enacted a zoning ordinance that classified brine injection wells as a "special use," requiring prospective operators of brine disposal wells to obtain a special use permit from the Township before commencing operations. Dart refused to apply for a special use permit from the Township, and filed suit in a Michigan state court challenging the validity of the ordinance.

A. *Timeliness*

Region V asserts in its response to these appeals that the petitions appear to meet the requirements of timeliness established in 40 C.F.R. § 124.19(a). However, upon review of the petitions and of certified mail receipts submitted by Region V as supplements to the administrative record, the Board concludes that the petition of Mary Zack was not timely filed, and therefore must be denied.

Pursuant to § 124.19(a), "[w]ithin 30 days after a * * * UIC * * * permit decision * * * has been issued * * * any person who filed comments on the draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision." 40 C.F.R. § 124.19(a). In addition, "[t]he 30-day period within which a person may request review under this section begins with the service of notice of the Regional Administrator's action *unless a later date is specified in that notice.*" *Id.* (emphasis added).

When the Region serves a final permit decision by mail, service occurs upon mailing and the date of mailing usually commences the calculation of the 30-day appeal period. *In re Bethlehem Steel Corp.*, UIC Appeal No. 90-4, at 3 (Adm'r, June 11, 1991). However, in this case the Region's August 25, 1992 letter notifying Ms. Zack of its final permit decision did specify that the 30-day period would begin on a "later date." The letter advised Ms. Zack that her petition for review would be timely if it was received in the Office of the Administrator "within thirty-three (33) days of receipt of this letter."[8] According to the certified mail receipt submitted for the record by the Region, delivery of the letter was accepted on August 28, 1992. Thus, in order to be timely, Ms. Zack's petition should have been filed—that is received—within thirty-three days of August 28, 1992, *i.e.* no later than September 30, 1992. The record demonstrates that Ms. Zack's petition was not

[8] The Region should have advised the recipients of the final permit decision that petitions for review must be filed with the Environmental Appeals Board, rather than the "Office of the Administrator." The part 124 rules were amended in February 1992 to reflect the role of the Environmental Appeals Board as the final Agency decisionmaker in UIC, RCRA, and PSD permit appeals. 57 Fed. Reg. 5320 (Feb. 13, 1992). Following the amendment of the rules, in order to be timely petitions for review must be directed to the *Board* and *received* by the Board within the time allowed by the rules, either in the EPA Headquarters mailroom (Environmental Appeals Board, MC-1103B, 401 M. St. S.W., Washington, D.C. 20460) or by the Board's docket clerk in the Board's offices (Environmental Appeals Board Docket Clerk, 607 14th St. N.W., Suite 500, Washington, D.C. 20005).

received in the Office of the Administrator until October 2, 1992. The petition must therefore be dismissed as untimely.[9]

B. *"Standing"*

Even if a petition for review has been timely filed, the merits of the petition may not be considered by the Board unless the petitioner has "standing" to assert the issues raised in the petition. Under the regulations governing permit appeals before the Board, a petitioner has "standing" to pursue an appeal of the conditions of a final permit that are identical to the conditions of the draft permit only if the petitioner filed timely comments on the draft permit or participated in the public hearing on the draft permit. *See* 40 C.F.R. § 124.19(a). A petitioner who failed to file timely comments on a draft permit or participate in the public hearing will only have standing to pursue an appeal to the extent that the conditions in the draft permit are changed in the final permit. *Id.* This requirement is imposed in order to "'ensure that the Region has an opportunity to address potential problems with the draft permit before the permit becomes final.'" *Brine Disposal* at 5 (quoting *In re Renkiewicz SWD-18*, UIC Appeal No. 91-4, at 4 (EAB, June 24, 1992)). Because the final permit in this case was identical to the draft permit, petitioners who failed to file timely comments or participate in the public hearing do not have standing to seek review of the final permit conditions. *See Avery Lake*, UIC Appeal No. 92-1, at 3.

