

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

In the Matter of:

**West Bay Exploration Co.,
Haystead #9 SWD,
Permit No. MI-075-2D-0010**

UIC Appeal No. UIC 18-01

EPA REGION 5 RESPONSE TO INFORMAL APPEAL UNDER 40 CFR § 124.5(b)

Pursuant to an Order for Additional Briefing issued by the Environmental Appeals Board (EAB or Board) in the above-captioned matter on February 1, 2018, Region 5 of the United States Environmental Protection Agency (the Region) hereby responds to the January 16, 2018 Informal Letter of Appeal (Informal Appeal) filed with the Board, under 40 C.F.R. § 124.5(b), by Mr. Peter Bormuth (Petitioner). On November 11, 2016, Petitioner submitted to the Regional Administrator a Request for Termination of an Underground Injection Control (UIC) permit (Request for Termination) issued by the Region to the West Bay Exploration Company, Traverse City, Michigan (Permittee) under Part C of the Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300h - 300h-8. The permit is for a UIC well, known as the Haystead #9 SWD, located in Jackson County, Michigan (Haystead #9 SWD), Permit No. MI-075-2D-0010 (Haystead #9 Permit). The Region is still evaluating the Petitioner's request. Petitioner's Informal Appeal asks the Board to direct the Regional Administrator to begin termination proceedings for the Haystead #9 Permit under 40 C.F.R. §§ 124.5 and 144.40. The Region opposes Petitioner's request for an order directing the commencement of termination proceedings.

The Board need not review Petitioner's Informal Appeal because his pleading violates a prior order of the EAB. In a June 2, 2014 Order Granting Extension of Time to File Response to Petition for Review (UIC Appeal No. 14-66), the Board stated, at 2, that it would summarily reject any future pleadings by Petitioner containing the gratuitous language cited in the order. Petitioner's Informal Appeal contains another gratuitous attack on the Agency, at 3, similar to the attack the EAB said it would not tolerate in his pleadings. In addition, the Petitioner made a similar gratuitous attack on the Agency in a December 2, 2014 citizen suit notice sent to the Region (*see* Para. 19, at 10-11). Despite the Board's unambiguous notice of the consequences of including such language in his pleadings, the Petitioner did so again in his Informal Appeal. Accordingly, the Board should summarily reject this pleading per its June 2, 2014 Order and 40 C.F.R. § 124.19(n).

Should the Board decide not to summarily reject Petitioner's pleading, the EAB should, nevertheless, decline to review his Informal Appeal because it does not satisfy the procedural requirements for of 40 C.F.R. § 124.5(b). A denial of a request to modify, revoke and reissue, or terminate an UIC permit is a "prerequisite to filing an informal appeal to the Board under § 124.5(b)." *In re Env'tl. Disposal Sys.*, UIC Appeal No. 07-01 at 2 (Order Denying Review), 2007 EPA App. LEXIS 52 (July 11, 2007). 40 C.F.R. § 124.5(b) requires that there be a denial of a request for termination by the Regional Administrator prior to an appeal, i.e. appellate jurisdiction may only be properly invoked via a timely filed appeal of an Agency decision. Petitioner filed his Informal Appeal prior to a decision by the Region and he acknowledges as much in the pleading; i.e. he concedes that he filed his appeal with the Board prematurely, prior to any action being taken or decision being made on his Request for Termination, citing the length of time that has passed

without a response from the Regional Administrator and essentially arguing the passage of time in the issuance of a decision is an “effective denial” of his request. Despite the length of time that has elapsed since the Petitioner submitted his Request for Termination to the Region, he must wait until the Regional Administrator has made a decision on his request before filing an informal appeal with the EAB. As a result, his untimely appeal is a clear circumvention of the regulations and the Board should decline to review it.

