IN RE CHEVRON MICHIGAN, LLC OF TRAVERSE CITY, MICHIGAN

UIC Appeal No. 12-01

REMAND ORDER

Decided March 5, 2013

Syllabus

Ms. Norma Petrie petitions the Environmental Appeals Board ("Board") to review a Class II Underground Injection Control final permit that the United States Environmental Protection Agency Region 5 ("Region") issued to Chevron Michigan, LLC of Traverse City, Michigan ("Chevron") on August 20, 2012, pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26. The permit authorizes Chevron to drill and operate an injection well to be used for noncommercial brine disposal from production wells owned or operated by Chevron in Antrim County, Michigan. Ms. Petrie filed her petition on September 28, 2012, thirty-nine days after the Region issued its final permit decision.

According to the administrative record, the Region issued a document addressing Ms. Petrie's comments on the draft permit on August 21, 2012, one day after it had issued the final permit decision. The record also indicates that the Region issued four other letters responding to different commenters: one was dated the same day as the response to Ms. Petrie's comments and three were dated August 15, 2012, five days before the Region issued its final permit decision.

Ms. Petrie's assertions, the Region's responses, and the administrative record that was certified by the Region raise three issues for resolution. First, was Ms. Petrie's petition timely filed? Second, should the Board remand the permit because the administrative record fails to demonstrate that the Region complied fully with the procedural requirements of 40 C.F.R. §§ 124.17 and 124.18? Third, did Ms. Petrie provide sufficient specificity for her substantive claims to warrant review of those claims?

Held: The Board remands the final permit decision because the certified administrative record fails to demonstrate that the Region complied completely with §§ 124.17 and 124.18, which require the Agency decision maker to consider public comments with an open mind and to base permit decisions on the administrative record. The Board denies review of all other issues raised by the petition.

(1) Timeliness Issue

Ms. Petrie's petition, which was filed within thirty days of the date she received the final permit decision package, was timely filed based on the appeal procedures the Region had articulated in this case. The Region, in the response to comments letter it sent

Ms. Petrie, explicitly allowed the thirty-day appeal period to begin running from the date of receipt of notice of the final permit decision rather than the date of service.

(2) Procedural Issues

Sections 124.17 and 124.18 require that the permit issuer base final permit decisions on the administrative record, which includes all comments and responses to comments. Because of the seriatim issuance of response to comments, some of which predate and some of which postdate the permit decision, it is unclear whether the decision maker considered the responses to comments when making her final decision. Furthermore, because of certain facts in the administrative record, the Board cannot ignore the possibility that the decision maker may not have reviewed the response to Petitioner's comments prior to issuing the permit and may not have issued the response to comments. The date discrepancies in the record also raise concerns about the contents of the administrative record, which under the regulations, is deemed complete on the date of final permit issuance. For these reasons, the Board concludes that the certified administrative record on its face fails to demonstrate that the Region complied fully with 40 C.F.R. §§ 124.17 and 124.18 when it issued the permit.

(3) Substantive Issues

The statements in Ms. Petrie's petition lack the specificity necessary to warrant review. She does not explicitly challenge the validity of any particular provision of the permit, and the Board cannot ascertain from her statements to which permit condition she is objecting. Nor does she provide any real argument of why any condition, or even the permit as a whole, warrants review. Her statements are merely generalized, conclusory assertions. Consequently, the Board denies review of Petitioner's substantive claims.

Before Environmental Appeals Judges Leslye M. Fraser, Catherine R. McCabe, and Kathe A. Stein.

