Responsiveness Summary to Public Comments

for

The Issuance of an Underground Injection Control (UIC) Permit

for

G2 STEM LLC

On January 11, 2023, the U.S. Environmental Protection Agency (EPA) Region 3 issued a public notice requesting comment and the opportunity for a public hearing for the proposed issuance of an Underground Injection Control (UIC) permit, PAS2D060BJEF, to G2 STEM LLC. EPA received numerous requests to hold this hearing, and on February 13, 2023, EPA held a virtual public hearing. Thirty-eight (38) people attended this public hearing, during which EPA received oral comments from nine (9) people. EPA also extended the public comment period until February 21, 2023.

The responsiveness summary which follows provides answers to questions and comments raised by 19 people, who either sent a written public comment to the attention of EPA Region 3 or provided comments at the hearing. One commenter submitted a petition signed by 88 people. In addition to the written and oral comments, seven (7) members of the public contacted EPA to request a public hearing, request additional information (*e.g.*, about the well and associated risks), or object to the issuance of the permit (with no additional comment). EPA thanks the commenters for their informative and thoughtful comments.

1. COMMENT: The proposed permit does not address certain concerns that are not regulated by EPA's UIC program.

RESPONSE: Several commenters raised concerns about matters outside of the UIC Program's jurisdictional scope, which EPA lacks the regulatory authority to address in the UIC permitting process under the Safe Drinking Water Act, 42 U.S.C. §300f *et seq*. These commenters raised issues associated with: quality of life; noise and air pollution; odor; property values; increased truck traffic/impacts on the roads; and the economic impact on the region. These concerns are outside the federal UIC permitting process and are commonly addressed by state and local regulations.

When making a decision on whether to issue a UIC permit, EPA's UIC jurisdiction is limited to determining whether the proposed injection operation will safely protect underground sources of drinking water (USDWs) from the subsurface emplacement of fluids and a determination that the injection operation, as proposed, will be compliant with all federal UIC regulations. EPA therefore acknowledges its receipt and review of comments, but they raise matters and issues that are not within the jurisdictional scope and purview of the UIC regulations and permitting process.

The UIC permit contains several conditions that address compliance with other local, state or federal laws. Paragraph 1.A. of the permit provides that "Issuance of this Permit does not convey property rights or mineral rights of any sort or any exclusive privilege; nor does it authorize any injury to any persons or property, any invasion of other private rights, or any infringement of State or local law or regulations." In addition, Paragraph I.D.12. of the permit states, "Nothing in this Permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation." Therefore, EPA's UIC permit is only one of several authorizations that a permittee may be required to obtain before being allowed to commence construction and/or operation.

2. COMMENT: Surface spills could contaminate local streams/waterways as well as the drinking water wells supplying water to local public water systems.

RESPONSE: EPA understands the concerns regarding potential spills at the well surface. However, the UIC Program has jurisdiction for the permitting of subsurface injection activities. EPA is not authorized under the Safe Drinking Water Act, 42 U.S.C. §300f *et seq*., to address surface spill prevention through the UIC permitting process. Surface disturbances, fluid containment, and surface spills which could occur on the injection well site are all regulated by the Pennsylvania Department of Environmental Protection (PADEP), which is the State agency responsible for all surface construction and spill prevention at the proposed well site. Title 25, Chapter 78, of the Pennsylvania Code requires the well operator to report surface spills or releases of brine to PADEP. There may also be local or county ordinances or regulations that address surface spill prevention. When making the decision on whether to issue a UIC permit, EPA's jurisdiction rests solely in determining whether the proposed injection operation will safely protect USDWs from the subsurface emplacement of fluids, as discussed in the response to Comment #1. Since 1984, there has been no reported injection well contamination of USDWs as a result of EPA Region 3 permitting actions.

3. COMMENT: Concerns over the composition of the proposed injection fluid and that the fluid may contain toxic, hazardous, or radioactive components or may contain hydraulic fracturing fluids.

