IN THE MATTER OF BRINE DISPOSAL WELL, MONTMORENCY COUNTY, MICHIGAN

UIC Appeal Nos. 92–4, 92–5, 92–6 and 92–6A

ORDER DENYING REVIEW

Decided July 22, 1993

Syllabus

Four individuals have filed separate petitions for review of EPA Region V's decision to issue to PetroStar Energy 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 the construction and operation, on a site owned by the State of Michigan, of a Class II well for disposal of fluids "brought to the surface in connection with * * * conventional oil or natural gas production." See 40 CFR § 144.6(b)(1).

Three of the petitioners object to the Region's permit decision on the grounds that injected wastes are likely to migrate laterally underneath adjacent, privately owned properties. These petitioners contend that under Michigan law, the adjacent landowners are entitled to prohibit such use of the subsurface formations underlying their properties, or to receive compensation for such use if it should occur. They claim that the permit must either be denied on the basis, or must provide a mechanism in the nature of a "liability bond" to assure the availability of appropriate compensation.

Individual petitioners also raise the objections that: (1) inspection of abandoned wells in the State of Michigan is not being carried out, so that there may exist unplugged or inadequately plugged wells in the vicinity of the proposed brine disposal well; (2) the permittee has not offered sufficient evidence of financial responsibility; (3) EPA cannot reliably monitor compliance with the regulatory requirements of the UIC program; (4) EPA must require a UIC permit applicant to utilize alternative waste disposal methods if such methods exist; and (5) one of the EPA representatives who addressed the audience at the public hearing on this permit was difficult to understand because he spoke with an accent.

In response to the petitions, Region V defends its substantive reasons for rejecting each of these objections and also contends that the objections were not preserved for review in accordance with 40 CFR § 124.13.

Held: While we find that each of the objections raised by these petitioners was properly preserved for review, we conclude that none of the objections provides us with a basis for granting review.

The Region did not clearly err by issuing this permit notwithstanding petitioners' view of the legal status of subsurface property interests under State law. That issue does not relate to any of the injection well permitting standards established in the Safe Drinking Water Act or its implementing regulations, and the Region therefore had no legal authority to deny or condition a permit on such basis.

Petitioners' contentions with respect to the need for a different bonding mechanism in this permit, the insufficiency of the permittee's demonstration of financial responsibility, and the Agency's authority to deny a permit based on the existence of alternative disposal methods are also rejected as legally erroneous. The objection premised on EPA's alleged inability to monitor compliance with the UIC regulations does not challenge the factual or legal basis for any aspect or condition of this particular permit decision, and is therefore not an issue within this Board's authority to resolve under 40 CFR § 124.19. The contention that improperly plugged wells may exist near the proposed brine disposal well, and the contention that public participation in the Region's decisionmaking process was erroneously denied owing to a speaker's accent, are not supported by any facts of record. For all of these reasons, the petitions for review are 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 four petitions from private individuals seeking review of U.S. EPA Region V's issuance of a Class II 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), for the construction and operation of a brine disposal well,[1] named the State Briley A1–34 SWD, on State-owned land in Briley Township, Montmorency County, Michigan. The permittee, H & H Star Energy, Inc., d/b/a PetroStar Energy (PetroStar), proposes to utilize the facility for disposal of produced brine from oil or natural gas production wells that it owns or operates in the area. Petitioners are Michigan residents Robert W. Thompson

[1] In this proceeding the Region has used the term "brine," or "salt water," to refer to the Class II fluids that are described in Section 144.6(b)(1) of EPA's Underground Injection Control regulations, 40 CFR § 144.6(b)(1), as fluids "brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production * * *." As explained by a Region V representative at the public hearing on this permit, "[i]n the oil or natural gas reservoir, natural formation waters, also called brines, are mixed in with the oil and gas. During the production of oil and gas, these brines are also brought to the surface, the oil or gas is separated from the brine and the brine is then injected back into the formation." Transcript of May 4, 1992 Public Hearing, at 7. The injection of formation waters "back into the formation" is unlawful except as authorized by a permit issued pursuant to the UIC regulations.