Opinion of the Board by Judge Kathie A. Stein:

I. *STATEMENT OF THE CASE*

On September 28, 2012, Norma Petrie ("Petitioner") filed a petition with the Environmental Appeals Board ("Board") seeking review of a Class II Underground Injection Control ("UIC") final permit, No. MI-009-2D-0217, which the United States Environmental Protection Agency ("Agency") Region 5 ("Region") issued to Chevron Michigan, LLC of Traverse City, Michigan ("Chevron") pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26. *See* Letter from Norma Petrie to the Clerk of the Board, U.S. EPA, at 1 (dated Sept. 16, 2012) [hereinafter Petition]. The permit authorizes Chevron to drill and operate an injection well in Antrim County, Michigan. *See* U.S. EPA, UIC Permit: Class II, Stratton #16-4, at 1 (Administrative Record ("A.R.") 49) [hereinafter Final Permit]. On November 20, 2012, the Region filed a response to the Petition. *See generally* Response to Petition for Review ("Response"). For the reasons discussed below,

the Board remands the final permit decision on procedural grounds, but denies review of all other issues raised by the Petition.

II. *ISSUES*

Based on Petitioner's assertions, the Region's responses, and the administrative record certified by the Region, the Board must resolve the following issues:

1. Was the petition timely filed?

2. Should the permit be remanded because the administrative record fails to demonstrate that the Region complied fully with the procedural requirements of 40 C.F.R. §§ 124.17 and 124.18?

3. Did Petitioner provide sufficient specificity for her substantive claims to warrant review of those claims?

III. *PROCEDURAL HISTORY*

On or about May 24, 2012,[1] the Region issued a draft UIC permit for public comment authorizing Chevron to drill and operate an injection well to be used for noncommercial brine disposal from production wells owned or operated by Chevron. *See* Statement of Basis for Issuance of UIC Permit, Permit No. MI-009-2D-0217, at 1 (undated) (A.R. 29); Letter from U.S. EPA, Region 5, to Natalie Schrader, Chevron Michigan, LLC (May 24, 2012) (A.R. 28) (enclosing draft permit). Ms. Petrie, among others, submitted comments on the draft permit during the thirty-day public comment period. *See* Letter from Norma Petrie to Lisa Perenchio, U.S. EPA ("Petrie Comment") (June 4, 2012) (A.R. 36); Addendum Letter from Norma Petrie to Lisa Perenchio, U.S. EPA (June 4, 2012) (A.R. 36); *see also* Certified Index to the Administrative Record ("Certified Index") at 2 (listing names of commenters and dates comments were received).

The Region issued its final permit decision on August 20, 2012. Response at 3; *see also* Final Permit at 1; Certified Index at 2. The Final Permit appears to have been signed by Timothy Henry for Tinka G. Hyde, the Director of the Water Division in Region 5. *See* Final Permit at 1. According to the administrative re-

[1] It is not clear what date the Region issued the draft permit because the statement of basis, while signed, is undated, and the draft permit itself is undated. The Certified Index does not specify dates for these documents either. The letter that the Region sent out with the draft permit, which was also unsigned, has a date stamp of May 24, 2012.

cord, on August 21, 2012, one day *after* the permit was signed, the Region issued a document addressing Ms. Petrie's comments on the draft permit. Certified Index at 2; *see also* Letter from U.S. EPA Region 5 to Norma Petrie at 1 (dated Aug. 21, 2012) (A.R. 41) [hereinafter Letter Responding to Norma Petrie Comments]. This document is in the form of a letter to Ms. Petrie and, although it contains a signature block for Lisa Perenchio, the Chief of the Direct Implementation Section, the letter in the record is not signed.[2] *See* Letter Responding to Norma Petrie Comments at 5. According to the administrative record, the Region also issued four other letters responding to different commenters: three were dated August 15, 2012, five days before the date of the final permit decision, and one was dated the same day as the response to Ms. Petrie's comments, August 21, 2012, one day after the date of the Final Permit. Certified Index at 2. Two commenters received response to comments letters prior to the date the Final Permit was signed.[3] *See id.*

According to the Region, it mailed notice of the final permit decision and the letter responding to Ms. Petrie's comment to her on August 21, 2012. Response at 3, 9. Importantly, the response to comments letter the Region sent to Ms. Petrie contained a discussion of permit appeal rights, stating that:

> In accordance with 40 CFR Section 124.19, any person who filed comments on the draft permit * * * may petition the [EAB] to review any condition of the final permit decision. Such a petition shall include a statement of the reasons supporting review of the decision * * * . The request must arrive at the Board's office *within 30 days of the receipt of this notice of decision*. The request will be timely if received during this time period.

