

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

In the Matter of:

**West Bay Exploration Company of
Traverse City, Michigan,
Haystead #9 SWD,
Permit No. MI-075-2D-0010,
Jackson County, Michigan.**

Permit Appeal No. UIC 14-67

**EPA REGION 5 RESPONSE TO MOTION TO ALLOW FILING OF PETITION
FOR REVIEW**

Region 5 of the United States Environmental Protection Agency (the Region) hereby responds to the May 22, 2014 motion filed with the Environmental Appeals Board (EAB) by Ms. Sandra K. Yerman (Petitioner) in the above-captioned appeal (Motion). The Motion seeks leave from the EAB to file Petitioner's May 14, 2014 Petition for Review (Petition) despite the fact that the Petition was filed 2 days after the May 12, 2014 deadline for filing an appeal in this matter. The Region concurs with the Motion and does not object to the filing of the subject Petition in this matter.

In support of the Motion, the Region states as follows:

1. On April 29, 2011, the West Bay Exploration Company, Traverse City, Michigan, (Permittee) submitted an application to the Region for the construction and operation a new Class II well for brine disposal, pursuant to the Underground Injection Control Program, Part C of the Safe Water Drinking Act, 42 U.S.C. § 300h *et seq.* The well is to be located in Jackson County, Michigan and known as the "Haystead #9 SWD."

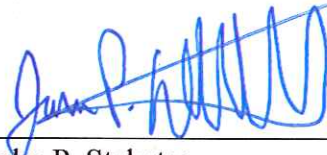
2. On April 9, 2014, the Region issued a final permit to the Permittee for the Haystead #9 well [Permit No. MI-075-2D-0010] (Haystead #9 Permit). The Region also simultaneously issued a Response to Public Comment document (RTC) summarizing the Agency's responses to all of the public comments received on the proposed permit action. The notice of the final permit and RTC was mailed to all persons who provided EPA with comments and to other State and federal officials and provided instructions on how to appeal the permit to the EAB. See 40 C.F.R. §§ 124.15(a) and 124.19.
3. On May 14, 2014, Petitioner filed her Petition seeking review of the Haystead #9 Permit [EAB Appeal No. UIC 14-67].
4. On May 16, 2014, Petitioner filed an affidavit with the EAB asserting that she sent her Petition to the EAB on May 10, 2014, via U.S. Postal Service "express mail," to the EAB's express mail mailing address.
5. The Region does not dispute the facts set forth in Petitioner's affidavit or the subject Motion except that the Region denies Petitioner's assertion that she was provided the wrong mailing address by the Region and asserts that the Region's April 9, 2014 public notice letter speaks for itself on the issue.
6. The Region does not dispute the fact that the Petitioner made a good faith effort to timely file the Petition with the EAB.
7. The Region considers her late filing to be harmless error.
8. The Petitioner is a *pro se* petitioner, for whom the Board may relax some of the more technical pleading standards for petitioners unrepresented by legal counsel. See *In re*

Environmental. Disposal Sys., Inc. 12 E.A.D. 254, 292, n. 26 (EAB 2005); *In re Beckman Prod. Servs.*, 5 E.A.D. 10, 19 (EAB 1994).

9. Although the Region is not seeking denial of the Petition due to the issue of timeliness, the Region reserves its right to seek a denial of the Petition, pursuant to 40 C.F.R. § 124.19, for other procedural reasons.

Accordingly, the Region concurs with the Motion and does not object to the filing of the Petition in this matter.

Respectfully submitted,



John P. Steketee
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region 5 (C-14J)
Chicago, Illinois 60604-3590
Tel. No. (312) 886-0558
Fax. No. (312) 582-5888
steketee.john@epa.gov

Dated this 28nd day of May, 2014.

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Appeal No. UIC 14-67

CERTIFICATE OF SERVICE

I hereby certify that the original of the attached **RESPONSE TO MOTION TO ALLOW FILING OF PETITION** in the matter **WEST BAY EXPLORATION COMPANY OF TRAVERSE CITY, MICHIGAN, HAYSTEAD #9 SWD, PERMIT NO. MI-075-2D-0010, JACKSON COUNTY, MICHIGAN, EAB Appeal No. UIC 14-67**, was filed today with the Board electronically, via the Central Data Exchange.

Further, I hereby certify that one copy of the attached **RESPONSE TO MOTION TO ALLOW FILING OF PETITION** in the matter **WEST BAY EXPLORATION COMPANY OF TRAVERSE CITY, MICHIGAN, HAYSTEAD #9 SWD, PERMIT NO. MI-075-2D-0010, JACKSON COUNTY, MICHIGAN, EAB Appeal No. UIC 14-67**, was sent to the Petitioner and Permit Applicant via Express Mail to the following addresses:

Sandra K. Yerman
6600 Riverside Road
Brooklyn, Michigan 49230

and

Timothy Brock
West Bay Exploration Company
13685 South West Bay Shore Drive, Suite 200
Traverse City, Michigan 49684


John P Steketee

May 28, 2014
Date