(Appeal No. 92–4), C.R. Humphrys (Appeal No. 92–5), Eugene E. Ochsner (Appeal No. 92–6), and Vincent J. Waier (Appeal No. 92–6A).

Region V issued its draft permit for this proposed facility on February 10, 1992. After receiving what it deemed a significant number of written comments and hearing requests from members of the public, the Region held a public hearing at Atlanta, Michigan on May 4, 1992.

After the hearing and a supplemental comment period, Region V issued a Response to Comments and a final permit, salient provisions of which can be summarized as follows. According to the proposed final permit, the State Briley A1–34 SWD will inject into a geological formation known as the Dundee Limestone, at a depth of 1975 to 2360 feet beneath ground surface.[2] The well's injection tubing is to be surrounded by a steel casing extending from 1975 feet to ground surface, and a second steel casing extending from 650 feet to ground surface; the entire length of each of the steel casings will be cemented. A "packer" will be inserted at a depth of 1925 feet to seal off the space (or "annulus") between the longer casing and the injection tubing, and the annulus will be filled with a corrosion-inhibiting fluid. A successful demonstration of the well's mechanical integrity will be required before any waste injection is authorized, and if the well is found to have lost mechanical integrity during operation that loss must be reported within twenty-four hours and all injection must cease pending restoration of mechanical integrity. The wellhead injection pressure, annulus pressure, flow rate, and cumulative volume of injected wastes must be observed and recorded by the operator on a weekly basis and reported to the Region on a monthly basis, and annular liquid loss must be determined and reported on a quarterly basis. As discussed below, the petitioners have not raised any objection challenging the environmental integrity of the well itself or challenging the permit terms designed to maintain and monitor its integrity.

Petitioners Thompson, Humphrys, Ochsner, and Waier each participated in the May 1992 hearing and, in addition, Mr. Waier submitted written comments on the draft permit during the public comment period. Each of these petitioners is therefore eligible to seek

[2] Because the lowermost underground source of drinking water in this area reaches a depth of 550 feet, there will be roughly 1425 feet of sedimentary rock strata (shale and limestone) separating the top of the injection zone from the base of the lowermost underground source of drinking water.

review of the Region's final permit decision before this Board. *See* 40 CFR § 124.19(a) ("[A]ny 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.").

Petitioners Humphrys, Ochsner, and Waier object to the issuance of this permit on the grounds that if injected brine migrates laterally underneath adjacent privately owned property, that migration will cause a violation of certain subsurface property rights of the neighboring landowners. Petitioner Humphrys also raises (at least by implication) a concern regarding upward migration, arguing that, in the State of Michigan, "[f]ield inspection of abandoned wells is no longer conducted as required." He concludes that if the Region is to issue a permit despite its awareness of the possibility of subsurface "trespass," and despite the possible presence of undetected, inadequately plugged wells in the area, the Region must ensure the availability of compensation to the adjoining landowners by requiring the establishment of an "in-perpetuity liability bond," a trust fund, or an escrow account.

The petitioners also individually raise several other objections. Petitioner Waier, in Appeal No. 92–6A, argues that the permittee's demonstration of financial responsibility in connection with its permit application was inadequate. Petitioner Ochsner, in Appeal No. 92–6, argues that EPA does not have a sufficient number of inspectors available to monitor underground injection operations such as this. Finally, petitioner Thompson, in Appeal No. 92–4, urges that we review and overturn the Region's permit decision because (1) the Region erroneously assumed that it did not have authority to require the permittee to adopt alternative methods of brine disposal (*i.e.*, methods other than deep well injection), and (2) Mr. Thompson found it difficult to understand one of the EPA representatives who made a presentation at the public hearing on the permit.[3]

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 CFR § 124.19; 45 Fed. Reg. 33, 412 (1980). The preamble to Section

[3] Mr. Thompson states that the EPA speaker of whom he complains, who apparently spoke with an accent, "could not communicate orally in the English language."

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).