Letter Responding to Norma Petrie Comments at 4-5. According to the U.S. Postal Service return receipt form, Ms. Petrie received and signed for the final permit decision package on August 29, 2012. *See* Response, Final Attach.

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[2] The unsigned response to comments letter that was sent to Ms. Petrie does contain several initials and dates below the signature line, one of which is "LP," possibly Lisa Perenchio. *See* Letter Responding to Norma Petrie Comments at 5. None of the initials appears to be that of Tinka G. Hyde, the permit issuer, however. The dates noted at the end of the letter range from August 10 to August 15, 2012. *See id.*

[3] According to the administrative record, Lucille Lercel received a response to comments letter on August 17, 2012, and Peter Bormuth received a response to comments letter on August 18, 2012. Certified Index at 2.

As previously noted, Ms. Petrie filed a petition seeking review of the Final Permit on September 28, 2012, to which the Region responded on November 20, 2012. The permittee did not seek leave to file a response.

IV. *PRINCIPLES OF LAW*

Section 124.19 of Title 40 of the Code of Federal Regulations ("C.F.R.") governs review of UIC permits. In determining whether to review a petition filed under 40 C.F.R. § 124.19(a), the Board first considers whether the petitioner has met threshold requirements such as timeliness, standing, and issue preservation. *See* 40 C.F.R. § 124.19; *In re Beeland Group LLC*, 14 E.A.D. 189, 194-95 (EAB 2008); *In re Indeck-Elwood, LLC*, 13 E.A.D. 126, 143 (EAB 2006). Assuming that a petitioner satisfies its threshold obligations, the Board then considers the petition to determine if review is warranted. *Indeck*, 13 E.A.D. at 143; *see also Beeland*, 14 E.A.D. at 195. Ordinarily, the Board will not review a permit unless the permit decision either is based on a clearly erroneous finding of fact or conclusion of law, or involves a matter of policy or exercise of discretion that warrants review. 40 C.F.R. § 124.19(a); Consolidated Permit Regulations, 45 Fed. Reg. 33,290, 33,412 (May 19, 1980).

On a number of occasions, the Board has reviewed and remanded permit decisions based on procedural irregularities that occurred during the permitting process. *E.g.*, *In re Weber* #4-8, 11 E.A.D. 241, 244-46 (EAB 2003) (considering and remanding permit because the permit issuer signed and mailed the response to comments letter three days after signing the final permit); *In re Russell City Energy Ctr.* ("*Russell City I*"), 14 E.A.D. 159, 182-87 (EAB 2008) (considering and remanding permit because of procedural problems with the public notice of the draft permit); *see also In re Shell Offshore, Inc.*, 15 E.A.D. 536, 602-10 (EAB 2012) (considering alleged irregularities at the public hearing and in the length of public comment period); *In re Russell City Energy Ctr., LLC* ("*Russell City II*"), 15 E.A.D. 1, 95-101 (EAB 2010) (considering several alleged procedural violations during the permitting process).

Of particular relevance to the present proceedings, the permitting regulations provide that the "Regional Administrator[4] shall base final permit decisions * * * on the administrative record," which must include all comments and the response to comments. 40 C.F.R. § 124.18(a), (b)(1), (4). Consistent with this

[4] The regulations define the term "Regional Administrator" to mean "the Regional Administrator of the appropriate Regional Office of the [EPA] or the authorized representative of the Regional Administrator." 40 C.F.R. § 124.2(a).

