



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

In re:)	
)	
Excelsior Mining Arizona, Inc.)	UIC Appeal No.18-04
Gunnison Copper Project)	
)	
UIC Permit No. R9UIC-AZ3-FY16-1)	
)	

ORDER DISMISSING PETITION FOR REVIEW

On June 22, 2018, the U.S. Environmental Protection Agency Region 9 (“Region”) issued a Class III Underground Injection Control area permit to Excelsior Mining Arizona, Inc., (“Excelsior”) for the construction and operation of an in-situ copper mining operation in Cochise County, Arizona. Region 9, U.S. EPA, *Underground Injection Control Program Class III In-Situ Production of Copper Area Permit No. R9UIC-AZ3-FY16-1* (issued June 22, 2018) (“Permit”). Five conservation organizations – Dragoon Conservation Alliance, Arizona Mining Reform Coalition, Grand Canyon Chapter of the Sierra Club, Center for Biological Diversity, and Patagonia Area Resource Alliance (jointly, “Petitioners”) – filed a Petition for Review, contending that the Region’s permitting analysis was based on clearly erroneous findings of fact and conclusions of law. *See* Petition for Review 6, 16-32 (July 25, 2018). Upon unopposed motion by the Region, the Board subsequently extended the thirty-day deadline for filing a response to October 12, 2018. *See* Order Granting Motion for Extension of Time to File

Responses and Reply (Aug. 12, 2018);¹ 40 C.F.R. § 124.19(b)(2), (3) (establishing a thirty-day deadline for responses). The deadline that the Board established for responding to the Petition has not yet passed, and neither the Region nor Excelsior has filed a response.

On October 4, 2018, the Board received a joint motion from Petitioners, Excelsior, and the Region seeking dismissal of the Petition with prejudice. *See* Joint Stipulated Motion to Dismiss Appeal with Prejudice (Oct. 4, 2018). Petitioners and Excelsior represent that they have entered into a Settlement Agreement whereby Excelsior will submit requests to the Region to modify the Permit “to add additional groundwater monitoring wells, to provide Petitioners access to groundwater monitoring data through a website or portal, and to take steps to minimize lighting during night drilling and wellfield operations.” *Id.* at 1. While the Region is not a party to the Settlement Agreement, the parties in this appeal represent that the Region anticipates it will process Excelsior’s requests “expeditiously” as either a major or a minor modification of the Permit. *Id.* at 2. Further, the parties acknowledge that “dismissal of this matter based on the [Settlement] Agreement is a better use of resources than continuing a permit appeal where [P]etitioners and the permit applicant have come to agreement on a proposed course of action that would resolve their differences.” *Id.*

The federal rules that govern the appeal of an Underground Injection Control permit provide that a petitioner may request the dismissal of a petition by filing a motion that briefly states the reason for its request. *See* 40 C.F.R. § 124.19(k).

¹ In the same Order, the Board also extended the deadline for filing a reply to November 5, 2018. *See* Order Granting Motion for Extension of Time to File Responses and Reply (Aug. 13, 2018). In a subsequent Order, the Board clarified that the extension also applies to the submission of administrative record materials. *See* Order Clarifying Extension of Time for Filing Administrative Record Materials (Aug. 21, 2018).

Based on the reasons provided in the joint motion, the Board GRANTS the parties' Joint Stipulated Motion to Dismiss Appeal with Prejudice and DISMISSES the Petition for Review with Prejudice.

So ordered.²

ENVIRONMENTAL APPEALS BOARD

Dated: October 10, 2018

By: 
Kathie A. Stein
Environmental Appeals Judge

² The three-member panel deciding this matter is composed of Environmental Appeals Judges Aaron P. Avila, Kathie A. Stein, and Mary Kay Lynch.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing **Order Dismissing Petition for Review** in the matter of *Excelsior Mining Arizona, Inc.*, UIC Appeal No. 18-04, were sent to the following persons in the manner indicated:

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Dated: **Oct 10 2018**



Eurika Durr
Clerk of the Board