

(Slip Opinion)

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

_____)
In re:)
)
Sammy-Mar, LLC)
) UIC Permit Appeal 15-02
UIC Permit No.)
PAS2D030BCLE)
)
_____)

[Decided February 18, 2016]

ORDER DENYING REVIEW

Before Environmental Appeals Judges Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward.

IN RE SAMMY-MAR, LLC

UIC Permit Appeal 15-02

ORDER DENYING REVIEW

Decided February 18, 2016

Syllabus

Mr. Shawn Agosti seeks review of a Class II Underground Injection Control (“UIC”) permit issued by the United States Environmental Protection Agency Region 3 (“Region”) to Sammy-Mar, LLC pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26. The permit authorizes Sammy-Mar to construct and operate a new Class II-D brine disposal injection well in Huston Township, Clearfield County, Pennsylvania. Petitioner asserts that the Board should grant review of the proposed permit on the following grounds: (1) the Region failed to consider adequately geological data and the possibility of seismic events related to the proposed well; (2) the Region failed to specify who will pay the costs of replacing drinking water wells should a spill occur; (3) the Region failed to consider effects of the well on traffic, property values, and hunters visiting the area; and (4) the Region failed to consider the potential for injected fluids to escape from the injection zone and contaminate environmentally sensitive areas.

Held: The Board finds that the Region provided thorough and well-reasoned responses during the public comment period to the questions and concerns raised in Mr. Agosti’s petition for review. The Board denies the petition for review because it fails to address the permit issuer’s responses and explain why the responses or determination to issue the permit were clearly erroneous or otherwise warrant Board review. *See* 40 C.F.R. § 124.19(a)(4)(ii).

Before Environmental Appeals Judges Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward.

Opinion of the Board by Judge Lynch:

I. STATEMENT OF THE CASE

On November 2, 2015, Mr. Shawn Agosti (“Petitioner”) filed a petition with the Environmental Appeals Board (“Board”) seeking review of a Class II Underground Injection Control (“UIC”) permit issued by the United States Environmental Protection Agency (“Agency”) Region 3 (“Region”) to Sammy-Mar, LLC pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26. *See* Letter from Mr. Shawn Agosti to the Environmental Appeals Board (received on Nov. 2, 2015) (“Petition”). The permit authorizes Sammy-Mar to construct and operate a new Class II-D brine disposal injection well in Huston Township, Clearfield County, Pennsylvania, referred to as “Povlik No.1.” *See* Injection Control Permit No. PAS2D030BCLE Authorization to Operate Class II-D Injection Well (Sept. 30, 2015) (“Permit”). On November 24, 2015, the Region filed a response to the Petition. Region III’s Response to Petition for Review (“Region’s Response”). For the reasons below, the Board denies Mr. Agosti’s petition for review because it fails to explain why the Region’s responses to comments are clearly erroneous or the issuance of this permit otherwise warrant review.

II. STATUTORY AND REGULATORY HISTORY

Congress established the UIC program pursuant to Safe Drinking Water Act (“SDWA”) section 1421, 42 U.S.C. § 300h, and EPA promulgated regulations at 40 C.F.R. parts 144 through 148 to protect underground sources of drinking water (“USDW”). The program is designed to protect underground water that “supplies or can reasonably be expected to supply any public water system.” SDWA § 1421(d)(2), 42 U.S.C. § 300h(d)(2). The regulations specifically prohibit “[a]ny underground injection, except into a well authorized by rule or except as authorized by permit issued under the UIC program.” 40 C.F.R. § 144.11. The UIC permit application procedures are set forth in section 144.31, which provides: “all injection activities including construction of an injection well are prohibited until the owner or operator is authorized by permit.” *Id.* at § 144.31(a).¹

¹ Under 40 C.F.R. § 144.6, injection wells fall into six classes depending on the type and depth of the injection activity and the potential for that injection activity to result in endangerment of a USDW. Class II wells are used to inject fluids:

- (1) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production

The UIC regulations establish minimum requirements for state-administered permit programs. EPA administers the UIC program in those states that, like Pennsylvania, are not authorized to administer their own programs. *See* 40 C.F.R. §§ 144.1(e), 147.1951.