principle, the regulations also provide that the "Director"[5] shall issue a response to comments "[a]t the time that any final permit decision is issued," *id.* § 124.17(a), and that the administrative record "shall be complete on the date the final permit is issued." *Id*. § 124.18 (c). These requirements accordingly "ensure that *the decision maker* gives serious consideration to comments *before or at the time of making his or her final permit decision*." *Weber*, 11 E.A.D. at 244 (emphasis added); *accord In re Rockgen Energy Ctr.,* 8 E.A.D. 536, 556 (EAB 1999); *In re Atochem N. Am., Inc.,* 3 E.A.D. 498, 499 (Adm'r 1991). The Board and its predecessors have vacated and/or remanded final permit decisions in cases where permit issuers have not followed these procedures. *See, e.g., Weber*, 11 E.A.D. at 244-46 (remanding Region 5 UIC permit decision where the record did not demonstrate that the permit issuer fully complied with the requirement to give adequate and timely consideration to public comments at the time of issuing a final permit decision); *Rockgen,* 8 E.A.D. at 556-57 (remanding part of a prevention of significant deterioration permit because the record did not make clear whether the state had meaningfully complied with 40 C.F.R. § 124.18, which requires that the decision maker base the permit decision on the administrative record, including the comments received during the public comment period); *Atochem,* 3 E.A.D. at 499 (vacating permit decision and remanding a Resource Conservation and Recovery Act permit where EPA failed to respond to public comments at the time of permit issuance); *In re McGowan*, 2 E.A.D. 604, 606-07 (Adm'r 1988) (vacating and remanding UIC permit where permit issuer did not provide a response to significant comments at the time it issued the permit decision).

V. *ANALYSIS*

A. *The Petition Was Timely Filed*

In responding to the Petition, the Region first argues that, as a threshold matter, the Petition should be dismissed as "potentially untimely." Response at 8-9. In support of this argument, the Region relies on the part 124 permitting regulations, which generally require petitions for review to be filed "[w]ithin 30 days after" a final permit decision has been issued. 40 C.F.R. § 124.19(a); *see also* 40 C.F.R. § 124.20(d) (granting an additional three days to deadline where notice is provided by mail).

The regulations, however, alternatively allow a permit issuer to specify a later date for the filing of a petition for review. 40 C.F.R. § 124.19(a); *In re Envotech, LP*, 6 E.A.D. 260, 265 (EAB 1996)*; see also In re Town of Hampton*, 10 E.A.D. 131, 133-34 (EAB 2001). The Region has done so here by explicitly

[5] In the case of an Agency-issued permit, the permitting regulations define the term "Director" as the Regional Administrator or an authorized representative. *See* 40 C.F.R. § 124.2(a).

allowing the thirty-day appeal period to begin running from the date of receipt of notice rather than the date of service. *See* discussion above Part III.

As noted above, Ms. Petrie received and signed for the final permit decision package on August 29, 2012. Consequently, based on the appeal procedures articulated by the Region, Ms. Petrie's petition was due on or before September 28, 2012. Ms. Petrie therefore filed a timely petition. Given the Region's express statement that the Petitioner had thirty days from receipt of the permit to file an appeal, the Board finds the Region's arguments to the contrary disingenuous.[6]

B. *The Permit Should Be Remanded Because the Administrative Record Does Not Demonstrate That the Region Complied Fully With the Procedural Requirements of 40 C.F.R. §§ 124.17 and 124.18*

Before addressing the merits of the substantive issues Ms. Petrie raises in her petition, the Board next considers a fundamental procedural question concerning the Final Permit's issuance that came to light upon examination of the record to determine whether the Petition was timely filed[7]: should the permit be remanded because the administrative record fails to demonstrate that the Region complied fully with the procedural requirements of 40 C.F.R. part 124 during the permit issuance process? More specifically, should the Board remand the permit because the administrative record indicates that the Region may have failed to comply completely with §§ 124.17 and 124.18, which require the Agency decision maker to consider public comments with an open mind and to base her permit decision on the administrative record?