RESPONSE: Individual constituents within the fluid produced from an oil or gas production reservoir potentially may be toxic, hazardous, or radioactive. However, Congress exempted oil and gas production fluids from hazardous waste regulation and such production wastes are not classified as hazardous under the Resource Conservation and Recovery Act (RCRA). As a result, EPA lacks the authority to regulate those fluids produced in association with oil and gas production activities, including hydraulic fracturing fluids, as hazardous waste and the disposal of these fluids down a Class II brine disposal injection well is legally permissible.

EPA further acknowledges concerns that injected wastewaters may have radioactive components. However, this is certainly not true of all oil and gas production fluids. Whether a

production fluid contains radioactive byproducts depends on the geologic formation from where the fluid has been produced. Produced fluid may contain Naturally Occurring Radioactive Material, or NORM. The NORM concentrations in produced fluids are typically low and do not meet the RCRA definition of hazardous waste. If this wastewater were to be disposed in a different manner (*e.g.,* disposed directly into the environment by stream discharge) then a more extensive characterization would be necessary. However, this wastewater will be injected approximately 7,200 feet beneath Earth's surface into an environment similar in nature to where the wastewater was generated.

The management and disposal of NORM wastes associated with the production of oil and gas are not federally regulated and EPA considers the injection of Class II fluids deep underground to pose minimal environmental risk and to be a safer alternative than other available methods of disposal, such as allowing them to be discharged into a stream, disposed of in a landfill or treated, and stored in containment pits or storage tanks. EPA also characterizes the reuse or recycling of produced fluid as a sound environmental management practice. Public and privately owned wastewater treatment facilities are unable to adequately remove many constituents found in brine, for example, chlorides and bromides. When these constituents are discharged to streams or rivers, they can pose serious risk to fish and other aquatic organisms living in the stream as well as contribute to serious health effects for people who obtain their drinking water from these streams and rivers.

The UIC permitting program is designed to provide an alternative method through which injection activities may occur in a regulated and environmentally protective manner which ensures that best management practices are identified and employed. The mandate of the UIC Program, as previously stated, is to protect USDWs from the subsurface emplacement of fluids. EPA faithfully seeks to fulfill this mandate through UIC Program requirements that include strict well construction criteria, the testing and inspection of injection well operations, monitoring and reporting requirements, and environmentally protective plugging and abandonment requirements.

4. COMMENT: The proposed injection well is sited close to public schools and a hospital that serve Walston and the surrounding community and the road to access the proposed injection well is located serves as a main artery for the area. The Permittee should find a location in a more rural area or on game lands in the vicinity, closer to where the production of oil and gas may be.

RESPONSE: EPA does not have the jurisdiction to direct a Permittee to construct their injection well disposal facility in a particular geographic location. The location chosen by a Permittee is based on many factors: economics, local zoning or land use restrictions, property ownership and accessibility, geologic suitability, to name a few. EPA is responsible for reviewing each UIC permit application it receives and makes a determination as to whether USDWs will be protected from the proposed operation but does not have the authority under the Safe Drinking Water Act, 42 U.S.C. §300f *et seq*., to identify suitable injection sites. Likewise, EPA cannot deny a permit solely because of residents' opposition to the location when the Permittee meets the requirements of the UIC Program.

5. COMMENT: Groundwater resources may be impacted by the injection operations.

RESPONSE: The Permittee reported that there are three (3) private drinking water wells within the ¼-mile Area of Review (AOR) with a maximum depth of 175 feet below ground surface. The Permittee has identified the base of the lowermost USDW to be at 570 feet below ground surface. 40 C.F.R. § 147.1955 requires surface casing in the injection well to be installed from the surface to a depth of at least 50 feet below the base of the lowermost USDW and cemented back to the surface. The permit requires the surface casing for the David A Weaver ("Weaver") injection well to be installed at an approximate depth of 650 feet below ground surface, which is at least approximately 475 feet below the total depth of the deepest drinking water well within the ¼-mile AOR and cemented back to the surface. In addition, intermediate casing must be installed from an approximate depth of 1,200 feet below ground surface and cemented back to the surface to protect groundwater.