III. THRESHOLD REQUIREMENTS FOR BOARD REVIEW

Section 124.19 of Title 40 of the Code of Federal Regulations governs Board review of a UIC permit. EPA's intent in promulgating these regulations was that this review should be only sparingly exercised. Consolidated Permit Regulations, Preamble at 40 C.F.R. 124.19, 45 Fed. Reg. 33,290, 33,412 (May 19, 1980). *See also In re Beeland Group, LLC*, 14 E.A.D. 189, 195-96 (EAB 2008). In considering any petition filed under 40 C.F.R. § 124.19(a), the Board first evaluates whether the petitioner has met threshold procedural requirements such as timeliness, standing, issue preservation and specificity. 40 C.F.R. § 124.19(a)(2)-(4); *see also In re Indeck-Elwood, LLC*, 13 E.A.D. 126, 143 (EAB 2006). If the Board concludes that a petitioner satisfies all threshold pleading obligations, then the Board evaluates the merits of the petition for review. *See Indeck-Elwood*, 13 E.A.D. at 143. If a petitioner fails to meet a threshold requirement, the Board typically denies or dismisses the petition for review. *See, e.g., In re Russell City Energy Ctr., LLC*, PSD Appeal Nos. 10-12 & 10-13, at 4-7 (EAB June 9, 2010) (Order Dismissing Two Petitions for Review as Untimely).

In any appeal from a permit decision issued under Part 124, the petitioner bears the burden of demonstrating that review is warranted. 40 C.F.R. § 124.19(a)(4). This standard does not require sophisticated legal arguments or the use of precise technical or legal terms. *In re Sutter Power Plant*, 8 E.A.D. 680, 687 (EAB 1999). But it is not enough for a petitioner to rely on previous statements of its objections, such as comments on a draft permit. Rather, a petitioner must demonstrate why the Region's response to those objections (the Region's basis for its decision) is clearly erroneous or otherwise warrants review. *See Beeland Group*,

operations, unless those waters are classified as a hazardous waste at the time of injection.

(2) For enhanced recovery of oil or natural gas; and

(3) For storage of hydrocarbons which are liquid at standard temperature and pressure.

40 C.F.R. § 144.6(b).

14 E.A.D. at 196. The petitioner bears this burden even when the petitioner is unrepresented by counsel, as is the case here.² *In re New Eng. Plating Co.*, 9 E.A.D. 726, 730 (EAB 2001); *In re Encogen Cogeneration Facility*, 8 E.A.D. 244, 249-50 (EAB 1999). With these principles in mind, the Board next summarizes the permit at issue and then considers Mr. Agosti's petition for review.

IV. SUMMARY OF RELEVANT FACTUAL HISTORY

The Permit authorizes Sammy-Mar to construct and operate a Class II brine disposal well and to inject fluids produced in association with oil and gas production operations. Permit at 1. The Permit limits injection to an area referred to as the "Huntersville Chert-Oriskany Sand Formations" in the interval between approximately 7030 feet through 7100 feet. *See* Statement of Basis for U.S. EPA's Underground Injection Control (UIC) Program Draft Class IID Permit No. PAS2D030BCLE for Sammy-Mar, LLC at 2 (Dec. 3, 2014) ("Statement of Basis"). An interval of approximately 5830 feet separates the injection zone from the lowermost source of drinking water. *Id.* Immediately above the injection zone is a twelve-foot confining layer referred to as the "Onondaga Limestone Formation." This formation has a low permeability, giving it the ability to confine and trap fluids and prevent upward migration into shallower geologic formations. *See* U.S. EPA Region 3, Response to Comments for the Issuance of [a UIC] Permit for Sammy-Mar, LLC at 13 (Sept. 30, 2015) ("Response to Comments"). Two geologic formations above the Onondaga Formation, referred to as the "Hamilton Group and Tully Limestone Formation," totaling approximately 600 feet, serve as additional confining formations preventing fluid movement upward towards the USDW. *Id.* The Region states that cumulatively these formations will confine all injected fluids. *Id.* In addition, the Permit contains conditions, such as a limit on injection