As noted above, 40 C.F.R. §§ 124.17 and 124.18 are designed to ensure that the decision maker gives serious consideration to public comments at the time he or she makes the final permit decision. These regulations thus implicate two important, interrelated requirements. First, as the Board explained in *Weber*, it is important that the *decision maker*, and not his or her staff, consider and base the final permit decision on the administrative record, including the comments and response to comments:

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[6] The Region has discretion to specify a later date for petitioners to file an appeal. Nevertheless, because commenters may receive the final permit package on different dates, using the receipt date may lead to confusion about the filing deadline, as it did in this case. Other permit issuers who have changed the deadline for filing typically select a date certain that is some time later than the "default" regulatory deadline. *See, e.g., In re Russell City Energy Ctr., LLC*, PSD Appeal Nos. 10-07 through 10-10, at 2 (EAB May 3, 2010) (Order Dismissing Four Petitions for Review as Untimely) (establishing March 22, 2010 deadline for petitions where final permit was issued February 3, 2010).

[7] The Board discovered the date discrepancies while examining the Final Permit and the response to comments letter the Region had sent Ms. Petrie to determine what deadline the Region had established for filing petitions for review of this permit and to calculate the appropriate deadline. Ms. Petrie did not raise this issue in her Petition.

> The idea behind the regulations is that the *decision maker* have the benefit of the comments and the response thereto to inform his or her permit decision. Thus, while it is important in its own right that agency staff consider public comments in the course of recommending action on the permit, their review cannot substitute for the obligations the regulations impose on the decision maker. These regulations focus on the actions of the *decision maker* and the record he or she has to consider, not on whether his or her staff have reviewed public comments and prepared a draft response thereto.

11 E.A.D. at 245.

Second, it is also critical for the decision maker to consider the comments, and issue a response to those comments, *at the time* that the final permitting decision is made, rather than at a later time. As the Board has explained, "[i]f the Region prepares a response to comments after it has already made its final permit decision, it runs the risk that the comments will not be considered with an open mind but instead with an eye toward defending the decision." *Rockgen,* 8 E.A.D. at 556 (quoting *Atochem,* 3 E.A.D. at 499); *accord Weber*, 11 E.A.D. at 245 (explaining that "decision maker must consider comments with a truly open mind").

The failure to comply fully with the requirements of §§ 124.17 and 124.18 is not a harmless, inconsequential, or trivial error, as the Board emphasized in a previous UIC permit appeal arising in Region 5. *Weber*, 11 E.A.D. at 245-46; *accord Rockgen*, 8 E.A.D. at 556-57; *Atochem*, 3 E.A.D. at 498-99 (concluding that failure to respond to all of petitioner's significant comments was not "harmless error" as the permit issuer claimed); *see also In re ConocoPhillips Co.*, 13 E.A.D. 768, 776-77 (EAB 2008) (emphasizing that "the permitting procedures outlined in the Agency's regulations serve an important function related to the efficiency and integrity of the overall administrative scheme" and thus "procedural arguments or errors" should not be viewed as "inherently insignificant"). Consequently, in *Weber*, where the permit issuer signed and sent the response to comments document three days after issuing a final permit decision, the Board remanded the permit even though the remand might not "result in any change in the Region's ultimate permit decision." 11 E.A.D. at 246.

Similarly, in *Rockgen*, "even though it [did] not appear as if [petitioner] ha[d] suffered any particularized prejudice from [the permit issuer's] failure to timely respond to comments," the Board remanded the permit with instructions for the permit issuer to "demonstrate, to a greater degree than heretofore, that it has given, or will give, as the case may be, thoughtful and full consideration to all public comments before making the final permit decision." 8 E.A.D. at 557. As the Board explained, "[t]he failure of the [permit issuer] to comply fully with the

public participation requirements of the regulations * * * , combined with a reasonable perception from the record that [the permit issuer] may not in fact have given consideration to the public's comments beforehand, * * * should be rectified." *Id.*

Here, the certified administrative record on its face raises a significant question as to whether the Region complied fully with these requirements. According to the record, the Region issued two response to comments letters a day after issuing the Final Permit and issued three other response to comment letters a week before issuing the Final Permit. Thus, because of the seriatim issuance of response to comments, some of which predate and some of which postdate the permit decision, it is unclear whether the final decision maker in fact considered these responses to comments when making the final decision. The requirement of 40 C.F.R. § 124.17(a) that a response to comments be issued "[a]t the time that [the] final permit decision is issued" is designed to ensure compliance with this important procedural requirement. The discrepancy between the dates of the responses to comments and the final decision, as reflected in the certified record, casts a cloud over the administrative record in this case.[8]