The length of time it has taken the Region to make a decision in the matter does not constitute an “effective denial” of the request. 40 C.F.R. § 124.5(b) does not proscribe a time limit for the Regional Administrator to complete a review and evaluation of a request to modify, revoke and reissue, or terminate a permit under 40 C.F.R. § 124.5(c) or (d). The Region concedes that the Regional Administrator may not act arbitrarily, capriciously or abuse her discretion by completely ignoring a request or by failing to properly review a request made under 40 C.F.R. § 124.5(b). Nonetheless, the Regional Administrator has considerable discretion in reviewing, evaluating and acting upon permit termination requests under 40 C.F.R. §§ 124.5 and 144.40. *See In re Envtl. Disposal Sys.*, 14 E.A.D. 96, 100-101 (July 18, 2008) (Order Denying Review). The Board noted that the regulatory history of 40 C.F.R. § 144.40 shows clear intent to provide the Region with discretion when it renders a permit termination decision, at 100. In this matter, the Regional Administrator has acted reasonably in reviewing and evaluating Petitioner’s Request for Termination. As set forth in more detail below, the Region: notified the Petitioner that it received his Request for Termination and the UIC Program would review it, albeit not within the 60 days requested by the Petitioner; provided him with updates on the progress of the review; and despite the passage of time, notified him that the Regional Administrator intended to make a decision on

his Request for Termination. In addition, because the subject well was properly permitted and has operated since 2014 without any loss of mechanical integrity or evidence of endangerment from its operation, it was determined to be a matter of a lower priority compared to the many other matters before the Region's UIC Program (*see* Para. 24 at 13-14). Given the complex regulatory requirements of the SWDA UIC Program and other work demands in the Program, this passage of time is not extraordinary, and the Regional Administrator has not acted unreasonably in this matter. Accordingly, there has been no "effective denial" of his request.

The Region opposes Petitioner's request, asking the EAB to direct the Regional Administrator to begin termination proceedings under 40 C.F.R. § 124.5(d), because the request is not timely; a decision has not been made by the Region which the Board may review to reach such a ruling; and, even if the Board decided to use its discretion to consider such a request at this time, the record does not provide any basis to direct such action under 40 C.F.R. §§ 124.5 or 144.40. Only after the Regional Administrator takes an action or makes a decision on the Request for Termination and only after an appeal of such decision has been made to the EAB, pursuant to 40 C.F.R. § 124.5(b), may the Board decide whether to direct the Regional Administrator to take action under 40 C.F.R. § 124.5(d). While 40 C.F.R. § 124.5(b) allows the EAB to direct the Regional Administrator "to begin modification, revocation and reissuance, or termination proceedings under 40 C.F.R. § 124.5(c)," the Region argues that a decision by the Board to direct the Region to take such action under 40 C.F.R. § 124.5(d) may only be taken in response to a denial by the Regional Administrator under 40 C.F.R. § 124.5(b), not in response to an improperly filed informal appeal. Despite the fact that the Petitioner attached his Request for Termination to

his Informal Appeal, the issues raised in his Request for Termination should not be before the Board at this time.

Even if the Board disagrees with the Region and holds that Petitioner Bormuth has satisfied the requirements for obtaining review pursuant to 40 C.F.R. § 124.5(b), and decides that his Informal Appeal and Request for Termination are properly before the Board, the Region argues that Petitioner's Informal Appeal and Request for Termination have not identified a sufficient basis under 40 C.F.R. § 144.40 (Termination of Permits) to allow the Board to direct the Regional Administrator to initiate termination proceedings on the Haystead #9 Permit. He has not demonstrated that any of the three termination conditions at 40 C.F.R. § 144.40(a)(1), (2) and (3) have been met in this matter. As discussed more fully below, the Petitioner's Request for Termination does not raise any new technical issue or concern that has not already been addressed by the Region and decided in the Region's favor by the EAB. Rather, the Petitioner is, yet again, trying to re-litigate prior technical arguments made before and rejected by the Board. He should not be provided an opportunity to do so again, especially prior to any final action being taken or decision being made on his Request to Terminate currently before the Region. Any decision by the Board otherwise would be highly prejudicial to the Agency.

