



REGION 9

SAN FRANCISCO, CA 94105

EPA Response to Comments

Modification of the Class III In-Situ Production of Borate Permit No. R9UIC-CA3-FY19-1

5E Boron Americas (Fort Cady) Project

Summary of Public Comments and EPA Response to Comments

On May 6, 2024, EPA issued a draft modification of 5E Boron America's (5E's) Class III Underground Injection Control (UIC) Permit for public notice and comment. The public comment period ended on June 5, 2024. During the public comment period, EPA received one public comment letter from Stephanie Regenold, Partner, Perkins Coie, LLP, on behalf of Elementis Specialties, Inc. ("Elementis"). In accordance with 40 C.F.R. § 124.17(a)(2), EPA is summarizing and responding to all significant comments received during the public comment period. EPA did not receive any requests for a public hearing.

Comment: Elementis, claiming to be an adjacent landowner, expressed concern that the proposed wells in the draft permit modification may interfere with Elementis' land interests and operations. Elementis noted that the proposed permit modification states that the proposed wells are depicted in new Figures A-4, A-5, and A-6, however, those figures have not been made publicly available. Thus, Elementis requested that EPA confirm that 5E activities are solely located on lands owned, controlled, or leased by 5E, and do not encroach or impact operations on Elementis' lands or interests.

EPA Response: Figure A-4 provides the existing and proposed monitoring well locations, and EPA has confirmed that the proposed new observation wells OW-9, OW-10, and OW-11 locations in this Permit modification are in areas where 5E Boron Americas owns or leases mineral rights (see attached Figures A-4 and Figure 3.2). EPA has added Figures A-4, A-5, and A-6 to our website for this permit action at <https://www.epa.gov/uic/r9uic-ca3-fy19-1>. In addition, EPA did not include the completion diagrams for the new observation wells OW-9, OW-10, and OW-11. These diagrams are also available at <https://www.epa.gov/uic/r9uic-ca3-fy19-1>. See attached Figures and Diagrams.

Comment: Elementis noted that the Mineral Lease Agreement between Elementis, as lessor, and 5E, as lessee, that was in effect when 5E's Class III permit was originally issued, was terminated on March 31, 2023. Based on the Appendix A project maps and well locations included as Figure A-3 attached to the original permit, Elementis commented that it appears some of the observation wells, potential future wells, monitoring wells, and initial wells proposed for development, may have been on these leased claims. Elementis requested to the extent any such wells are located on Elementis' interests, that EPA should confirm that the

permit is modified to remove authorization for these wells from the permit and adjust the permit boundaries and require 5E to obtain Elementis' written authorization before any further activities under the permit.

EPA Response: Issues of property rights are governed by legal precepts that are outside the scope of the UIC permitting process, which is limited to the protection of underground sources of drinking water. See *In re Archer Daniels Midland Co.*, 17 E.A.D. 380, 404-05 (EAB 2017). The Safe Drinking Water Act and the UIC regulations establish the only criteria a Region may use in establishing permit requirements. *In re Envotech, L.P.*, 6 E.A.D. 260, 264, 276 (EAB 1996); *In re Federated Oil & Gas*, 6 E.A.D. 722, 725-26 (EAB 1997). The Region is not required to take ownership of land into account before issuing a final UIC permit decision. *In re Panoche Energy Center*, 18 E.A.D. 818, 852 (EAB 2023).

Furthermore, the UIC regulations and the Permit are clear that the issuance of the permit does not convey property rights of any sort, or any exclusive privilege, and the issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations. See 40 C.F.R. §§ 144.35(b) and (c), Permit Parts III.A and III.E.6.

Also, as noted above, the wells subject to the draft permit modification are located on property that the permittee owns. For this reason and the reasons articulated above, it would be inappropriate for EPA to modify the Permit to remove authorization for these wells or require written authorization from Elementis prior to 5E engaging in injection activities as issues of property rights need to be addressed outside of the permitting process.

Attachments

1. Figures A-4, A-5, and A-6
2. Completion diagrams: OW-9, OW-10, and OW- 11
3. Figure 3.2: Property Ownership (Excerpt from the Initial Assessment Report (Updated), May 11, 2023 at [dc83cfab-77e.pdf \(investi.com.au\)](#))