² The Board generally endeavors to construe liberally the issues presented by an unrepresented petitioner, so as to fairly identify the substance of the arguments being raised. The Board nevertheless "expect[s] such petitions to provide sufficient specificity to apprise the Board of the issues being raised." *In re Seneca Res. Corp.*, UIC Appeal Nos. 14-01 through 14-03, slip op. at 2-3 (May 29, 2014), 16 E.A.D. ___; *Sutter*, 8 E.A.D. at 687-88. "The Board also expects the petitions to articulate some supportable reason or reasons as to why the permitting authority erred or why review is otherwise warranted." *Sutter*, 8 E.A.D. at 688; *accord In re Beckman Prod. Servs.*, 5 E.A.D. 10, 19 (EAB 1994).

pressure to prevent fractures, testing, monitoring, and reporting requirements designed to ensure well integrity, and detailed construction and operating requirements – all designed to achieve the overarching purpose of the SDWA and UIC regulations – to protect underground sources of drinking water from contamination.³

V. ANALYSIS

The revised part 124 regulations, which incorporate Board precedent, require a petition to contain three essential components: (1) clear identification of the contested permit condition or other specific challenge to the permit decision at issue that is based on either a clear error of fact or law, or an exercise of discretion or important policy consideration warranting review; (2) a demonstration that any issue being raised on appeal has been preserved for Board review (*i.e.*, was raised during the public comment period or public hearing on the draft permit), or an explanation as to why the issue was not required to be raised; and (3) argument, with factual and legal support, as to why the permit condition or other challenge warrants review by the Board, including an explanation as to why the permit

³ For example, the Permit allows injection “only into a formation which is separated from any underground source of drinking water by a confining zone, as defined in 40 C.F.R. § 146.3, that is free of known open faults or fractures within the Area of Review as required by 40 C.F.R. § 146.22.” Permit pt. III.A.1. The Permit specifically prohibits the injection of fluids “at a pressure which initiates fractures in the confining zone * * * or causes the movement of * * * fluids into an underground source of drinking water.” *Id.* pt. III.B.4. The well must be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water for the life of the well. *Id.* pt. III.A.2. The Permit prohibits injection until the permittee: “(i) demonstrates the mechanical integrity of the Injection Well in accordance with 40 C.F.R. § 146 and (ii) receives notice * * * that such demonstration is satisfactory.” *Id.* pt. III.A.4. The permittee is prohibited from conducting injection operations until it demonstrates that it has plugged all abandoned wells identified within the area of review. *Id.* pt. III.A.5. Further, the Permit requires continuous monitoring and an automatic shut-off device in the event of mechanical integrity failure. *Id.* pt. II.B. Finally, the Permit contains detailed reporting and notification requirements for any noncompliance. *Id.* pt. II.D.

issuer's response to comment on the issue raised, if any, was clearly erroneous or otherwise warrants review. The regulations further specify that petitioners must demonstrate, by providing specific citation to the administrative record, including the document name and page number, that each issue being raised in the petition was raised during the public comment period (including any public hearing to the extent required by 124.13). *See* 40 C.F.R. 124.19(a)(4)(ii).