The Permittee is required to inject through the tubing string installed inside the long string casing, which will be a third level of casing in addition to the surface casing and intermediate casing. The permit limits the injection of fluids for disposal to the Oriskany Sandstone Formation at a depth of approximately 7,236 to 7,256 feet below ground surface. The lowermost USDW is separated from the injection zone by approximately 6,666 feet. The injection formation is overlain by the Onondaga formation with a thickness of 10 feet and the Huntersville Chert formation with a thickness of 90 feet. These formations will act as confining zones and prohibit movement of fluids from the injection zone into a USDW. As a result of these construction requirements and the operation requirements, EPA does not anticipate any groundwater contamination events.

After the injection well is drilled, the long string casing is cemented, and tubing and packer installed, but before injection begins, the Permittee is required by the permit to submit to EPA notice of completion of construction (EPA Form 7520-18), providing details about the drilling, completion and testing of the well. The completion report must include the injection well drilling records, logging information, cementing records and mechanical integrity testing information. EPA will review this information to verify that the geological information submitted in the permit application is accurate, and that the injection well is properly constructed and cemented to prevent leaks during operation and fluid movement out of the injection zone through the injection well bore.

EPA will review the cementing records and logs to verify proper cementing without channels between the casing and well bore that could provide a conduit for fluid movement. Also, the required mechanical integrity pressure test must show that there are no internal failures in the tubing, casing or packer installed within the well before injection begins. If new information obtained from the completion report warrants changes to the permit, EPA will modify the permit conditions as appropriate. EPA recognizes that without certain precautions, abandoned wells near an injection well may pose a risk to USDWs by providing a conduit for the migration of fluid out an injection zone. Therefore, the UIC regulations and the permit impose

certain requirements on an injection well operator to protect USDWs from that risk. Specifically, the operator is required to determine whether any abandoned wells exist within a specified area, calculated and defined as the area of review (AOR) around the proposed well, 40 CFR §144.55, which could pose a threat to USDWs.

Within the AOR, there are two active oil and gas production wells that do not penetrate the injection zone: (1) the R & P & Mary E Caldwell DS15 well (API No. 37-065-21564) and (2) the Rochester & PGH Coal Co 4 well (API No. 37-065-20460). The R & P Coal Co WN1012 well (API No. 37-065-20399) well is an active well that penetrates the injection zone, and therefore could pose a threat to USDWs. Therefore, before authorization to inject is given, G2 STEM will be required to provide documentation that this well is properly plugged and abandoned pursuant to Paragraph III.A.5 of the permit. If any unplugged/abandoned wells that penetrate the injection zone are found within the AOR later the permit requires the Permittee to perform corrective action.

Furthermore, the permit will 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. To confirm mechanical integrity and ensure that the injected fluid remains in the receiving formation, the permit requires continuous monitoring of pressure conditions within the injection well.

6. COMMENT: Deep mining has taken place in this area in the last century, and there is the possibility of mine subsidence.

RESPONSE: As part of the permit application requirements found at 40 C.F.R. § 146.24, the Permittee must identify any surface or subsurface mines within the AOR. G2 STEM identified areas where inactive subsurface mines exist within the AOR on the topographic map labeled Attachment A Addendum 1 in the permit application as well as a small inactive surface mine northeast of the proposed injection well location. These inactive subsurface mines, however, are not deep relative to the depth of the injection zone and are, in fact, located at a depth that requires USDW protection under the UIC Program. UIC well construction and operating requirements are premised upon protecting these zones from fluid migration or other impacts.

Many of the oil and natural gas production wells in this area penetrate coal seams, coal mines or mine pillars. Title 25, Chapter 78, Sections 78.83 (g) and (h) of the Pennsylvania Code address construction requirements for wells which penetrate coal seams for the purpose of protecting coal resources. In some instances, the coal protection string of casing in a well may be the same as the fresh water or surface casing string.

The Weaver injection well will be constructed with a surface casing, an intermediate casing, and long string casing to protect coal seams as well as USDWs. Furthermore, geological information submitted by the Permittee indicated the absence of faults in the injection and confining zones in the vicinity of the proposed injection well. The absence of faults in the injection and confining zones minimize the possibility of injection induced mine subsidence. The

injection zone is overlain by the Onondaga and Huntersville Chert formations which act as the confining zones; in addition to thousands of feet of intermittent impermeable shale that separate the injected fluids from the lowermost USDW by approximately 6,666 feet. The Oriskany Sandstone formation, the injection zone, is approximately 7,236 feet below ground surface while the coal seams are located approximately 450 feet below ground surface in this area. This geology ensures that injection fluid will not leave the intended injection zone should a mine collapse and/or mine subsidence occur. In addition, should a mine collapse and/or mine subsidence happen, continuous monitoring of pressure on the well would identify such an occurrence and the well should immediately cease injection.