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[9] The regulations provide that:

> Whenever a party or interested person has the right or is required to act within a prescribed period after the *service* of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

40 C.F.R. § 124.20(d) (emphasis added). The Region apparently took this additional time into account in determining that Ms. Zack had 33 days within which to perfect an appeal, although it was unnecessary to do so since the Region's instructions required Ms. Zack to act within a specified time following *receipt* of the permit decision, rather than *service* (*i.e.* mailing) of the permit decision. *Bethlehem Steel*, UIC Appeal No. 90-4, at 6.

We also note that to the extent Ms. Zack's one-paragraph petition raises any substantive issues for review, the issues raised (past regulatory violations of Beckman, and proximity of the Pohl 1-34A to the existing Daymon disposal well) are addressed herein in connection with our consideration of the other petitions.

Region V asserts that petitioners Sara Thomas and Olivia Verfaillie lack standing to pursue an appeal of the final permit conditions because they failed to file timely comments on the draft permit. The petition of Sara Thomas indicates that her appeal is being pursued in her capacity as "Conservation Chairperson" of the "Sierra Club - Crossroads Group" of Brighton, Michigan. However, there is no evidence in the record before us, and no allegation in the petition, that either Ms. Thomas or the "Sierra Club - Crossroads Group" submitted written comments on the draft permit or participated in the September 24, 1991, public meeting. Accordingly, since we have no basis for disputing the Region's factual assertions about Ms. Thomas' lack of standing, we conclude that neither Ms. Thomas nor the Sierra Club - Crossroads Group have standing to seek review of the final permit conditions.[10]

In contrast, Olivia Verfaillie did submit written comments on the draft permit. However, the record reveals that her comments were received by Region V on February 25, 1992—several months beyond the October 16, 1991 comment deadline announced by the Region. Pursuant to the regulations, commenters "must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under § 124.10." 40 C.F.R. § 124.13. To establish that a petitioner has standing to appeal on the basis of written comments, we find that the comments must be timely filed. We believe this ensures that 40 C.F.R. § 124.13, which establishes the obligation to file timely comments, is given its full meaning. Accordingly, the petition of Olivia Verfaillie must also be denied for lack of standing.[11]

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[10] In any event, to the extent Ms. Thomas' petition raises any substantive issues for review, the issues raised (past regulatory violations of Beckman, presence of radioactive material at the Daymon well, and the effect of state and local regulations on EPA-permitted activity) are addressed herein in connection with our consideration of the other petitions.

[11] Although standing can also be acquired by attendance at a public hearing, the record before us contains no evidence that Ms. Verfaillie acquired standing on this basis. Moreover, as a separate matter, Ms. Verfaillie's one-paragraph letter petition raises no substantive issues implicating specific conditions of the Pohl 1-34A permit. Ms. Verfaillie expresses only generalized concern for the environmental effects of "[i]njecting toxic wastes down into the earth." While we appreciate that Ms. Verfaillie's concerns are very important to her, her allegations that the wastes are toxic are unsubstantiated and contradicted by the record. As noted above, the only wastes to be disposed of in this Class II well are brine wastes generated in connection with oil and gas production. *See* n.1, *supra.* Brine alone is not considered "hazardous" for purposes of deep well injection. *See generally* 40 C.F.R. § 144.7 (establishing different classifications for injection wells that inject hazardous and non-hazardous fluids); 40 C.F.R. § 261.4(b)(5) (excluding brine from definition of "hazardous waste" under RCRA). Ms. Verfaillie's unsupported and generalized concerns do not establish that review of the Pohl 1-34A permit conditions is warranted. *See Terra Energy, Ltd.*, UIC Appeal No. 92-3, at 3 (EAB, Aug. 5, 1992).

C. *Lack of Specificity*

In addition to being timely filed and demonstrating that a petitioner has standing to pursue an appeal, a petition for review must contain certain fundamental information in order to justify consideration on its merits. Even employing a very generous reading, the one-page letter petitions of Caroline Fanto and Joseph Fanto fail to set forth the basic information necessary for review by this Board.