Mr. Agosti's petition is one and a half pages in length and only generally raises concerns, mostly focused on the location of the injection well in Clearfield County, Pennsylvania, and summarily states that there need to be more studies "both environmentally and economically" before the Permit is issued. The Board takes seriously the concerns raised by Mr. Agosti regarding injection wells but he has not demonstrated why the UIC permit issued to Sammy-Mar warrants review. Instead, the record shows that the Region undertook a careful review of the permit application including evaluating the geology of the injection and confining zones; accepting public comment on the draft permit; revising the draft permit in response to comments, and determining that the conditions in the permit would protect USDWs from endangerment from the injection operations in accordance with the SDWA. In accordance with the UIC regulations, the Region determined that it was appropriate to issue a final Class II Permit to Sammy-Mar and mailed or emailed the Response to Summary Comments and Notice of Final Permit to all persons who provided written comments.

The Region provided a thorough response to Mr. Agosti's Petition to the Board. In fact, the Region helpfully connected Mr. Agosti's letter to issues the Region considered in assessing the permit application, including those issues raised during the public comment period. Essentially, the Petitioner raises four general concerns regarding the Region's permitting decision. Petitioner asserts that the Board should grant review of the proposed Permit on the following grounds: (1) the Region failed to consider adequately geological data and the possibility of seismic events related to the proposed well; (2) the Region failed to specify who will pay the costs of replacing drinking water wells should a spill occur; (3) the Region failed to consider effects of the well on traffic, property values, and hunters visiting the area; and (4) the Region failed to consider the potential for injected fluids to escape from the injection zone and contaminate environmentally sensitive areas. *See* Petition at 1-2. The Region views these four areas of concern as previously raised generalized objections that it carefully considered and addressed in its Response to Comments. The Region asserts that the petition merely restates prior comments rather than confronting the Region's Response to Comments and does

not raise any other issues warranting review. For the reasons discussed below, the petition for review is denied in all respects.

A. *Seismic Activity*

Petitioner expresses concern regarding the potential for seismic events in the area surrounding the proposed well. Petition at 1. The Region addressed this concern extensively in its Response to Comments on the draft permit, including: (1) a background discussion on induced seismic activity, citing a National Academy of Sciences report on induced seismic potential; (2) an evaluation of factors relevant to seismic activity, such as the existence of known faults and/or fractures and the history of, and potential for, seismic events in the area around the well, citing data from the U.S. geological survey and the Pennsylvania Department of Conservation and Natural Resources; (3) a discussion of factors affecting fluid transmission and pore pressure and the relationship of over-pressurization to seismic activity; (4) a discussion of seismic events occurring elsewhere, such as events in Ohio, Texas, Oklahoma, and West Virginia; and (5) a discussion of the potential for contamination of USDWs resulting from earthquakes. *See* Response to Comments at 6-13. Although the Region recognized the existence of two faults located about one-quarter mile from the injection site, the Region explained that these faults are localized and non-transmissive and that fluid injected into the Huntersville Chert formation will be confined. *Id.* at 8. As the Region explained:

The applicant submitted, and EPA reviewed, geological information indicating the probable presence of two faults which appear to be located about one-quarter mile from the injection well site, in the Oriskany/Huntersville Chert receiving formation. Drilling records and geologic cross sections provided in the permit application show displacement of the bedrock. The presence of the fault to the south of the proposed well in the Oriskany/Huntersville Chert receiving formation is confirmed by drilling records included in the permit application. In addition, a seismic survey was submitted by Sammy-Mar which appears to indicate that both faults are localized and non-transmissive. These non-transmissive faults provide the structural confinement which enabled natural gas to be fully contained within, and later produced from this area from the 1950s through the present. Other gas production wells drilled outside the fault zone in which the Sammy-Mar well is located were plugged for lack of production. For example gas production well API# 033-20047 was documented as a dry hole and was actually plugged and abandoned in 1959 shortly after completion. This gas well production history

helps to illustrate that the displacement of the Huntersville Chert/Oriskany formation created by the faults established confinement of natural gas and formation fluids within the immediate fault block structure and that fluid flow (natural gas and produced water) along or across the faults is not evident. Because of the non-transmissive nature of the faults, fluid that is injected into the Huntersville Chert/Oriskany formation at the proposed injection well location should be confined within the fault block.

