

Challenge to UIC Class II Permit: April 29th U.S. EPA Environmental Appeals Board Decision



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The United States Environmental Protection Agency (“EPA”) Environmental Appeals Board (“EAB”) addressed in an April 29th decision a challenge to an underground injection control (“UIC”) Class II Permit (“Permit”) that had been issued to Muskegon Development Company (“MDC”). See UIC Appeal No. 18-05.

The Permit authorized MDC to convert an existing oil production well in Claire County, Michigan, for injection of fresh water to enhance oil recovery from the company’s other nearby oil production wells.

Mr. Emerson Joseph Addison III (“Petitioner”) filed a Petition for Review before the EAB challenging the Permit issued by EPA’s Region 5 office.

The UIC permitting program addresses the protection of groundwater that could reasonably be expected to supply any public water system from any contaminant that may be present as a result of underground injection activities pursuant to the authority of the Safe Drinking Water Act. EPA administers the UIC program in Michigan since the state is not authorized to administer its own UIC program.

The injection wells addressed by the decision are denominated Class II wells. Such wells are used to inject fluids for three different purposes. These include:

- Disposal of fluids from oil or gas production
- Storage of hydrocarbons
- Enhanced recovery of oil or gas

The well at issue in the EAB decision involved a well whose purpose was to enhance recovery of oil or natural gas.

The Petitioner challenged EPA’s permit decision on five grounds. They include:

1. Omission of responses to certain comments in the agency’s Response to Comments document
2. Consideration of environmental justice
3. Consideration of pre-existing risk to underground sources of drinking water
4. Response to comments on risk to aquifers from which water will be withdrawn
5. Categorization of certain comments is outside the scope of the UIC permitting program

EAB’s April 29th decision remands the Permit in part. Otherwise it denies the Petition for Review.

EAB determined that remand is appropriate for the following two issues:

1. The current state of EPA's Response to Comments document substantially impedes a determination as to whether EPA considered and meaningfully responded to certain comments and so exercised its considered judgment in issuing the permit.
2. EAB is unable to determine whether EPA appropriately evaluated the environmental justice implications of the permitting action.

EAB denied the Petition for Review as to the other three arguments holding they were not preserved for review or there was a failure to establish that EPA clearly erred or that review was otherwise warranted.

A copy of the decision can be found [here](#).