A. *"Standing"*

Before proceeding to the merits of the petitions, we are confronted by the Region's contention that these petitioners lack "standing" to contest the issuance of the PetroStar permit because they failed to comply with 40 CFR § 124.13. That regulation states that persons who are opposed to a draft permit must, in order to preserve their objections for a possible appeal, "raise all reasonably ascertainable issues and submit all reasonably ascertainable arguments supporting their position by the close of the public comment period (including any public hearing) under § 124.10." As we have often explained, compliance with that requirement—and with the corresponding provision in Section 124.19 calling for a demonstration that "any issues being raised [in a petition for review] were raised during the public comment period (including any public hearing) to the extent required by the[] regulations"—is necessary to "ensure that the Region has an opportunity to address potential problems with the draft permit before the permit becomes final." *In re Renkiewicz SWD–18,* UIC Appeal No. 91–4, at 4 (EAB, June 24, 1992). *Accord, e.g., Avery Lake,* UIC Appeal No. 92–1, at 4 (EAB, Sept. 15, 1992); *In re Shell Oil Co.,* RCRA Appeal No. 88–48, at 3 (Adm'r, March 12, 1990). However, 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, under Section 124.13 "the person filing the petition for review does not necessarily have to be the one who raised the issue" during the comment period. *In re Broward County, Florida,* NPDES Appeal No. 92–11, at 11 (EAB, June 7, 1993).

We find no valid basis for the Region's assertion that the issues raised by these petitioners were not preserved for review in accordance with 40 CFR § 124.13. All of the issues presented for review were raised during the public comment period or at the public hearing.[4] Indeed, all of the issues but one are explicitly addressed in

[4] There is one possible exception. The letter in which petitioner Thompson stated his objection to the accented speech of an EPA engineer who spoke at the public hearing may have been received by the Region one day after the close of the supple-

the Region's Response to Comments.[5] We therefore believe both that the letter of Section 124.13 was satisfied and that its objective was fully served. The Region had ample opportunity to evaluate these objections before finalizing the permit, and to react by making any adjustments to the final permit that it deemed necessary. The Region concluded, however, that no changes were necessary or appropriate, and it is to the propriety of that conclusion that we now turn.

B. *The Merits*

1. *Subsurface trespass*

We first address the most pervasive of the issues raised by the various petitioners, concerning the rights of neighboring landowners under State property law and their alleged entitlement to compensation in the event of a subsurface "trespass." We must deny review with respect to this issue, because resolution of State property-law issues such as this is beyond the scope of EPA's role in reviewing an injection well permit application. As we recently reaffirmed in *In re Suckla Farms, Inc.,* UIC Appeal No. 92–7 (EAB, June 7, 1993), "EPA is simply not the proper 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. *See also In re Columbia Gas Transmission Co.,* UIC Appeal No. 87–1, at 3 (Adm'r, April 13, 1987) (holding that the Regional Administrator, when acting on a UIC permit application, "was not required to take ownership of the land into account").

As noted above, the Agency's authority to regulate deep well injection derives from Part C of the Safe Drinking Water Act, as amended, 42 U.S.C. §§ 300h through 300h-7. In Section 1422(c) of the Act, 42 U.S.C. § 300h-1(c), Congress directed the EPA Administrator to issue regulations for nonauthorized States (such as Michigan) containing "minimum requirements for effective programs to

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mental comment period that followed the hearing. The Region does not rely on any such argument, however, and we believe the objection to have been properly preserved in any event. The record before us reveals no clear statement by the Region that would have sufficiently alerted potential commenters, such as Mr. Thompson, to a requirement that their post-hearing comments be received (rather than mailed) within four days after the hearing. There is therefore no basis for concluding that Mr. Thompson's objection was waived, and we shall address it on the merits.