Id. Moreover, as the Region stated:

Earthquake activity in Pennsylvania has been associated with the Precambrian, crystalline, igneous/metamorphic bedrock, sometimes referred to as “basement rock”, which is located below sedimentary bedrock, either from basement faulting or faulting at a shallower depth caused by tectonic stresses that originated from the basement rock. The available geophysical and seismic information researched by the Permittee, as well as through EPA’s review of published information of seismicity in Pennsylvania * * * shows no evidence of faults that reach the land’s surface from basement rock. Basement rock, in the area of the proposed permit, is located at depths approximating 16,000 feet, almost 8,900 feet below the proposed injection zone.

Statement of Basis at 3; *see* also Response to Comments at 7-9. With regard to the potential endangerment of underground sources of drinking water due to earthquakes, the Region explained:

Of the hundreds of thousands of injection wells operating in the United States, EPA is not aware of any case where a seismic event caused an injection well to contaminate a USDW. * * * A number of factors help to prevent injection wells from failing in a seismic event and contributing to the contamination of a USDW. Most deep injection wells, that are classified as Class I or Class II injection wells are constructed to withstand significant amounts of pressure. They are typically constructed with multiple strings of steel casing that are cemented in place. The casing in these wells is designed to withstand both significant internal and external pressure.

* * * *

[T]he proposed Sammy-Mar injection well, under the terms of the permit will be constructed with multiple strings of steel casing

cemented in place. Furthermore, the proposed Sammy-Mar injection well will be required under the permit to be mechanically tested to ensure integrity before it is operated and will be continuously monitored during operation to ensure that mechanical integrity is maintained. This mechanical integrity testing is required by the UIC regulations for all brine injection wells. If a seismic event were to occur that affected the operation and mechanical integrity of the Sammy-Mar injection well, the well will be designed to automatically detect a failure due to pressure changes in the well annulus between the long string casing and the injection tubing, and this would cause the well to automatically stop injection. *See* Part II.C.2 of the Permit.

Response to Comments at 12-13.

Upon examination of the record, the Board finds that the Region, in recognition of and in response to Petitioner's concerns regarding the seismology in the area surrounding the proposed well, provided a thorough and rational response addressing this issue. Simply repeating concerns before the Board that have been previously presented to and answered by the permit issuer does not satisfy Petitioner's obligation to confront the permit issuer's responses and explain why the responses were clearly erroneous or otherwise warrant Board review. *See* 40 C.F.R. § 124.19(a)(4)(ii).

Federal circuit courts of appeal have consistently upheld the Board's threshold requirement to demonstrate, with specificity, that review is warranted, including the requirement that a petitioner must substantively confront the permit issuer's response to the petitioner's previous objections. *See, e.g., Native Vill. of Kivalina IRA Council v. EPA*, 687 F.3d 1216, 1219 (9th Cir. 2012), *aff'g In re Teck Ala., Inc.*, NPDES Appeal No. 10-04, at 7-11 (EAB Nov. 18, 2010) (Order Denying Review); *City of Pittsfield v. EPA*, 614 F.3d 7, 11-13 (1st Cir. 2010), *aff'g In re City of Pittsfield*, NPDES Appeal No. 08-19 (EAB Mar. 4, 2009) (Order Denying Review); *Mich. Dep't of Env'tl. Quality v. EPA*, 318 F.3d 705, 708 (6th Cir. 2003) ("[Petitioner] simply repackag[ing] its comments and the EPA's response as unmediated appendices to its Petition to the Board * * * does not satisfy the burden of showing entitlement to review."), *aff'g In re Wastewater Treatment Facility of Union Twp.*, NPDES Appeal Nos. 00-26 & 00-28 (EAB Jan. 23, 2001) (Order Denying Petitions for Review); *LeBlanc v. EPA*, 310 F. Appx. 770, 775 (6th Cir. 2009) (concluding that the Board correctly found petitioners to have procedurally defaulted where petitioners merely restated "grievances" without offering reasons why the permit issuer's responses were clearly erroneous or

otherwise warranted review), *aff'g In re Core Energy, LLC*, UIC Appeal No. 07-02 (EAB Dec. 19, 2007) (Order Denying Review). Because the Petition does not satisfy this requirement, review is denied on this issue.