Finally, several of the contentions made in Petitioner's Informal Appeal are either not valid or are misleading. First, contrary to Petitioner's continuing assertion that the Permittee misrepresented relevant facts during or after the permitting process, the Region has not identified any failure by Permittee to disclose or misrepresent any fact in the matter and likewise, the Board has not identified any such misrepresentation. Second, contrary to Petitioner's assertion that the permitted activity is endangering human health and the environment, the Region has not found any

information to support this claim and has not identified any danger to human health or environment from the operation of the well since it began operating in 2014. Third, while the Region has not identified any danger to human health or the environment from the operation of the well, should any such danger ever be identified, Petitioner is not correct in saying that termination of the permit would be the only option to address such concerns, i.e. the SWDA and UIC regulations provide for other options to address an issue with the integrity of a UIC well or endangerment to a USDW. Fourth, while Petitioner's contention that he has not heard from the Regional Administrator in response to his Request for Termination is factually accurate, it is misleading. As set forth more fully below, Petitioner Bormuth has heard from staff in the Region on several occasions concerning his Request for Termination and would typically only hear from the Regional Administrator after an action had been taken or a decision had been made on his Request for Termination. Lastly, as discussed in more detail below, the length of time that has passed between the date Petitioner filed his Request for Termination and he filed his Informal Appeal, is not unusual in such matters nor the result of gross negligence by the Agency. Rather, the Regional Administrator has acted reasonably and within her discretion in conducting her review of the Request for Termination and fulfilling his and her other responsibilities under the UIC program, especially given the fact the issues raised in this appeal have already been litigated before the EAB; the subject permit was properly issued; and the subject UIC well has been operating since 2014 without any loss of mechanical integrity or endangerment concerns.

In support of its response to the Appeal and opposition to the request therein, the Region states as follows:

1. On April 29, 2011, the West Bay Exploration Company submitted an application to the Region for the construction and operation of a new Class II well for brine disposal, pursuant to the UIC Program, Part C of the SDWA, 42 U.S.C. § 300h *et seq.* The well was 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 SWD well [Permit No. MI-075-2D-0010]. 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. During the 47-day public comment period, which ended on May 14, 2013, Petitioner submitted written comments on the draft permit to the Region on April 16, April 30 and May 2, 2013, and oral comments at the EPA’s April 30, 2014 public hearing.
4. On May 8, 2014, Petitioner Bormuth filed a Petition with the EAB seeking review of the Haystead #9 Permit [EAB Appeal No. UIC 14-66].
5. On May 14, 2014, Ms. Sandra Yerman filed a Petition with the EAB seeking review of the Haystead #9 Permit [EAB Appeal No. UIC 14-67] (Yerman Petition).
6. On June 2, 2014, the Board issued an Order Granting Extension of Time to File Response to Petition for Review (UIC Appeal No. 14-66). At 2, the Board stated “Finally, the Board notes that Mr. Bormuth, in his opposition to the Region’s extension request, repeatedly engages in gratuitous, personal attacks on Sandra K. Yerman,

another petitioner in this proceeding. Petitioner Peter Bormuth's Response to EPA Region 5 Motion For An Extension of Time to File a Response To Petition for Review UIC 14-66, at 3-4 (referring to Sandra K. Yerman as "Christian scum"). Under its authority 'to take all measures necessary for the efficient, fair, and impartial adjudication of issues arising in an appeal,' 40 C.F.R. § 124.19(n), the Board hereby puts Mr. Bormuth on notice that, in the future, it will summarily reject pleadings containing such language. So ordered."

7. On July 3, 2014, the Board issued a Final Decision on the Yerman Petition denying review of her Petition due to the fact that she failed to meet the threshold requirements for Board review under 40 C.F.R. § 124.19. *See In re W. Bay Exploration Co.*, UIC Appeal No. 14-67 (EAB July 3, 2014).
8. On July 10, 2014, the Region filed its Response to the Bormuth Petition with the EAB.
9. On September 22, 2014, the Board issued its Bormuth Decision holding that Petitioner Bormuth failed to demonstrate that the Region's decision to grant the Haystead #9 Permit was based on a clearly erroneous finding of fact or conclusion of law and, therefore, denied his Petition. *See In re W. Bay Exploration Co.*, UIC Appeal No. 14-66, (EAB September 22, 2014) (Order Denying Review).
10. On September 30, 2014, Petitioner filed a Motion for Reconsideration with the Board, per 40 C.F.R. § 124.19(m), seeking reconsideration of the Board's September 22, 2014 Order Denying Review.

