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Underground Injection Control: U.S. EPA Environmental Appeals Board Addresses Challenge to Class II Permit Renewal

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The United States Environmental Protection Agency ("EPA") Environmental Appeals Board ("EAB") addressed in a May 6th Decision a Petition challenging the renewal of a Class II Underground Injection Control ("UIC") permit. See UIC Appeal No. 21-01.

Ms. Darlene Marshall ("Marshall") petitioned EAB to review EPA Region 3's reissuance of a permit to Windfall Oil & Gas, Inc. ("Windfall").

The Class II injection well ("Well") is located in Brady Township, Pennsylvania.

The Safe Drinking Water Act ("SDWA") regulations include minimum requirements for UIC permits. EPA has not delegated the UIC program to the State of Pennsylvania. Therefore, EPA Region 3 issues such permits in the state.

The UIC program provides that injection wells fall into six classes. Class II disposal wells encompass those used to inject fluids brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production.

The most recent Class II permit issued for the well was in 2015. This permit had a five-year term that was set to expire on October 31, 2019. However, because of an error, EPA issued a minor modification correcting the expiration date to July 30, 2020.

The permit was reissued on December 13, 2020. It authorizes Windfall to construct and operate a Class II injection well subject to certain specified conditions. The injection zone for the well is stated to lie approximately 7,300 to 7,387 feet below the surface elevation in the Huntersville Chert/Oriskany formation. Further, the lowermost underground source of drinking water is stated to be located approximately 800 feet below surface elevation and separated from the injection zone by approximately 6,500 feet of shale and rock.

Marshall challenged the reissuance of the permit by raising six issues which include:

- EPA's Selection of the Area of Review
- EPA's Treatment of Wells Located Outside the Area of Review
- The Potential for Injection Fluid to Migrate or be Transmitted to Underground Sources of Drinking Water
- The Potential for Seismic Activity in the Vicinity of the Injection Well

- Potential Impacts of the Well on Drinking Water Quality
- The Permit's Lack of Emergency Planning Conditions

EAB rejects the Petition and the six issues raised, holding:

In Windfall I, the Board ruled on each of the substantive issues fairly raised by the Petitioner in this appeal, and the Petitioner has not pointed to any factual or legal basis, or new information in the administrative record for this Permit, that would cause us to reconsider our previous analysis. 16 E.A.D. at 773-814. Neither has Petitioner demonstrated that the Region clearly erred in reissuing the Permit in 2020. The 2020 reissued permit is designed to protect underground sources of drinking water and includes construction, operational, recordkeeping, and monitoring provisions that directly address Petitioner's concerns. For each of the issues fairly raised in the petition, the Region has explained its permitting decision in the administrative record, including the underlying rationale for the decision. Petitioner has failed to carry her burden of demonstrating that the Region's determinations were clearly erroneous. As to the seventy enumerated issues that are described in just a few words in the petition, they do not satisfy the threshold procedural requirements for appeal.

Note the reference to "seventy enumerated issues." EAB did not consider those issues as substantive and, therefore, rejected them as not satisfying the procedural requirements for an appeal.

A copy of the Decision can be downloaded [here](#).