Focusing more particularly on Petitioner, the administrative record on its face raises at least a question as to whether the decision maker considered the letter responding to Ms. Petrie's comments prior to making a final decision and issuing the permit as 40 C.F.R. § 124.18 requires. The record, certified by the

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[8] Confounding this problem is that the Region, rather than issuing one consolidated response to comments document as is the typical practice of part 124 permit issuers, appears to have issued separate letters to each of the commenters, seemingly responding to each set of comments individually. *Cf. Russell City II*, 15 E.A.D. at 13 (noting that the permit issuer had issued a 235-page response to the public comments); *Conocophillips*, 13 E.A.D. at 776 (noting that the permit issuer had issued a "Responsiveness Summary" document responding to all comments). Section 124.17, by its language, seems to contemplate one document responding to all comments. *See, e.g.,* 40 C.F.R. § 124.17(a) (referring to the response to comments as "this response" and stating that it should respond to *all* significant comments). The Region's approach could lead to confusion and inconsistent responses to similar or identical comments. Moreover, it also does not provide commenters with a comprehensive recital of all the Region's responses to comments. Here, a commenter who desires to review all of the Region's responses to comments would have to obtain a copy of all the response letters the Region had issued. It is not clear whether the Region sends copies of all its responses to each commenter, and it does not appear that the Region makes them publicly available by posting copies on its website.

Providing all of the Region's responses to all commenters is important because a commenter may challenge a permit based on comments it did not raise as long as the commenter participated in the public comment period and someone else commented on this issue during the public comment period thereby enabling the Region to consider the issue. *See* 40 C.F.R. § 124.19(a); *see also, e.g., Beeland*, 14 E.A.D. at 200 n.11 (considering issue that petitioner had not raised, but other commenters had, where petitioner had participated in public comment period); *In re Brine Disposal Well*, 4 E.A.D. 736, 740 (EAB 1993) (explaining that, under the permitting regulations, "'the person filing the petition for review does not necessarily have to be the one who raised the issue' during the comment period" (quoting *In re Broward County*, 4 E.A.D. 705, 714 (EAB 1993))).

Region, shows that the Region issued the Final Permit the day *before* it issued the response to Petitioner's comments. Further, the Board notes that none of the initials on the response to comments letter are that of the decision maker;[9] only staff initials appear in the document. The signature block in the response to comments document was drafted for the section chief, not the permit issuer. Based on this record, the Board cannot ignore the possibility that the decision maker may not have reviewed the response to Petitioner's comments prior to issuing the permit and may not have issued the response to comments herself, as 40 C.F.R. § 124.18 requires. That practice, if it occurred, would "short circuit the permit process" and "denigrate, if not render superfluous, the important role the Agency decision maker must exercise."[10] *Weber,* 11 E.A.D. at 245.

These date discrepancies in the record also raise concerns about the contents of the administrative record. If two of the response to comments documents were, in fact, issued after the Final Permit, as the administrative record suggests occurred, under the regulatory scheme, those response to comments documents would not, as a technical matter, be part of the administrative record. The Region therefore could not have based its decision on those responses. 40 C.F.R. § 124.18(c) (deeming the administrative record "complete" on the date the final permit is issued); *Weber*, 11 E.A.D. at 243 n.2 (noting that the Region's response to certain comments was not officially part of the administrative record because that response postdated permit issuance); *see also, e.g., In re Dominion Energy Brayton Point, LLC*, 12 E.A.D. 490, 518 (EAB 2006) (concluding that documents submitted subsequent to permit issuance – in that case, several hours after issuance – could not be considered part of the administrative record); *In re Peabody W. Coal Co.*, 12 E.A.D. 22, 40 n.42 (EAB 2005) (stating that documents arriving after the issuance of the final permit were not part of the administrative record even though they were incorrectly included in the certified index).