In order to establish that review of a permit is warranted, § 124.19 requires a petitioner to include in his petition for review "a statement of the reasons supporting review, including * * * a showing that the condition in question is based on" either a clearly erroneous finding of fact or conclusion of law or on a policy or exercise of discretion warranting review. 40 C.F.R. § 124.19(a). The Board has interpreted this provision as requiring that a petition include two essential components: (1) clear identification of the conditions in the permit at issue, and (2) argument that the conditions warrant review. *In re LCP Chemicals - New York*, RCRA Appeal No. 92-25, at 4 (EAB, May 5, 1993); *see also In re Genesee Power Station Limited Partnership*, PSD Appeal Nos. 93-1 through 93-7, at 42-43 (EAB, Oct. 22, 1993); *In re Terra Energy Ltd.*, UIC Appeal No. 92-3, at 3 (EAB, Aug. 5, 1992).

These minimal elements cannot be found in either petition. Caroline Fanto and Joseph Fanto have identified *no* permit conditions that warrant review. For example, Mr. Fanto's petition states only that "[i]t is my opinion this permit should not be granted," and affirmatively acknowledges that he cannot offer any "geological reasons" why the permit should be denied, "only common sense reasons."[12] Mr. Fanto declines to identify even the "common sense" reasons justifying permit

[12] Mr. Fanto's petition states, in its entirety, as follows:

> The purpose of this letter is to appeal under section 124.19, R.C.R.A. the U.S. E.P.A. permit, #MI 09302D-0004. It is my opinion this permit should not be granted. Unfortunately for the people who will be affected the most by your granting of this permit, you do not choose to see the big picture. I can't give you any geological reasons not to grant this permit though there may be some, only common sense reasons, of which there are many.
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> I don't intend to waste your time or mine talking to you about common sense, I haven't seen it mentioned in the appeal requirements.

denial. In a similar vein, Caroline Fanto's petition states that "[m]any residents and I have expressed excellent reasons why another injection well in this area is a very unsound idea. * * * Once again, I am asking you *not* to issue Beckman Production Services a permit." Even if this statement can be read as incorporating by reference the comments on the draft permit filed by Ms. Fanto and others, a mere reference to earlier comments is inadequate to establish a basis for review of a permit decision. *LCP Chemicals*, RCRA Appeal No. 92-25, at 4; *Genesee Power Station*, PSD Appeal Nos. 93-1 through 93-7, at 40-43.

The Board generally tries to construe petitions filed by persons unrepresented by counsel in a light most favorable to the petitioners. While the Board does not expect or demand that such petitions will necessarily conform to exacting and technical pleading requirements, a petitioner must nevertheless comply with the minimal pleading standards and articulate *some* supportable reason why the Region erred in its permit decision in order for the petitioner's concerns to be meaningfully addressed by the Board. The petitions of Caroline Fanto and Joseph Fanto have simply provided the Board with no basis for granting review. *See LCP Chemicals*, at 5. Accordingly, the petitions must be denied.

D. *The Merits*

The remaining petitions of Patricia Richards, Connie Michaud, and Leroy Duke collectively raise four cognizable objections to Region V's decision to issue a commercial Class II UIC permit to Beckman.[13] As we explain below, the objections raised do not support a conclusion that the Region's permit decision was clearly erroneous, nor do they implicate important matters of policy or exercise of discretion that warrant review. *See* 40 C.F.R. § 124.19(a).

1. *Lack of Security at the Pohl 1-34A Well*

Petitioners Richards and Duke object to issuance of the permit to Beckman because of perceived inadequate security at the Pohl 1-34A

[13] The remaining three petitioners have not necessarily confined their appeals to the issues they personally raised during the comment period. For example, the petition of Leroy Duke raises concerns about radioactive material excavated at another brine disposal well operated by Beckman, an issue that Mr. Duke did not raise in his earlier comments. Contrary to the Region's assertion that this issue is not properly before the Board, *see* Region's Response to Appeals at 12, we will consider Mr. Duke's objection. The Board has held that "although a reasonably ascertainable objection may not be presented in a petition for review unless that objection was previously raised during the public comment period * * * 'the person filing the petition for review does not necessarily have to be the one who raised the issue' during the comment period." *Brine Disposal Well* at 5-6 (quoting *In re Broward County, Florida*, NPDES Appeal No. 92-11, at 11 (EAB, June 7, 1993)).

site, and the potential for illegal dumping in the well because of poor security. In her petition, Ms. Richards states that "[b]ecause of our rural area, anyone could come with a pump and inject anything, anytime of the day or night." Petitioner Duke claims that alleged lack of security at the Daymon 1-3 well suggests that security will also be inadequate at the Pohl 1-34A site, and also points to the rural nature of the well's location as exacerbating the potential for illegal dumping.