[5] The only issue raised here that is not discussed in the Response to Comments is the objection referred to in note 4, *supra*, concerning the Region's conduct of the May 4, 1992 public hearing.

prevent underground injection which endangers drinking water sources"; provided, however, that "[s]uch program may not include requirements which interfere with or impede * * * the injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production operations, * * * unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection." The Agency has issued regulations (including the Class II injection well permitting criteria and standards applicable to this proceeding) that are designed to implement this congressional mandate. *See* 40 CFR Parts 144, 146, and 147. Importantly, the Agency's UIC regulations are oriented exclusively toward the statutory objective of protecting drinking water sources.[6] It has therefore repeatedly been held that parties objecting to a federally issued UIC permit must base their objections on the criteria set forth in the Safe Drinking Water Act and its implementing regulations. As this Board stated in *In re Terra Energy Ltd.,* UIC Appeal No. 92–3 (EAB, Aug. 2, 1992):

> The 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 * * *.

Id. at 3 n.6. *Accord, In re Collins Brothers Oil Co.,* UIC Appeal No. 91–3, at 3 (Adm'r, Feb. 28, 1992) (review denied where petitioner "failed to demonstrate that his requested permit conditions are required pursuant to the UIC permitting regulations to ensure the safe construction and operation of the injection well").

Here, petitioners point to no facts in the record suggesting that the conditions of the PetroStar permit will not adequately protect drinking water sources in the vicinity of the proposed well. They claim that injection of brine into the proposed well might lead to

[6] The UIC regulations do, however, require the Agency to consider certain other federal laws that may be implicated by a proposed injection well operation. See 40 CFR § 144.4. These include the Wild and Scenic Rivers Act, the National Historic Preservation Act of 1966, the Endangered Species Act, the Coastal Zone Management Act, and the Fish and Wildlife Coordination Act. *Id.*; *see also In re Renkiewicz SWD–18,* UIC Appeal No. 91–4, at 5–6 (EAB, June 24, 1992).

a violation of certain alleged State-law property rights of neighboring landowners, but they do not claim that such injection would violate the Safe Drinking Water Act, any other applicable federal law, or the UIC program regulations. Because the Agency has no authority to deny a UIC permit based on an alleged possibility of subsurface trespass under State law, the requests for review of this issue in Appeal Nos. 92–5, 92–6, and 92–6A must be denied.[7]

2. *Bonding and financial responsibility*

The objections in Appeal Nos. 92–5 and 92–6A relating to the financial arrangements addressed in the permit are also inadequate to justify review. The bonding, trust fund, or escrow account condition requested by petitioner Humphrys in Appeal No. 92–5 (which would be designed to compensate neighboring landowners in the event of lateral migration, or in the event of upward migration through nearby unplugged or inadequately plugged wells) is simply not authorized by the applicable regulations. Nor do the regulations support petitioner Waier's assertion, in Appeal No. 92–6A, that PetroStar's demonstration of financial responsibility was inadequate.

Consistent with 40 CFR § 144.52(a)(7), PetroStar offered evidence of its financial ability to plug and abandon the proposed well according to a plan set forth in the permit, by obtaining a letter of credit in favor of EPA Region V in an amount exceeding the estimated cost of plugging and abandonment. The regulations generally require no more, and petitioners Humphrys and Waier offer no site-specific reasons to conclude that additional or different financial arrangements are necessary in this particular case.[8] As we recently noted

[7] Of course, we express no view on the merits of petitioners' assertions with respect to the subsurface ownership rights of adjoining landowners under Michigan property law. The enforceability of any such rights is unaffected by the issuance of the PetroStar permit. *See* Permit section I.A ("Issuance of this permit does not convey property 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 law or regulations."); *see also Suckla Farms,* UIC Appeal No. 92–7, at 12 n.15 ("[A]s 40 CFR § 144.35(c) expressly recognizes, EPA's UIC permitting process does not presume to rearrange private property rights or contractual relations, or to sanction conduct that is otherwise actionable between or among private parties.").

[8] EPA possesses broad authority under the UIC program to impose, on a case-by-case basis, permit conditions "necessary to prevent migration of fluids into underground sources of drinking water." 40 CFR § 144.52(a)(9). Arguably, this authority could justify a permit condition subjecting a well operator to more-stringent financial responsibility requirements than are prescribed for UIC permittees generally in the text of the program regulations. We need not reach that issue in this case, however.