Accordingly, because of the importance of ensuring that Agency decision makers adhere fully to the public participation requirements of these regulations, a remand is in order. Whether or not this remand results in any change to the Region's ultimate permit decision, remand is necessary to ensure that the permit issuer has complied or will fully comply with the requirement to give adequate and timely consideration to public comments at the time of issuing a final permit deci-

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[9] The Board presumes that the Regional Administrator delegated authority to issue the permit to Tinka G. Hyde, the signer of the final permit decision.

[10] It bears noting that issuance of the response to comments before the final permit decision is made raises questions as well because the decision maker should have the full record, not a partial record, before him or her before making the decision. The most straightforward way to avoid creating unnecessary ambiguity in the administrative record is, in the future, for the permit issuer to issue both the permit and all the responses to comments on the same date and assure that the certified administrative record reflects these dates.

sion. *Weber*, 11 E.A.D. at 246; *Rockgen,* 8 E.A.D. at 557; *Atochem*, 3 E.A.D. at 499. Greater care in preparing an adequate administrative record so that the administrative record on its face demonstrates full compliance with §§ 124.17 and 124.18 could obviate the delays caused in this case by the Region's inadequately prepared administrative record. The Board provides two options for the Region to follow on remand below. *See infra* Part VII.

C. *Petitioner Has Not Provided Sufficient Specificity for Her Substantive Claims to Warrant Review*

In her petition, Ms. Petrie challenges the Region's drinking water analysis in a very general way. She claims that the Region's final permit decision was "based on tenuous knowledge of the relationship between injection wells and underground drinking water and that the EPA has an imperative to protect and defend our water sources as a matter of policy." Petition at 1. She also claims that "an administrative review is in order to bring recent scientific evidence to the panel," but does not refer to any specific scientific studies or data. *Id*. Petitioner preserved these issues for review by raising similar, more specific, drinking water concerns in her comments on the draft permit. *See* Petrie Comments at 1.

While the Board recognizes that Petitioner's concerns about drinking water are very important, she has not met her burden to show that the Petition warrants Board review. As the Board has explained, to justify consideration on the merits, a petitioner's substantive claim "must contain certain fundamental information." *In re Beckman Prod. Servs.*, 5 E.A.D. 10, 18 (EAB 1994); *accord Envotech*, 6 E.A.D. at 267. In particular, section 124.19 requires that, "at a minimum, it [] contain 'two essential components: (1) clear identification of the conditions of the permit that [are at] issue, and (2) argument that the conditions warrant review.'"[11] *In re Puna Geothermal Venture*, 9 E.A.D. 243, 274 (EAB 2000) (quoting *Beckman*, 5 E.A.D. at 18) (alteration in original); *accord Envotech*, 6 E.A.D. at 268. Consequently, the Board has denied review of issues that are vague and unsubstantiated for lack of specificity. *In re Peabody W. Coal Co.*, 15 E.A.D. 406, 429 n.36 (EAB 2011); *In re City of Attleboro*, 14 E.A.D. 398, 443-44 (EAB 2009); *In re City of Moscow*, 10 E.A.D. 135, 172 (EAB 2001); *Beckman*, 5 E.A.D. at 18-19; *In re Terra Energy Ltd.*, 4 E.A.D. 159, 161 (EAB 1992).

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[11] Because Ms. Petrie is not represented by counsel, the Board has, as in previous cases, endeavored to construe her objections generously so as to identify the substance of its arguments. *See, e.g., In re Federated Oil & Gas*, 6 E.A.D. 722, 727 n.5 (EAB 1997); *Envotech*, 6 E.A.D. at 268 & n.13. Nevertheless, "[w]hile the Board does not expect or demand that [pro se] 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 petitioner's concerns to be meaningfully addressed by the Board." *Beckman*, 5 E.A.D. at 19 (emphasis added); *accord In re Envtl. Disposal Sys., Inc.*, 8 E.A.D. 23, 28 n.5 (EAB 1998); *Envotech*, 6 E.A.D. at 268 & n.13.