B. Cost of Well Testing, Damage, and Replacement

Petitioner expresses concern that Sammy-Mar will not be able to pay the costs of testing and replacing drinking water supplies should any contamination occur. Petition at 1. As the Region pointed out, however, the regulations do not require that a permit applicant provide monetary assurances to cover the costs of ground water remediation. *See* Response to Comments at 20; *see also In re Windfall Oil & Gas, Inc.*, UIC Appeal Nos. 14-73 through 14-190, slip op. at 45 (EAB June 12, 2015), 16 E.A.D. _____. However, as the Region stated:

EPA does have emergency authorities under the [SDWA] if endangerment to USDWs should result from injection activities. Section 1431 of the SDWA [42 U.S.C. § 300i] authorizes EPA to take an action against anyone who causes or contributes to the contamination of a drinking water supply which may present an endangerment to the health of persons using such water supply. Any action brought under Section 1431 * * * can include a requirement that the responsible party provide alternative drinking water to citizens affected by the endangerment.

Response to Comments at 20.

In addition, as the Region stated, the UIC regulations impose financial requirements for plugging and abandonment of Class II wells. The regulations require that permit applicants “demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the [Region].” 40 C.F.R. § 144.52(a)(7) (financial responsibility); *See also id.* § 144.31(e)(10) (requiring that applicants for Class II wells provide a plugging and abandonment plan); *id.* § 146.10 (containing requirements for plugging and abandoning Class I, II, III, IV, and V wells). The Sammy-Mar permit requires that the permittee “maintain continuous compliance with the requirement to maintain financial responsibility and resources to close, plug, and abandon the underground Injection Well in accordance with 40 C.F.R. § 144.52(a)(7) in the amount of at least \$26,000.” Permit pt. III.D. The Permit states further that the Region “may require the permittee to submit a revised demonstration of Financial Responsibility if the [Region] has reason to believe that

the original demonstration is no longer adequate to cover the costs of plugging and abandonment.” *Id.*

Although Petitioner appears unsatisfied with the Region’s response to his concern, Petitioner fails to substantively confront the Region’s response or explain in any way why the Region’s determination was clearly erroneous or otherwise warrants Board review, nor has Petitioner demonstrated that the Region made a clear error of law or fact or abused its discretion in issuing the Permit. The Board therefore denies review on this issue. *See, e.g., In re Pa. Gen. Energy Co.*, UIC Appeal Nos. 14-63 through 14-65, slip op. at 7 (EAB Aug. 21, 2014), 16 E.A.D. ____; *In re Seneca Res. Corp.*, UIC Appeal Nos. 14-01 through 14-03, slip op. at 7 (EAB May 29, 2014), 16 E.A.D. ____.

C. *Scope of Board Review*

Petitioner asserts that the Region failed to address concerns regarding the funding of local emergency services for additional calls due to increased traffic, the effect on the local economy and property values, and the effect on hunters traveling to the area. Petition at 1-2. The UIC permitting process, however, “is narrow in its focus and the Board’s review of the UIC permit decisions extends only to the boundaries of the UIC permitting program, which is limited to the protection of underground sources of drinking water.” *In re Bear Lake Props.*, 15 E.A.D. 630, 643-44 (EAB 2012) (citing cases); *see also In re Env’tl. Disposal Sys.*, 12 E.A.D. 254, 295 (EAB 2005) (local concerns such as well siting and transportation issues fall outside the scope of the Board’s jurisdiction in UIC permit appeals). Because these claims are outside the Board’s permitting review authority, the Board denies review on these issues. *See In re Stonehaven Energy Mgmt., LLC*, 15 E.A.D. 817, 825 n.6 (EAB 2013). Moreover, as the Region correctly states in its Response, even though these local matters are outside the scope of the Board’s review authority, Sammy-Mar must still comply with all applicable state and local laws and regulations. *See Region’s Response* at 14. Indeed, the Permit makes clear that it “does not convey property rights or mineral rights of any sort or any exclusive privilege; nor does it authorize any injury to persons or property, any invasion of other property rights, or any infringement of State or local law or regulations.” Permit pt. I.A. Under these circumstances, review is denied.