11. On October 1, 2014, Petitioner filed a Motion to Supplement the Record with the Board seeking to submit additional materials not included in the administrative record at the time of permit issuance.
12. On October 1, 2014, the Region issued a final UIC permit to the Permittee per 40 CFR 124.19(l)(2), attaching a new permit cover page to the notice letter with an effective date of October 1, 2014. EPA's notice letter to the Permittee requested a completion report (i.e. EPA Form 7520-10 Completion Report for Brine Disposal, Hydrocarbon Storage, or Enhanced Recovery) and the results of a mechanical integrity test witnessed by EPA field inspectors, after the construction of the well was complete.
13. On October 14, 2014, drilling on the Haystead #9 SWD well began and was completed on November 6, 2014. All three steel casings used to construct the well (i.e. surface casing, intermediate, and long string casing) were cemented from the bottom of each casing string to the ground surface.
14. On October 8, 2014, the Region filed with the Board its Response to Petitioner's Motions for Reconsideration and to Supplement the Record, opposing both motions.
15. On October 10, 2014, Petitioner filed a Response to the Region's October 8, 2014 Response.
16. On October 21, 2014, the Board issued an Order Denying Reconsideration holding that Petitioner had not identified any demonstrable error in the Board's decision on his Petition for Review. *See In re W. Bay Exploration Co.*, UIC Appeal No. 14-66, (EAB October 21, 2014) (Order Denying Reconsideration).

17. On November 17, 2014, EPA field inspector Sam Williams, witnessed a mechanical integrity pressure test of the Haystead #9 SWD well conducted by the Permittee. As indicated by EPA's field inspector, the Haystead #9 SWD well passed the mechanical integrity test, losing 0 (zero) pounds per square inch gauged (psig) of pressure in the annulus space between the well's injection tubing and long string casing, over 30 minutes at 440 psig. The test record and Notice of Inspection were signed by Terry Pelham, Company Representative for the Permittee, and EPA field inspector Sam Williams.

18. On November 18, 2014, EPA received a submittal via email from Anni Baker, Permits and Production Coordinator for the Permittee, which included the mechanical integrity test results, the Completion Report for Brine Disposal, drilling and geologic formation records, and cementing "ticket" records for the Haystead #9 SWD well. EPA reviewed the mechanical integrity test results, and reports and records submitted by the Permittee on November 18, 2014, and found that the Haystead #9 SWD well: a) met all federal construction requirements for Class II disposal wells; b) the site specific geologic record (i.e. Formation Record or "EQP 7200-5" for MDEQ #60830) confirmed the Salina Group, and more than 2,600 feet of overlying rock strata (including the Bell Shale, Norwood Shale, Paxton Shale, Lachine Shale, Upper Antrim Shale, Ellsworth Shale, Sunbury Shale, and Coldwater Shale) capable of confining injected fluids to the permitted formation (i.e. Niagaran) are present at the Haystead #9 SWD well site; and c) the Haystead #9 SWD well met both "internal" and "external" mechanical integrity requirements per 40 C.F.R. § 146.8 (a)(1) and (c)(2). The Region determined the

mechanical integrity demonstration for the Haystead #9 SWD well to be satisfactory, and provided the Permittee with written authorization to inject on November 18, 2014, i.e. to commence injection into the well.

19. On December 2, 2014, the Region received a notice of intent to file a citizen's civil action against the Administrator, per Section 1449 of the SDWA, 42 U.S.C. § 300j-8, as amended. The notice stated that the action would concern an alleged failure by the Water Division Director, Region 5, EPA, to perform a non-discretionary action and "willful & wanton misconduct" during the course of her official duties in association with the issuance of the UIC permit for the Haystead #9 SWD well, i.e. the Region was negligently and willfully ignoring the well's danger to underground drinking water. In the last paragraph of the notice of intent letter, Petitioner stated "You evil jesu (sic) scum in the EPA are deliberately threatening our underground sources of drinking water in the Michigan Basin and I will see you brought to justice for this deliberate, reckless, and willful misconduct. Water is life and you have failed your responsibility to protect it." To date, no action has been filed in the U.S. District Court for the Eastern District of Michigan.

