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Brine Disposal/Underground Injection Control: U.S. Environmental Appeals Board Addresses Challenge to Class II Permit

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The United States Environmental Protection Agency ("EPA") Environmental Appeals Board ("EAB") issued a February 18th decision addressing an appeal of a Class II underground injection control ("UIC") permit that had been issued by the Region 3 office of EPA.

EPA had issued a Class II UIC permit pursuant to the Safe Drinking Water Act ("SDWA") authorizing Sammy-Mar ("SM") to construct and operate a brine disposal injection well in Clearfield County, Pennsylvania.

The UIC program was established pursuant to the Section 1421 of the SDWA to protect underground sources of drinking water. The implementing regulations are found at 40 C.F.R. Parts 144-148. The regulations are intended to protect underground water that "supplies or can reasonably be expected to supply any public water system."

An underground injection well is prohibited unless authorized by rule or except as authorized by permit issued under the UIC program.

Class II wells are used to inject fluids:

1. Which are brought to the surface in connection with natural gas storage operations, or conventional or natural gas production that may be co-mingled with waste waters from gas plants which are an intricate part of production 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).

Pennsylvania has not been delegated the authority to issue Class II UIC permits. Therefore, EPA issues such permits in Pennsylvania.

Mr. Shawn Agosti sought review of the permit issued to SM on four grounds:

1. EPA failed to consider adequately geological data and the possibility of seismic events related to the proposed well

2. EPA failed to specify who will pay the costs of replacing drinking water in water wells should a spill occur
3. EPA failed to consider the effects of the well or traffic, property values and hunters visiting the area
4. EPA failed to consider the potential for injected fluids to escape from the injection zone and contaminate environmentally sensitive areas.

The EAB determined that EPA provided “thorough and well-reasoned responses during the public comment period to the questions and concerns raised in Mr. Agosti’s petition for review”. As a result, it denied the petition for review holding that it failed to address EPA’s responses and explain why the responses or determination to issue the permit were clearly erroneous or otherwise warrant EAB review.

[Click here to download a copy of the decision.](#)