Underground Injection Control/California Power Generation Plant: U.S. EPA Environmental Appeals Board Petition for Review

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Panoche Energy Center, LLC, ("PEC") filed an October 28th Petition for Review ("Petition") before the United States Environmental Protection Agency ("EPA") Environmental Appeals Board ("EAB") challenging certain conditions of a federal Underground Injection Control ("UIC") Class I Non-hazardous Permit ("Permit").

The Permit was issued by EPA.

The Petition describes PEC as an operator of a 417 megawatt simple cycle power generation plant located in Central California.

The previously referenced Permit is stated to allow PEC to operate four injection wells to address wastewater associated with power generation and construct up to two additional wells with no change in injection volume or maximum allowable injection pressure. PEC states in t he Petition that it has operated injection wells since 2008 under a prior UIC permit.

EPA is stated to have issued a federal Class I UIC permit in 2008 to construct and operate six injection wells. PEC is stated to have installed four wells at the facility between 2008 and 2009. Further, PEC is stated to have submitted a renewal application to EPA in 2017.

EPA provided an early draft of the Permit to PEC that included a "corrective action" which required the installation of a monitoring well within 100 feet of the Silver Creek 18 well. This is described as an abandoned well located within the AoR:

. . . in order to evaluate injection zone conditions and identify potential changes in the Underground Sources of Drinking Water ("USDW").

The Petition states that because PEC demonstrated that there is no potential for endangerment to the USDWs, that EPA removed the monitoring well requirement as a corrective action when it published the draft permit for public comment. However, EPA is stated to have included the same requirement to construct and operate an "ambient monitoring" well as a new monitoring condition in the published draft. This condition is also stated to have been included in the Permit issued by EPA in 2022.

PEC challenged the inclusion of the ambient monitoring well during the Notice in Comment process.

The Petition challenges Part II.E.2 that requires PEC to drill and operate a 3,953 foot-deep monitoring well. It argues that there is no factual justification or rationale purpose for the monitoring well.

The arguments addressed in the challenge in the Petition include:

- PEC's Conservative Analysis of Potential Endangerment of USDWs
- PEC voluntarily used Class I hazardous waste injection well regulations for the USDW endangerment analysis
- PEC applied conservative assumptions when completing its AoR and endangerment analysis
- Cement plugs were discounted
- Base screening calculations were conservative
- Clay and shale swelling was discounted
- Shale creep within the confining units was discounted
- A buffer zone between the injection zone and USDWs was not considered
- PEC's Enhanced Wastewater System Has Reduced Pressure in the Injection Formation
- Monitoring Conditions in the Permit Will Warn of Any Possible Endangerment

PEC's summary of arguments states that imposition of the ambient monitoring requirement is erroneous because:

- EPA did not provide a rational basis for its conclusion that there is potential risk of movement of fluid from the injection zone into a USDW.
- EPA did not rationally explain how the Ambient Monitoring Requirement would provide an "early warning" about USDW endangerment resulting from PEC's injection activities.

Additional arguments in the Petition state:

- The Record Does Not Show Potential Risk of Endangerment of USDWs:
- PEC demonstrated no endangerment of USDWs and EPA agreed.
- To claim "potential" risk of endangerment, EPA relies on rank speculation without factual foundation that older muds in properly plugged wells may fail.
- The Utah Study is irrelevant and does not provide the missing justification.
- The Ambient Monitoring Requirement is Not Rational

The Petition asks that the U.S. EPA Environmental Appeals Board:

- Find that EPA's Ambient Monitoring Requirement in the Permit was clearly erroneous and/or abuse of discretion and reverse the determination to impose this requirement and remand the Permit to EPA Region 9 for further actions consistent with the Environmental Appeals Board's decision
- Stay the contested Permit provisions pending the Environmental Appeals Board's decision in this matter

A copy of the Petition can be downloaded here.