D. *Well Siting*

Finally, Petitioner asserts that the potential exists for contamination to nearby surface waters and sensitive environmental areas should injected fluids

escape from the injection zone and migrate to the surface. An examination of the record before us, however, demonstrates that the Region considered and responded to concerns regarding the containment of injected fluids. In particular, in its Response to Comments, the Region stated:

[T]here is a confining zone, or group of geologic formations, immediately above the injection zone, the Onondaga Limestone formation. This is a limestone geologic formation which typically has a very low permeability, giving it the ability to confine and trap fluids from migrating upwards. In addition, other confining zones exist above the Onondaga Limestone and beneath the lowermost USDW.

* * * *

Several other factors will keep the injected fluid in place and not allow it to migrate out of the injection zone. One factor is that the permit does not allow the injection pressure to exceed the injection formation's fracture pressure and thereby prevents fracturing that could allow fluid to migrate out of the injection zone. In addition, no other artificial penetrations (e.g., abandoned wells) of the injection zone were identified within the AOR. The absence of any other artificial penetration into the injection zone within the AOR will prevent injection fluid from migrating out of the injection zone and into USDWs.

To confirm that the injected fluid remains in the receiving formation, the permit requires continuous monitoring of pressure conditions within the injection well. In addition, the annual pressure fall-off testing will establish reservoir pressure conditions and help analyze fluid movement within the reservoir. The permit also requires fluid level monitoring wells which will provide real-time pressure measurements at two locations at the outer edge of the AOR.

Response to Comments at 16-17; *see also id.* at 13-14 (discussing the adequacy of the confining zone).⁴ Because Petitioner fails to address the Region's Response to

⁴ The Region stated further that:

Comments or explain why the Region's determination was clearly erroneous or otherwise warrants review by the Board, review is denied on this issue.

VI. *CONCLUSION*

For the reasons stated above, the Board denies the petition for review of the Region's permitting decision filed by Mr. Shawn Agosti.

So ordered.

As part of the public notice process, EPA provides copies of the Statement of Basis and the draft permit to the U.S. Fish & Wildlife, the Nature Conservancy, the PA Fish & Boat Commission, the Pennsylvania Game Commission, and the Allegheny National Forest for their review and comment. No comments were received by any of these organizations. In addition, EPA conducted a search for possible endangered species in the project area and it appears that there were none in Clearfield County.

Response to Comments at 22.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Order Denying Review in the matter of Sammy-Mar, LLC, UIC Appeal No. 15-02 were sent to the following persons in the manner indicated:

By U.S. First Class Certified Mail
Return Receipt Requested:

Shawn Agosti
187 Horseshoe Drive
Penfield, PA 15849

By EPA Pouch Mail:

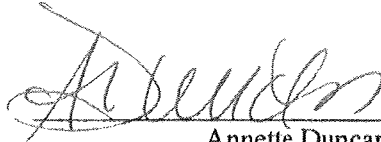
Cheryl L. Jamieson
Senior Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA Region 3
1650 Arch Street
Philadelphia, PA 19103

By Inter-Office Mail:

Pooja S. Parikh (2355A)
Water Law Office
Office of General Counsel

Dated:

FEB 18 2016


Annette Duncan
Secretary