20. On January 5, 2016, EPA field inspector Sam Williams, witnessed a second mechanical integrity pressure test of the Haystead #9 SWD well conducted by the Permittee. The Haystead #9 SWD well passed the mechanical integrity test, losing 0 (zero) psig of pressure in the annulus space between the well's injection tubing and long string casing, over 30 minutes at 360 psig. The test record was signed by Shane Jones, Company Representative for the Permittee, and EPA field inspector Sam Williams on January 5,

2016, and was received by EPA's UIC Program on February 2, 2016. The test results demonstrate the Haystead #9 SWD well maintained the federal mechanical integrity requirements in 40 C.F.R. § 146.8 (a)(1).

21. On December 11, 2016, Petitioner submitted his Request for Termination to the Region.

22. On December 13, 2016, Mr. Tim Elkins of the Region's UIC program notified Petitioner by email that the Region had received his Request for Termination. On December 14, 2016 Petitioner replied to Mr. Elkins' email message asking whether he could receive a response "before the Trump Administration takes office." On December 19 and 20, 2016, Mr. Elkins responded by email stating that: EPA was reviewing his request, but could not provide a projected date for the completion of the review; and "I recognize your preference for an expedited EPA decision in this matter, but to be clear, a change in administrations is just not a criteria the Agency considers when reviewing the merits or issuing a response to a request under 40 CFR § 124.5. I do appreciate your interest in protecting groundwater and assure you EPA will evaluate the merits of your request. I just cannot provide any details on the timeline or project a response date at this time." Additional email messages were then exchanged in which Petitioner expressed his desire for a prompt response, preferably within 60 days, conflating the time period by which the EAB may take action on an informal appeal under 40 CFR § 124.5(b) prior to an automatic denial with a non-existent time period by which the Regional Administrator must make a decision on a request for permit termination.

23. On December 22, 2016, Mr. Elkins responded as follows: “Peter – Your request will certainly be considered, but just to be absolutely clear, Title 40 CFR Section 124.5 does not require EPA to respond to your Request for Termination within 60 days. When EPA has evaluated the merits of your Request, the Agency will issue a response. Thanks again, Tim Elkins.” Petitioner responded on January 10, 2017 expressing his opinion that the Region’s issuance of the Haystead #9 UIC permit was gross negligence and ended his message by saying “If i [sic] don't hear from you in 60 days, i [sic] will be filing against you and the EPA in Federal Court for gross negligence.” In July of 2017, Petitioner emailed Mr. Elkins asking the status of the matter and Mr. Elkins replied that the Region could not predict when a decision would be made, but that the agency would definitely respond to his Request for Termination.

24. The following information is a summary of the current assignments and intended areas of work within the Region’s UIC Program:

- A. Pending Permit Actions: 20 pending applications for new permits; seven applications to re-issue permits; 100 requests to modify permits; EPA intends to initiate modification of 44 additional permits following reviews it completed as mandated by 40 CFR 144.36; one request from an interested person to terminate a permit (i.e. by Mr. Bormuth); and one remand from the EAB.
- B. Permit Administration: 13 pending reviews of proposals to plug wells; one pending review of a plugging and abandonment report; three pending reviews of requests to release financial assurance mechanisms; and eight pending reviews of updates to financial assurance mechanisms

