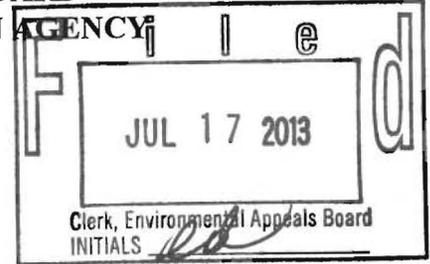


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC**



_____))
In re:))
))
West Bay Exploration Co.))
))
UIC Permit No. MI-075-2D-0009))
))
_____))

UIC Appeal Nos. 13-01 & 13-02

**ORDER DENYING IN PART AND GRANTING IN PART PETITIONER
SANDRA K. YERMAN'S MOTION ENTITLED "NOTICE TO ALL
CONCERNED OF AN INCORRECT/INCOMPLETE RECORD"**

On April 16, 2013, the Environmental Appeals Board (“Board”) dismissed with prejudice petitions filed by Peter Bormuth and Sandra K. Yerman challenging an Underground Injection Control (“UIC”) permit granted by U.S. Environmental Protection Agency Region 5 (“Region”) to West Bay Exploration Company (“West Bay”). *In re West Bay Exploration Co.*, UIC Appeal Nos. 13-01 & 13-02 (EAB Apr. 16, 2013) (Order Dismissing Petitions for Review as Moot). The Board concluded the case was moot because the Region had notified the Board that it had withdrawn this UIC permit in its entirety pursuant to 40 C.F.R. § 124.19(j). On May 29, 2013, the Board denied motions for reconsideration filed by Mr. Bormuth and Ms. Yerman. *In re West Bay Exploration Co.*, UIC Appeal Nos. 13-01 & 13-02 (EAB May 29, 2013) (Order Denying Reconsideration). Ms. Yerman has now filed another motion with the Board asking that the Board: (1) reconsider its denial of her motion for reconsideration; (2) correct the administrative record for this case the Region prepared; and (3) correct the Board’s docket regarding the number

of motions for reconsideration she has filed. The Board is denying her motion, in part, and granting, in part, as explained in more detail below.

The Board denies Ms. Yerman's renewed motion for reconsideration. Reconsideration is only appropriate upon a showing of "demonstrable error, such as a mistake of law or fact." *In re Bear Lake Properties, LLC*, UIC Appeal No. 11-03, at 2-3 (EAB July 26, 2012) (Order Denying Motion for Partial Reconsideration); *see* 40 C.F.R. § 124.19(m). A motion for reconsideration is not an opportunity for a party to reargue its case "in a more convincing fashion." *Bear Lake* at 3. Yet, that is what Ms. Yerman has done here. Her request for reconsideration simply repeats and enlarges upon her earlier arguments about the construction of 40 C.F.R. § 124.19(j).

The Board also denies Ms. Yerman's request to correct the administrative record the Region prepared. The case before the Board has been concluded. The Board has dismissed all of the petitions with prejudice and denied reconsideration of that decision. To the extent Ms. Yerman continues to have a concern with the administrative record on West Bay's UIC permit application, she may raise her concern with the Region, before whom the permit application is now pending.

The Board, however, grants Ms. Yerman's request to correct the Board's docket concerning her motions for reconsideration. In the relevant time period, the docket currently lists two separate motions for reconsideration filed by Ms. Yerman on April 22, 2013 (both sent to the Board by facsimile), and an April 24, 2013 filing labeled "Response to the Petition for Review" (sent to the Board by U.S. mail). Ms. Yerman argues that the April 24, 2013 docket entry is a duplicate of her first motion for reconsideration (the first of the two reconsideration motions filed on April 22, 2013), and thus the docket mistakenly suggests that she filed three motions for

reconsideration in April 2013 when, in fact, she only filed two such motions. The Board's review of these docket entries and filings has disclosed two errors. First, the Board agrees with Ms. Yerman that the April 24, 2013 docket entry should be removed. The Board mistakenly made that docket entry due to an error in a document Ms. Yerman filed on that date.¹ Second, the Board has concluded that the docket should include an entry for a revised version of Ms. Yerman's first April 22, 2013 motion for reconsideration. This revised version was mailed by Ms. Yerman on April 20, 2013, and was received for filing by the Board on April 26, 2013.² Accordingly, the Board has corrected its docket by removing the April 24, 2013 filing labeled "Response to the Petition for Review" and adding a new entry for the April 26, 2013 filing by Ms. Yerman of a revised reconsideration motion.

¹ A close examination of the document received on April 24, 2013, shows that this filing was an attempt by Ms. Yerman to send the original copy of her first April 22, 2013 document faxed to the Board, as 40 C.F.R. § 124.19(i)(2) requires. Ms. Yerman's filing, however, did not comply with section 124.19(i)(2) because she mailed a version of the "original" that contained two copies of page two of the two-page April 22, 2013 motion but no copy of page one. The Board treated this document as a new filing and labeled it as a "Response to the Petition for Review" because that is exactly what the first line of text states on the two pages that were submitted to the Board (i.e., the first line of page two of the first April 22, 2013 document faxed to the Board).

² The April 26, 2013 filing appears to have been another attempt by Ms. Yerman to send to the Board the original copy of the first April 22, 2013 document faxed to the Board, as 40 C.F.R. § 124.19(i)(2) requires. This attempt also did not comply with section 124.19(i)(2) because it was not simply an original copy of the faxed motion but a modified version of that filing. In the April 26, 2013 filing, Ms. Yerman inserted a "cover page" summarizing and expanding on the arguments in her two-page April 22, 2013 document faxed to the Board. At that time, the Board did not notice that the filing on April 26, 2013 was a revised motion, and so it was not given a separate docket entry but treated as the original of the first April 22, 2013 document faxed to the Board.

In sum, the Board denies Ms. Yerman's requests for reconsideration and to correct the Region's administrative record and grants Ms. Yerman's request for correction of the Board's docket as indicated above.

So ordered.

Dated: *July 17, 2013*

ENVIRONMENTAL APPEALS BOARD³

By: 
Catherine R. McCabe
Environmental Appeals Judge

³ The three-member panel deciding this matter is composed of Leslye M. Fraser, Catherine R. McCabe, and Kathie A. Stein.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying in Part and Granting in Part Petitioner Sandra K. Yerman's Motion Entitled "Notice To All Concerned of an Incorrect/incomplete Record" in the matter of West Bay Exploration Co., UIC Appeal Nos. 13-01 and 13-02, were sent to the following persons in the manner indicated:

By Certified Mail, Return Receipt Requested:

Peter Bormuth
142 W. Pearl St.
Jackson, MI 49201

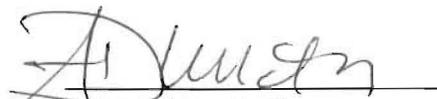
Sandra K. Yerman
6600 Riverside Dr.
Brooklyn, MI 49230

West Bay Exploration Company
13685 South West Bay Shore Drive
Suite #200
Traverse City, MI 49684

By Pouch Mail:

Kris P. Vezner
Assistant Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604

Dated: JUL 17 2013


Annette Duncan
Secretary