The petitioners' arguments disregard the permit conditions imposed by Region V that specifically address the security issues raised in the petitions. Part II(A)(4) of the permit expressly provides:

> In order to prevent any illegal dumping into the injection well, the operator must install padlocks at the wellhead on the master valve and construct a padlocked gate across the road entrance to the site to preclude access of unauthorized personnel.

Permit #MI-093-2D-0004 at 10.

Based on the inclusion of this provision, it is apparent that the Region considered the potential for unauthorized dumping at the site, and developed permit conditions to address the problem. Petitioners have identified no other security concerns in their petitions for review that might lead us to conclude that the conditions imposed by the Region are inadequate to prevent unauthorized injection in the well. Accordingly, we conclude that the Region did not clearly err in developing the security measures mandated in the permit, and petitioners' request for review of this issue must be denied.

2. *Proximity of the Pohl 1-34A to the Daymon Well*

Petitioners Duke, Michaud, and Richards all express concern that the siting of the Pohl 1-34A will increase the potential for groundwater contamination because it is too close to an existing brine disposal well, the Daymon 1-3. Petitioners do not, however, offer any geological or technical information to support a conclusion that commercial operation of the Pohl 1-34A will create a heightened risk of groundwater contamination, nor does our review of the record support such a conclusion.

This Board has observed that:

> The Safe Drinking Water Act and implementing criteria and standards are designed to assure that no contami-

> nant in an underground source of drinking water causes a violation of a primary drinking water regulation or otherwise adversely affects the health of persons.

Terra Energy Ltd., at 3 n.6 (citing 40 C.F.R. § 144.12(a)). In keeping with this goal, the Region is required to consider certain site-specific information when deciding whether to issue a new permit for operation of a Class II brine disposal well. *See* 40 C.F.R. § 146.24. Information that must be considered includes the location of the proposed Class II disposal well with respect to the location, operational status, and construction of all other wells within the "area of review" (AOR) applicable to the well for which a permit is sought. Information concerning other wells in the AOR is necessary in order to evaluate the potential for migration of injected fluid from the proposed well beyond the well's injection zone. *See* 40 C.F.R. § 146.24(a).

In the case of the Pohl 1-34A, the AOR was designated as a fixed radius of one-quarter mile surrounding the well, in accordance with 40 C.F.R. § 146.6(b). According to the record, the Daymon well is located slightly over one-quarter mile south of the Pohl 1-34A, outside the applicable AOR. *See* Response to Comments at 1. Although it was therefore under no specific mandate to do so, the Region nevertheless elected to evaluate the possible effect of commercial brine disposal in the Pohl well in light of the disposal activity at the Daymon well. *See* Response to Comments at 2. In particular, the Region analyzed the injection pressure reports for the Daymon well. Based on its analysis, the Region determined that the existence of the Daymon well posed no threat to the safe operation of the Pohl 1-34A well. *Id.* Because petitioners have offered no evidence to the contrary, the Board cannot conclude that the Region's decision to issue a commercial Class II permit to Beckman was clearly erroneous, and review of this issue must be denied.

3. *Regulatory Violations and Radioactivity at the Daymon 1-3 Well*

Petitioners Duke, Michaud, and Richards contend that the administrative sanctions imposed on the owners and operators of the Daymon 1-3 well, including Beckman, for unauthorized injection and violations of monitoring and reporting requirements should be a basis for denying a commercial Class II permit to Beckman for the Pohl 1-34A well. *See* n.6, *supra*. Petitioners also argue that the presence of radioactive material at the Daymon well site suggests that Beckman is not a responsible operator, and should therefore be denied a permit for the Pohl 1-34A well. *See id.*

First, Beckman's compliance history at the Daymon site is not necessarily relevant to the Region's decision to issue Beckman a permit for commercial operation of the Pohl 1-34A well. We recently held that:

> Petitioners' generalized concerns regarding [the permittee's] past [regulatory] violations do not, without more, establish a link to a 'condition' of the present permit modification, and thus do not provide a jurisdictional basis for the Board to grant review. *See* 40 C.F.R. § 124.19(a)(only 'condition[s] of the permit decision' are reviewable on appeal to the Board) * * *. Of course, we would expect that [the Region] would act responsibly with respect to its oversight of the final permit and, in its discretion, initiate enforcement actions or a permit revocation proceeding should violations arise.