- C. Compliance Evaluation: 205 wells for which EPA needs to issue reports following permit compliance evaluation inspections; 57 pending reviews of reports from tests (e.g., mechanical integrity) performed on wells or geologic reservoirs; and four information collection orders under development under Section 1445 of the SDWA.
 - D. Compliance Assurance: 15 formal enforcement cases under development; three informal enforcement cases under development; one case for which settlement discussions with the respondent are underway; and 262 high priority Class V wells for which EPA is providing assistance to owners such that known sources of threats to drinking water will be eliminated through well closure.
 - E. Land Ban/Aquifer Exemption: three requests to renew exemptions from the RCRA ban on land-based disposal of hazardous waste; two requests from Illinois to exempt aquifers under 40 CFR § 144.7.
 - F. State Oversight: one report to write and issue from a review of the Illinois Class II program.
25. Petitioner's technical arguments made in support of his Request for Termination of the Haystead #9 SWD well are not new and have been considered and rejected by the Board in this matter. The same arguments made by Petitioner were addressed by the Board both in the EAB's September 22, 2014 Order Denying Review and October 21, 2014 Order Denying Reconsideration.

26. With regard to Petitioner's groundwater endangerment arguments, these arguments were rejected by the Board in its September 22, 2014 Order Denying Review. At 16, the Board stated:

4. Conclusion on Petitioner's Groundwater Endangerment Argument. The Board concludes that Mr. Bormuth has failed to demonstrate that the Region made a clear error of fact or law in finding that the Haystead well does not present an endangerment to underground supplies of drinking water. The Region is entitled to deference on this technical issue and has provided a well-reasoned and thoroughly-documented explanation for its conclusion that the Marshall Sandstone aquifer is protected from contamination by 2,653 feet of rock strata. In his petition, Mr. Bormuth attempts to shift the focus to a relatively narrow segment of these rock strata, the anhydrite layers in the Salina Group, and argues that these rock layers will be breached by the injected brine. As discussed above, however, the Board has determined that the evidence that Mr. Bormuth has submitted to substantiate this claim is marginal at best. Mr. Bormuth presents an even less convincing case that the other rock strata relied upon by the Region will not confine the injected brine. He ignores findings by the Region that are inconvenient to his argument, and he failed to timely raise or adequately support several claims critical to his position. For these reasons, the Board defers to the Region's technical judgment that the Haystead well will not endanger the Marshall Sandstone aquifer."

Petitioner, yet again, is trying to re-litigate prior technical arguments made to and rejected by the Board. He should not be provided an opportunity to do so again, especially prior to any final action being taken or decision being made on his Request for Termination before the Region.

27. With regard to Petitioner's argument that the Region's experience with the Sunoco UIC permit in Inkster, Michigan (Permit No. MI-163-3G-A002) establishes willful and wanton misconduct by the Agency in this matter, this argument was rejected by the Board in its October 21, 2014 Order Denying Reconsideration, at 5.

28. Petitioner is again attempting to subvert the UIC permitting process by improperly attaching his Request for Termination to his Informal Appeal without first waiting for

EPA's decision on his request, and any rationale for such decision. Petitioner clearly prefers that only his arguments and facts be before the Board. As the Board stated in its September 22, 2014 Order Denying Review, the Petitioner is "...attempting to use this appeal to bypass the Region, the permit issuing authority here. He has saved the full elaboration of his argument and the supporting scientific articles for presentation to the Board in his permit appeal. Allowing this tactic would turn the administrative process on its head." See Order Denying Review, at 12. Petitioner's Informal Appeal is yet another attempt by the Petitioner to bypass the Region and to have the Board make a different scientific finding more to his liking. Petitioner's attempt to once more introduce these studies in another proceeding before the Board to support his underground drinking water supply endangerment argument should be rejected.

29. None of the arguments made by the Petitioner's Informal Appeal are new or establish any unreasonable action by the Agency and certainly do not establish gross negligence by the Regional Administrator. The cases cited by petitioner in his Informal Appeal concerning negligence by the government, *United States v. Meyer*, 808 F.2d 912 (1st Cir. 1987), *Sierra Club v. Train*, 557 F. 2d 485, 490 (5th Cir 1977), and *In the Matter of Deutsch Co.*, 1991 EPA ALJ LEXIS 42 (E.P.A May 26, 1999), either do not support, or are not relevant, to his argument. The only case the Region was able to identify addressing negligence under 40 CFR § 124.5 is *United States v. City of Toledo*, 867 F. Supp. 603 (N.D. Ohio 1994). This was a case where EPA was enforcing effluent limits against the City of Toledo prescribed by its NPDES permit. Regarding negligence, the court noted "Although the doctrine of equitable estoppel may be used in circumstances