7. COMMENT: The injection well will cause induced seismicity.

RESPONSE: EPA must, and herein has, considered all appropriate geological data on the injection and confining zones associated with the Class II Injection well for which G2 STEM now seeks a permit. While SDWA regulations for Class II wells do not require specific consideration of seismicity, EPA has nevertheless conducted a full and complete evaluation of the factors herein relevant to seismic activity. In conducting this evaluation, EPA researched, reviewed, considered and evaluated relevant issues such as the existence of any known faults and/or fractures in the AOR, any history of, or potential for, seismic events in the area of the Injection Well and other relevant factors. Those seismic factors reviewed, considered and evaluated by EPA are addressed and discussed in "*Region 3 framework for evaluating seismic potential associated with UIC Class II permits*". An additional EPA report examining injection-induced seismicity (Minimizing and Managing Potential Impacts of Injection-Induced Seismicity from Class II Disposal Wells: Practical Approaches," EPA UIC National Technical Workgroup, February 5, 2015) provides this Agency's standard operating procedure for assessing regional and local seismicity when reviewing UIC Class II permit applications.

In further response, EPA recognizes that the disposal of fluids through injection wells has the potential to trigger seismicity under certain conditions. However, induced seismicity associated with brine injection is uncommon, as the conditions necessary to trigger seismicity often are not present. Seismic activity induced by Class II wells is likely to occur only where all of the following conditions are present: (1) there is a fault in a near-failure state of stress; (2) the fluid injected has a path of communication to the fault; and (3) pressure exerted by the fluid is high enough and lasts long enough to allow movement along the fault line. The presence of a fault in a receiving formation creates a more vulnerable condition for a future seismic event. A fault is a fracture or crack in the rocks that make up the Earth's crust, along which displacement has occurred. Where a fault is present near an injection site, scientists believe that injection can trigger seismicity when the pore pressure (pressure of fluid in the pores of the subsurface rocks) in the formation increases to such levels as to overcome the frictional force that keeps the fault stable. Pore pressure increases with increases in the volume and rate of injected fluid. Thus, the probability of triggering a significant seismic event due to injection, where the injection fluid reaches an active fault, increases with the volume and rate of fluid injected. In addition, as larger volumes of fluid are injected over time, the fluid can travel further within a formation, making it more likely that a fault could be intersected. When injected fluid reaches a fault, frictional forces

that have been maintained within that fault can be reduced by the introduction of fluid. At high enough pore pressure, the reduction in frictional forces can result in the formation shifting along the fault line, resulting in a seismic event.

The Permittee submitted information indicating that the injection and confining zones are free of any known faults and/or fractures in the ¼-mile AOR. EPA found that there has not been any measurable seismic event in Jefferson County. The USGS Seismic Hazards Map for Pennsylvania indicates the Weaver well is situated in the lowest seismic risk area in the Commonwealth. In addition, according to USGS, the closest earthquake epicenter occurred approximately 26 miles away from the proposed Injection Well near Rimersburg in Clarion County. This earthquake occurred on June 28, 2022 and had a magnitude of 2.1 which is considered relatively low and generally cannot be felt by humans. The depth to the top of the crystalline basement from the surface elevation of the Weaver well is approximately 16,000 feet below sea level, according to the PA DCNR "Precambrian Basement Map of the Appalachian basin and Piedmont Province in Pennsylvania". The base of the Oriskany Formation at the Weaver well is approximately 8,700 feet above the estimated top of the Precambrian basement.