Petitioner's claims fail to contain either of the requisite components. Petitioner does not explicitly challenge the validity of any particular provision of the permit, and the Board cannot ascertain from the above-quoted statements to which permit condition Petitioner is objecting. *See In re Beeland Group, LLC*, UIC Appeal Nos. 08-01 & 08-03, at 4-5 (EAB May 23, 2008) (Order Denying Review) (denying review where petitioners failed to identify any permit condition that they believe warranted review); *Puna*, 9 E.A.D. at 274-75 (denying review of two issues where petitioner failed to identify any permit terms it claimed to be erroneous); *Beckman*, 5 E.A.D. at 18 (noting that neither petition identified any challenged permit conditions). Nor does Petitioner provide any real argument in her petition of why any condition, or even the permit as a whole, warrants review. Her statements are merely generalized, conclusory assertions. *See In re Beeland Group LLC*, 14 E.A.D. 189, 200 (EAB 2008) (explaining that general statements, rather than specific arguments, are insufficient to warrant review); *In re City of Marlborough*, NPDES Appeal No. 04-12, at 13-14 (EAB Mar. 11, 2005) (Order Denying Petition for Review) (denying review of fourteen generalized claims because they lacked sufficient specificity); *Beckman*, 5 E.A.D. at 18-19. The statements in her petition, therefore, lack the specificity necessary to warrant review. For this reason, the Board denies review of Petitioner's substantive claims.

VI. *CONCLUSION*

Based on the foregoing, the Board concludes that the certified administrative record fails to demonstrate on its face that the Region complied fully with 40 C.F.R. §§ 124.17 and 18 when it issued the permit. Specifically, the record suggests that the decision maker may not have had the response to comments required by 40 C.F.R. § 124.17 in the record before her at the time she issued the final permit decision. The Board, therefore, cannot conclude that the decision maker based her decision on the full administrative record, including the response to comments, as is required. Thus, the Board remands the final permit decision to the Region so that it may address these procedural issues. The Board denies review of all other issues raised by the Petition for the reasons described above.

VII. *ORDER*

Accordingly, in order to ensure that the requirements of the governing regulations are effectuated, the Board hereby remands this case. On remand, the Region has two options:

> (1) If the Region determines, upon reexamination of its administrative record, that the permit issuer did, in fact, consider all comments and responses to comments at the time of her decision, issued the responses to comments at

> the time of the final decision, and therefore based her decision on the complete administrative record as of the date of permit issuance – in other words, determines that the certified index to the administrative record (and the date stamps on the response to comments letters) are in error as to the date of issuance – the Region may make technical changes to and recertify its administrative record to demonstrate full compliance with the regulations.
>
> (2) Unless the Region can fully meet the requirements in option (1), the Region must reconsider and reissue a final permit decision based on the complete administrative record including the final response to comments document. If the Region decides to reissue the final permit decision and its response to comments, the Region should issue one comprehensive response to comments document. The response to comments is to be issued at the time the final permit decision is issued.

This Remand Order does not reopen the public comment period. After the Region completes its actions on remand, anyone dissatisfied with the Region's actions on remand must file a petition seeking Board review in order to exhaust administrative remedies pursuant to 40 C.F.R. § 124.19(f)(1)(iii).[12] Any such petitions shall be limited to those issues addressed by the Region on remand or raised by or in connection with the remand procedures. No new issues may be raised that could have been raised, but were not raised, in the present appeal.

So ordered.

[12] Parties and interested persons are advised that the EPA recently issued a rule revising part 124.19, which becomes effective on March 26, 2013. *See* Revisions to Procedural Rules To Clarify Practices and Procedures Applicable in Permit Appeals Pending Before the Environmental Appeals Board, 78 Fed. Reg. 5281 (Jan. 25, 2013). Therefore, effective March 26, 2013, the language currently located at the above-cited 40 C.F.R. § 124.19(f)(1) will instead be located at 40 C.F.R. § 124.19(*l*)(2). In addition, anyone filing a petition for review upon the Region's completion of actions on remand after March 26, 2013, should follow the latest version of § 124.19 in preparing a petition for review.