of deliberate and egregious misconduct where a governmental agency has acted affirmatively, it is not available where the agency has simply acted in an indifferent, passive, or negligent manner. The record in this case shows, at worst, inaction on the part of the EPA and State EPA, despite awareness of the circumstances and the risks that they posed for the City and similarly situated permit holders. That inaction was not, however, purposefully undertaken to cause harm or injury to the City. It reflects, rather, the difficulties encountered by the agencies as they sought to resolve complex regulatory and policy issues.” *United States v. City of Toledo*, 867 F. Supp. 603, 607 (N.D. Ohio 1994). While the record does not reflect, nor does the Region concede, that the Regional Administrator has acted in an indifferent or passive manner in response to Petitioner’s Request for Termination, nevertheless, even if the Regional Administrator had done so, such action would not be negligence; would not result in an “effective denial” of the subject request; nor would it be a basis for the Board to direct the Regional Administrator to begin termination proceedings under 40 CFR § 124.5(d).

30. While 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), this consideration does not have much import here as Petitioner readily acknowledges in his Informal Appeal that it was not timely filed under 40 CFR § 124.5, therefore, he was aware of the pleading requirement 40 CFR § 124.5(b), i.e. that an informal appeal may only be filed after a

decision is made by the Regional Administrator. He simply chose to disregard the requirement.

In sum, the Board should summarily reject Petitioner's Informal Appeal per the EAB's June 2, 2014 Order in this related matter (UIC Appeal No. 14-66) because it contains a gratuitous attack on the Agency in violation of the order. In the alternative, the Board should decline review of Petitioner's Informal Appeal because it does not satisfy the requirements for obtaining review under 40 C.F.R. § 124.5(b) despite the length of time the Region has taken to make a decision on Petitioner's Request for Termination, i.e. there has been no "effective denial" of his request. In addition, the Region also opposes Petitioner's request to direct the Regional Administrator to begin termination proceedings under 40 C.F.R. § 124.5 because his request is not timely; a decision has not been made by the Region which the Board may review to reach such a ruling; and, even if the Board decided to use its discretion to consider such a request at this time, the record does not provide any basis to direct such action under 40 C.F.R. §§ 124.5 and 144.40, as a result, Petitioner's request should be denied. Lastly, most of the contentions Petitioner makes in his informal Appeal are either misleading or without merit.

Respectfully submitted,



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Dated this 14th day of February, 2018.

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
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CERTIFICATE OF SERVICE

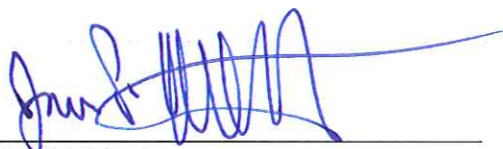
I hereby certify that the original of the attached **EPA REGION 5 RESPONSE TO INFORMAL APPEAL UNDER 40 CFR § 124.5(b)** in the matter of **WEST BAY EXPLORATION CO., HAYSTEAD #9 SWD, PERMIT NO. MI-075-2D-0010, EAB Appeal No. UIC 18-01**, was filed today with the Board electronically, via the EAB's eFiling System.

Further, I hereby certify that one copy of the attached **EPA REGION 5 RESPONSE TO INFORMAL APPEAL UNDER 40 CFR § 124.5(b)** in the matter of **WEST BAY EXPLORATION CO., HAYSTEAD #9 SWD, PERMIT NO. MI-075-2D-001, EAB Appeal No. UIC 18-01**, was sent to the Petitioner and Permittee via Express Mail, with an additional copy by email, to the following addresses:

Peter Bormuth
142 West Pearl Street
Jackson, Michigan 40201
earthprayer@outlook.com

and

Timothy Baker
West Bay Exploration Company
13685 South West Bay Shore Drive, Suite 200
Traverse City, Michigan 49684
tim@wbeco.net



John P Steketee

February 14, 2018

Date