Nevertheless, requirements and provisions within the permit have been developed to prevent over-pressurization of the injection formation by limiting the surface injection pressure during the injection operations. The Oriskany Sandstone formation, the injection formation, is an oil and gas bearing formation that has been produced in this part of Pennsylvania for years. Given that large volumes of oil and gas have been extracted from the formation, the pressure of the formation as it exists now is less than the state of the formation prior to production. Therefore, injecting produced fluid back into the formation will not over-pressurize the formation but contribute to returning the formation to its natural state. Furthermore, the permitted maximum allowable surface injection pressure and bottom-hole pressure will be conservatively calculated to ensure that injection pressure will not propagate existing fractures or create new fractures in the formation. The information to calculate the maximum allowable surface injection pressure and bottom-hole pressure will be collected during formation testing completed by the Permittee. The equation that must be used to establish the Maximum Allowable Injection Pressure is set forth in Paragraph III.B.4. of the Permit. The Permittee is not allowed to inject until data collected during formation testing pursuant to Paragraph III.B.4. to calculate and establish a Maximum Allowable Injection Pressure, among other things. By limiting both the maximum allowable surface injection pressure and the bottom-hole injection pressure during injection operations, the proposed permit effectively seeks to prevent over-pressurization of the inject ion formation and the potential propagation of fractures that could: (a) create potential channels for fluid movement into USDWs; and/or (b) create conduits for fluids to travel from the injection zone to known or unknown faults during operation of the proposed injection well.

Finally, several factors help to prevent injection wells from failing in a seismic event and contributing to the contamination of a USDW. Most Class I or Class II injection wells, including this proposed Injection Well, are constructed to withstand significant amounts of pressure. The Weaver well will be constructed with multiple concentric strings of casing that are cemented in

place. Furthermore, the permit requires G2 STEM to mechanically test the Injection Well to ensure integrity before operations begin and to continuously monitor the Injection Well during operations to identify any potential mechanical integrity concerns. The Injection Well will also be designed to automatically cease operation in the event that the mechanical integrity of the well is compromised, including by a seismic event.

8. COMMENT: G2 STEM partnership's compliance history and past violations is of concern.

RESPONSE: EPA understands the commenter's expressed concerns over the Permittee's compliance history in the Commonwealth. G2 STEM and its associated entities have not had or do not have an existing UIC permit in Pennsylvania. However, G2 STEM and its partnership may hold oil and/or gas production assets in Pennsylvania. EPA must stress that its evaluation of the subject permit application is limited to ensuring that the Weaver injection well does not endanger USDWs pursuant to UIC Program requirements. Pursuant thereto, the proposed well will be subject to all applicable UIC regulatory requirements and conditions for construction, testing, maintenance, and financial assurance to ensure that it maintains mechanical integrity throughout the life of the well and is properly closed. EPA further clarifies that the wells regulated under Pennsylvania's Oil and Gas Act are producing wells (*i.e.*, not injection wells), and therefore are not under the UIC Program. While EPA does not possess the requisite authority to enforce the Commonwealth of Pennsylvania's oil and gas regulations (that authority rests solely with the PADEP), EPA does have direct implementation and enforcement authority for the UIC program in Pennsylvania.

EPA reiterates that it expects all operators to comply with applicable regulatory requirements as well as their UIC permit requirements. An operator's failure to comply with a permit, including accurate monitoring and reporting to EPA, subjects that operator to possible civil or criminal penalties or both. EPA's UIC Program obligations and authorities include injection well permitting, the performance of compliance evaluation inspections and the initiation of appropriate enforcement activities when warranted. EPA Region 3 has a team of UIC inspectors, including one full time inspector whose sole responsibility is to perform Class II underground injection well inspections. At least one EPA inspector will be present to witness the mechanical integrity tests conducted on the Weaver injection well and EPA will, at a minimum, inspect the well, during operation, on an annual basis. EPA reviews each injection well operator's annual report and the continuous monitoring reports of pressure and injection fluid volumes that each operator must submit to the Agency.

9. COMMENT: The financial position of the Permittee and whether the EPA evaluates the financial health of an operator during the life of the permit is of concern.

In response, EPA reiterates that it expects all operators to comply with applicable regulatory requirements as well as their UIC permit requirements and be in a financial position to do so. An operator's failure to comply with a permit, including accurate monitoring and reporting to EPA, subjects that operator to possible civil or criminal penalties or both.