In re Laidlaw Environmental Services Thermal Oxidation Corp., RCRA Appeal No. 92-20, at 15 (EAB Oct. 26, 1993). Moreover, petitioners do not point to any evidence suggesting that Beckman's alleged violations for unauthorized injection at the Daymon well stemming from a dispute over the authority to operate the well would have any bearing on Beckman's operation of the Pohl 1-34A.

Thus, we conclude that there is an inadequate link between this permit and the regulatory violations cited at the Daymon well, and that petitioners' objections stemming from the Daymon violations do not provide the Board with a basis for review of the Pohl 1-34A permit. Should Beckman fail to comply with the terms of its permit it may be subject to an enforcement action or permit revocation proceeding.

Petitioners concerns with respect to the detection and excavation of low-level radioactive material at the Daymon well are likewise unrelated to the conditions imposed by the Region in the Pohl 1-34A permit. As the Region explained in its response to comments, the buildup of some radioactive material at brine disposal wells is not unusual, because the injectate may contain radium, a decay product of naturally occurring uranium found in some geological formations. Response to Comments at 3. Petitioners have offered no argument or evidence to counter the evidence in the record that the radioactive material excavated from the Daymon site posed no threat to human health or the environment. Moreover, petitioners have cited no evidence that suggests that harmful accumulations of radioactive material are likely to occur at the Pohl 1-34A. In these circumstances, the Re-

gion did not clearly err in deciding to grant the permit, and accordingly review of this issue must be denied.

4. *Litigation Between Dart and the Township of Iosco*

Petitioner Duke argues that the permit should not be issued to Beckman, because of pending litigation between the Township of Iosco and Dart regarding Dart's challenge to certain use conditions that the Township seeks to impose on the Pohl 1-34A site. Because neither the pendency nor the outcome of the litigation implicates the criteria applied by the Region in issuing a permit to Beckman, Petitioner Duke's objections founded on the pending litigation are irrelevant to our determination.

We note at the outset that the issuance of a Class II permit "does not convey any property rights of any sort, or any exclusive privilege," nor does the issuance of a Class II permit "authorize any injury to persons or property or invasion of other private rights, *or any infringement of State or local law or regulations.*" 40 C.F.R. § 144.35(b) & (c) (emphasis added).[14] This means that even if a Class II permittee has met all federal requirements for issuance of a UIC permit, it is not by virtue of its federal UIC permit shielded from compliance with any valid state or local regulations governing its operations. *See Suckla Farms, Inc.*, UIC Appeal Nos. 92-7, 92-8, at 10-12. EPA's inquiry in issuing a UIC permit is limited solely to whether the permit applicant has demonstrated that it has complied with the federal regulatory standards for issuance of the permit. *See id.* We have stated that:

> EPA is simply not the correct forum for litigating contract- or property-law disputes that may happen to arise in the context of waste disposal activity for which a federal permit is required. These disputes properly belong in a court of competent jurisdiction.

Id. at 11-12.

Although Beckman may have satisfied the requirements for issuance of a UIC permit, Beckman remains subject to applicable state and local laws, including any judicial order entered in connection with the pending litigation that may affect Beckman's use of the Pohl 1-34A site. *See id.* at 12; n.14. Because the pending litigation does not alter or affect the criteria applied by the Region in evaluating Beckman's permit application, the Region did not err in issuing the permit prior

[14] These limitations are also expressed in the permit itself, at Part I.A.

to resolution of the litigation. Accordingly, review of this issue must be denied.

III. *CONCLUSION*

For the foregoing reasons, the petitions for review in UIC Appeal Nos. 92-9 through 92-16 are denied.

So ordered.