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in *Suckla Farms,* UIC Appeal No. 92–7, the financial responsibility requirements in the UIC permitting regulations focus principally on the potential cost of "plugging and abandonment," and are not (as these petitioners may have assumed) written in such a way as to require the availability of "cleanup" or "corrective action" funds. *See id.* at 20. We further observed in *Suckla Farms* that even the most stringent UIC financial responsibility requirements—those applicable to the injection of wastes that, unlike the wastes at issue here, are defined as "hazardous" wastes pursuant to 40 CFR §§ 144.3 and 261.3—are "based only on the estimated cost of 'plugging and abandonment,' and demand no additional security against potential cleanup costs." *Id.* Review of these issues must therefore be denied.

3. *Alternative disposal methods*

Petitioner Thompson, in Appeal No. 92–4, contends that the Agency erred by failing to consider alternative methods of brine disposal before issuing this permit. The contention is without merit. The Region correctly concluded that neither the Safe Drinking Water Act nor the UIC regulations allow the Agency to consider or require alternative brine disposal methods when acting on a Class II UIC permit application.[9] As noted above, Congress specifically instructed the Agency in the Safe Drinking Water Act not to unduly restrict the disposal of oil and gas field brines in deep injection wells, but to limit or prohibit such injection *only* to the extent of ensuring "that underground sources of drinking water will not be endangered."

The regulations do not require the Region to exercise its Section 144.52(a)(9) "omnibus" authority (and the Region does not commit reversible error by failing to exercise that authority) in the absence of any showing that a requested condition is "necessary to prevent migration of fluids into underground sources of drinking water." No such showing has been made here.

Petitioner Humphrys suggests that additional financial assurances are necessary in part because, in Michigan, "[f]ield inspection of abandoned wells is no longer conducted as required." The Region specifically concluded, however, that within the one-quarter mile area of review surrounding the proposed PetroStar well there are no other active injection wells, producing wells, temporarily abandoned wells, or plugged and abandoned wells that penetrate the PetroStar well's injection zone and could therefore provide a conduit for upward fluid migration. Mr. Humphrys has not challenged that factual finding as clearly erroneous, and his general statement of concern regarding the adequacy of abandoned well inspection in Michigan is insufficient to compel the imposition of additional permit conditions pertaining to the permittee's financial responsibility.

[9]That is not to say, however, that the Agency seeks to inhibit the development of innovative methods for dealing with this type of waste. To the contrary, as the Region remarked in its Response to Comments, as a general matter "the USEPA encourages treatment of waste as an alternative to disposal, [but] the UIC Section has no authority to require such alternative methods."

Mr. Thompson has not demonstrated, or attempted to demonstrate, that the proposed PetroStar well would "endanger" drinking water sources, as that term is defined in the Act.[10] His assertion regarding the availability of alternative disposal methods bears no apparent relation to the issue of potential endangerment or to any of the statutory or regulatory standards applicable to injection wells, and we must therefore deny review of this issue.

4. *Miscellaneous*

We must also deny review of the remaining two issues raised in these petitions, namely (1) Mr. Thompson's objection to an allegedly incomprehensible presentation by an EPA engineer, and (2) Mr. Ochsner's contention that EPA does not have a sufficient number of inspectors to monitor compliance with the regulatory requirements of the UIC program.

Mr. Thompson does not explain why his alleged difficulty in understanding one of the EPA engineers, due to the engineer's accent, should have the effect of invalidating this permit—and we find it hard to imagine any satisfactory explanation for such a seemingly arbitrary and extreme result. The presentation was successfully transcribed verbatim by a court reporter and was apparently comprehensible to the remainder of the audience.[11] Moreover, as the Region points out, Mr. Thompson "has not demonstrated that a lack of communication with the Region prevented him from understanding the proposed permit provisions or from expressing his own concerns about [the] permit requirements. Other U.S. EPA officials were present at the hearing to explain the permit if Petitioner did not understand

[10] *See* Safe Drinking Water Act Section 1421(d)(2), 42 U.S.C. § 300h(d)(2) ("Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.").