In evaluating the financial health of a Permittee, the EPA is limited to ensuring that the Permittee has adequate financial responsibility and resources to close, plug, and abandon the injection well as required by Paragraph III.D. of the permit and 40 C.F.R. § 144.52(a)(7). The Permittee must provide a demonstration of financial responsibility assuring the plugging cost for the Injection Well prior to any construction or commencement of injection operations. The Permittee must continuously maintain financial responsibility and resources to close, plug and abandon the Injection Well in the amount of at least Ninety-four Thousand Five Hundred and Sixty-Eight Dollars ($94,568). The amount of the financial responsibility demonstration, is based upon an independent, third-party professional's estimate of the costs associated with the plugging and abandonment of the Injection Well, must also be sufficient to preclude the possibility of abandonment without proper plugging and closure. Authorization to construct and operate the Injection Well will not be given by EPA until financial assurance is in place. The Permittee intends on securing a Standby Trust Agreement along with a third-party financial instrument such as a letter of credit or surety performance bond.

EPA has a robust process in place to ensure that adequate financial assurance is maintained. Pursuant to 40 CFR 144.28(d)(3), EPA may require the owner or operator to submit a revised demonstration of financial responsibility if EPA has reason to believe that the original demonstration is no longer adequate to cover the cost of closing, plugging and abandoning the well. The Permittee must provide a demonstration of financial responsibility assuring the plugging costs for the injection well prior to any construction or commencement of injection operations. Every five years, EPA re-evaluates the adequacy of financial responsibility using third-party financial instruments by requesting a third-party plugging estimate from the Permittee. During our annual review of every permit, EPA checks the date of the last plugging estimate to ensure that the five-year re-evaluation is completed. During the five-year re-evaluation, we can require an increase in financial responsibility. It should also be noted that while under the Class II regulations, a permit may be issued for the life of the permit, EPA has chosen for this Class II-D permit, and in general for such permits, to require a ten-year permit term. Upon permit renewal, an evaluation of the adequacy of the financial responsibility would need to be completed.

EPA would evaluate the financial position of the Permittee if the Permittee chose to use self-insurance as the financial instrument to cover the cost of plugging and abandonment. The self-insurance instrument requires owners or operators to submit financial statements and other information that show they are likely to remain in operation, based on indicators of the economic health of the organization, and that they will be able to properly plug and abandon their wells. If the self-insurance option is ultimately chosen, EPA will evaluate the financial health of the company on an annual basis.

Pursuant to Paragraph III.D.4 of the Permit, in the event of the bankruptcy of the trustee or of the institution issuing the financial assurance mechanism, or suspension or revocation of the authority of the trustee institution to act as a trustee or of the institution issuing the financial assurance mechanism to issue such an instrument, the Permittee must immediately notify the

Director, in writing and in accordance with Paragraph II.A., above, and submit an alternative demonstration of financial responsibility acceptable to the Director within sixty (60) days after such an event.

10. COMMENT: EPA should hold an in-person public hearing rather than conduct a virtual public hearing, and an authorized representative of the Permittee should be in attendance to answer questions.

RESPONSE: During the COVID-19 pandemic, the practice of holding virtual public hearings in-lieu of in-person public hearings became more widespread. Currently, EPA holds virtual public hearings, as appropriate, including for this subject permit. The public notices of public hearings have included both Internet access instructions and telephone access instructions, including for the virtual public hearing regarding the subject permit application.

EPA regulations and guidance support the use of virtual public hearings in lieu of in-person public hearings, as appropriate. Public hearing requirements in connection with the UIC permitting process is set forth in 40 CFR §§ 25.5 and 124.12. One of the stated objectives for the Part 25 regulations is "[t]o use all feasible means to create opportunities for public participation, and to stimulate and support participation." 40 CFR § 25.3(c)(7). The Federal Register preamble to Part 25 provides that the regulations should provide "maximum flexibility and discretion" to implementing agencies and that implementing agencies should have the "freedom to tailor their programs to specific local, regional, or Statewide needs." Part 25 – Public Participation in Programs Under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act, 44 Fed. Reg. 10287 (Feb. 16, 1979). According to a memorandum on "Virtual Public Hearings and Meetings" issued on April 16, 2020 by former EPA General Counsel Matthew Leopold, "Virtual public hearings and meetings are a permissible tool under the federal environmental statutes that EPA administers to provide for public participation in permitting, rulemaking, and similar regulatory actions in lieu of in-person public hearings and meetings."

