

**BEFORE THE ENVIRONMENTAL APPEALS BOARD**  
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**WASHINGTON, D.C.**

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ENVIR. APPEALS BOARD

<b>In the Matter of:</b>	)	
<b>West Bay Exploration Co. of</b>	)	<b>Permit Appeal No. UIC 14-66</b>
<b>Traverse City, Michigan</b>	)	
<b>Haystead #9 SWD</b>	)	
<b>Permit No. MI-075-2D-0010</b>	)	
<b>Jackson County, Michigan</b>	)	

**PETITIONER PETER BORMUTH'S MOTION TO STRIKE EPA REGION 5 RESPONSE TO UNTIMELY PETITION FOR REVIEW UIC 14-67**

The Petitioner, Peter Bormuth, objects to the filing of the EPA Region 5 Response to the untimely Petition for Review UIC 14-67 and respectfully requests that the Environmental Appeals Board strike the Response until the Board rules on the Yerman Motion To File untimely Petition For Review UIC 14-67

In support of this request to deny, the Petitioner states as follows:

1. After a public comment period that ended May 3, 2013, Region 5 issued a final permit to the Permittee, West Bay Exploration Co. for the Haystead #9 SWD on April 9, 2014 [Permit No. MI-075-2D-0010]. The Region simultaneously issued a Response to Public Comment document summarizing the Agency's responses to all public comments received on the proposed action.

2. On May 8, 2014 the Petitioner, Peter Bormuth of Jackson Michigan filed a Petition for Review with the EAB seeking review of the Haystead #9 Permit [EAB Appeal No. UIC 14-66].
3. On May 14, 2014, an untimely Petition for Review was filed with the EAB by Sandra K. Yerman of Brooklyn Michigan seeking review of the Haystead #9 Permit [EAB Appeal No. UIC 14-67]. When determining whether to grant review of petitions filed the Board must first consider whether each petitioner has fulfilled certain threshold procedural requirements including timeliness, standing, and issue preservation. See 40 C.F.R. 124.19(a); *accord In re Circle T Feedlot, Inc.*, NPDES Appeal Nos. 09-02 & 09-03, slip op. at 4 (EAB June 7, 2010), 14 E.A.D.; *In re Avon Custom Mixing Servs.*, 10 E.A.D. 700, 704-08 (EAB 2002).
4. 40 CFR Section 124.19 gives a petitioner 30 days to file. Petitioners served by mail are granted an additional 3 days. The EPA/EAB regards petitions filed the date they are received, not the date they are mailed. 30 days from April 9, 2014 is May 9, 2014. Three additional days extends the deadline to May 12, 2014. Yerman filed on May 14, 2014. Failure to file a petition for review by the filing deadline will ordinarily result in dismissal of the petition on timeliness grounds, as the Board strictly construes threshold procedural requirements. (see *In re Town of Marshfield*, NPDES Appeal No. 07-03, at 4 (Mar. 27, 2007) (Order Denying Review); *In re Puma Geothermal Venture*, 9 E.A.D. 243, 273 (EAB 2000).
5. On May 22, 2014, Petitioner Yerman filed a Motion to Allow Filing of her Untimely Petition [EAB Appeal No. UIC 14-67]. 40 CFR Section 124.19(f) states that in advance of filing a motion, parties must attempt to ascertain whether the other party(ies) concur(s) or

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object(s) to the motion and must indicate in the motion the attempt made and the response obtained. Yerman did not contact this Petitioner, thus violating procedural rules.

6. On 5-28-14 the EPA Region 5 filed a Response to the Yerman Motion to Allow Filing of Petition For Review 14-67. The EPA did not object to the Yerman filing despite its untimely nature.
7. On 6-2-14 the Petitioner filed his corrected Response to Yerman's May 22, 2014 Motion to File. The Plaintiff objected to the filing as being untimely and prejudicial.
8. On 6-5-14 Petitioner Yerman filed a Reply To the EPA Region 5 Response in which she contested the EPA rationale to allow her filing and insisted that her petition was timely.
9. On 6-12-14 the EPA Region 5 filed their Response to Petition for Review 14-67 before the EAB had ruled on the Yerman Motion to Allow Filing.
10. The Petitioner asks that this Response be stricken from the record until such time the Board rules on the May 22, 2014, Yerman Motion to Allow Filing of her Untimely Petition. It is not appropriate for a Response to be placed on the docket before a ruling has been made on the timeliness of the Petition. Under its authority "to take all measures necessary for the efficient, fair, and impartial adjudication of issues arising in an appeal," 40 C.P.R. § 124.19(n), the Board must first rule on Yerman's Motion since the Plaintiff has contested the motion on the grounds of timeliness and prejudice and Petitioner Yerman has filed a Reply insisting that her Petition was timely.

WHEREFORE the Petitioner, Peter Bormuth, for the forgoing reasons respectfully requests the EPA Region 5 Response to Petition for Review 14-67 be stricken by the EAB until the Board rules on Yerman's Motion to File.

Respectfully submitted,



Peter Bormuth

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Dated: June 16, 2014

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**CERTIFICATE OF SERVICE**

I, Peter Bormuth, do hereby certify that on June 16, 2014, I sent a copy of Petitioner's Motion to Strike to John P. Steketee, Associate Regional Counsel, U.S. EPA, Region 5 (C-14J), 77 West Jackson Blvd., Chicago, IL 60604-3590 by regular mail.

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Dated: June 16, 2014