[11] Mr. Thompson points out that, according to the hearing transcript, one unidentified audience member at the rear of the hearing room suggested that the speaker was not sufficiently audible. Three sentences into the engineer's remarks, the transcript contains the following:

> UNIDENTIFIED PERSON: Sir, we're back here in the back and we can't hear you or understand you, what you're saying.

Hearing Transcript at 6. No further comments of that nature are recorded in the transcript, suggesting to us that the speaker thereafter succeeded in making himself audible to all members of the audience. On the basis of the transcript and the remainder of the administrative record, we can only conclude that petitioner's characterization of the difficulty created by this presentation is vastly overstated.

the U.S. EPA engineer * * * [and] U.S. EPA personnel were also available after the hearing to informally discuss the permit requirements." Response to Petition for Review in No. 92–4, at 8.[12] To this we would add that the Region apparently sent Mr. Thompson a copy of the hearing transcript containing the engineer's remarks, yet Mr. Thompson, in his petition for review, does not find fault with the substance of the remarks. It appears from the record that Mr. Thompson was afforded a full and fair opportunity to relate his views at the appropriate stages of this permit proceeding, and he cites no specific circumstances that would enable us to conclude otherwise.[13] Review of this issue is denied.

Finally, we cannot undertake to review this permit decision on the basis of Mr. Ochsner's assertion that EPA's inspection (*i.e.,* enforcement) capabilities are inadequate. That contention can only be read as a general statement of concern regarding EPA's administration of the entire UIC program in the State of Michigan. As such, it does not "directly call into question the propriety of any specific permit term," *In re BFGoodrich Co.,* RCRA Appeal No. 89–29, at 4 (Adm'r, Dec. 19, 1990), and therefore fails to satisfy one of the basic preconditions for administrative review under 40 CFR § 124.19. *See In re LCP Chemicals—New York,* RCRA Appeal No. 92–25, at 4 (EAB, May 5, 1993). Moreover, the contention is apparently predicated on the incorrect assumption that we are authorized to go beyond an assessment of a permit's validity under the governing statute and regulations, and actually to oversee the permit's implementation and enforcement. We have no such authority. *See In re General Electric Co.,* RCRA Appeal No. 91–7, at 9 (EAB, Nov. 6, 1992) ("The purpose of this Board [in the permit appeal context] is to determine whether the permit was appropriately issued. The Board has no oversight responsibility for the implementation of a validly issued permit.").[14] Mr. Ochsner's objection does not "identify any specific permit

[12] The administrative record fully supports the Region's contentions regarding the presence and availability of other qualified officials during and after the hearing.

[13] Mr. Thompson suggests that his opportunity to influence the Region's permit decision was illusory because "it is evident from [the EPA permit writer's] opening remarks that the decision to grant the permit had been made prior to the public hearing." Having carefully reviewed the remarks in question, we perceive no legitimate basis for that assertion. The remarks to which Mr. Thompson alludes do contain a summary of the draft permit that prompted the hearing, but that is exactly as it should be: In any permit proceeding, the preparation of a draft permit necessarily precedes the solicitation of comments from the public and any decision to hold a public hearing. See 40 CFR §§ 124.6(d), 124.10, 124.12.

[14] While we have no authority to monitor permit implementation, we do, of course, have the authority to review the terms of the permit itself, including those designed

conditions that give rise to [his] concerns, or that require revision to address those concerns," *Terra Energy Ltd.,* UIC Appeal No. 92–3, at 3, and therefore raises no issue that we can properly address. We must, accordingly, deny review with respect to this issue.

III. *CONCLUSION*

For the foregoing reasons, the petitions for review in UIC Appeal Nos. 92–4, 92–5, 92–6, and 92–6A are denied.

So ordered.

to assure its enforceability, such as monitoring and reporting requirements. Mr. Ochsner's objection is not premised on the inadequacy of the permit terms, however.