EPA has taken efforts to ensure wide and robust public participation with respect to this subject permit. At the virtual public hearing, many commenters called in using the telephone access instructions or used the Internet to attend and provide comments. In addition, Young Township held an in-person town meeting for EPA's virtual public hearing held on February 13, 2023, where the public was able to provide oral testimony in-person. EPA also extended the public comment period until February 21, 2023.

Under the UIC Program's public participation requirements, a permit applicant is not required to attend or to respond to questions at a public hearing hosted by EPA nor does EPA have the authority to compel a permit applicant to attend a public hearing or to answer questions from the public during EPA's public hearing.

Federal Underground Injection Control Program

Permit Appeals Procedures

The provisions governing procedures for the appeal of an EPA UIC permit are specified at 40 C.F.R. Part 124.19. Any person who commented on the draft Permit can appeal the final Permit by filing a written petition for review with the Clerk of the EPA Environmental Appeals Board (EAB).

A petition for review must be filed within thirty (30) days of the date of the notice announcing EPA's permit decision. This means that the EAB must receive the petition within 30 days. All parties and other interested persons are encouraged to file documents with the Board by using the EAB's Electronic Filing System which is accessible on the Board's website at www.epa.gov/eab. Also, send a copy of the petition for review to EPA Region 3 at the email address listed below. See the EAB website for further information on how to file with the EAB electronically.

For the U.S. Environmental Protection Agency Region 3, Source Water & UIC Section (3WD22), send an email copy of the petition to the following email address: R3_UIC_Mailbox@epa.gov.

Filing documents by U.S. mail or hand delivery or courier (including delivery by a commercial delivery service) is also permissible. Documents sent through the U.S. Postal Service (except by U.S. Express Mail) to the Clerk of the Board are to be addressed to the EAB's mailing address:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, N.W.
Mail Code 1103M
Washington, D.C. 20460-0001

Documents delivered in person by courier or otherwise (including delivery by U.S. Express Mail or a by commercial delivery service) are to be sent to the EAB's hand-delivery address:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
WJC East Building
1201 Constitution Avenue, N.W., Room 3332
Washington, D.C. 20004

Note that pursuant to an order issued by the EAB on September 21, 2020, Revised Order Authorizing Electronic Service of Documents in Permit and Enforcement Appeals, the EAB

authorized parties to all newly filed permit and enforcement appeals to utilize email to fulfill their service obligations under 40 C.F.R. §§ 22.5(b) and 124.19(i)3(ii). Thus, a party need not seek and obtain consent of another party in order to serve that party by email. Parties must promptly file notices informing the Board and the other parties of any changes in their email addresses.

The petition must clearly set forth the petitioner's contentions for why the EAB should review the Permit. The petition must identify the contested permit conditions or the specific challenge the permit decision. The petitioner must demonstrate the issues raised in the petition had been raised previously during the comment period. The petitioner must also state whether, in his or her opinion, the permit decision or the permit's conditions appealed are objectionable because of:

1. Factual or legal error, or
2. The incorporation of a policy consideration which the EAB should, at its discretion, review.

If a petition for review of this Permit is filed, the permit conditions appealed would be deemed not to be in effect pending a final agency action.

After review of the Appeals Petition, the EAB will either grant or deny the appeal. The EAB will decide the appeal on the basis of the written briefs and the total administrative record of the permit action. If the EAB denies the petition, EPA will notify the petitioner of the final permit decision. The petitioner may, thereafter, challenge the permit decision in Federal Court. If the EAB grants the appeal, it may direct the Region 3 office to implement its decision by permit issuance, modification or denial. The EAB may order all or part of the permit decision back to the EPA Region 3 office for reconsideration. In either case, if the Permit is appealed, a final agency decision occurs when after appeal the Permit is issued, modified or denied and an Agency decision is announced. After this time, all administrative appeals have been exhausted, and any further challenges to the permit decision must be made to Federal Court.