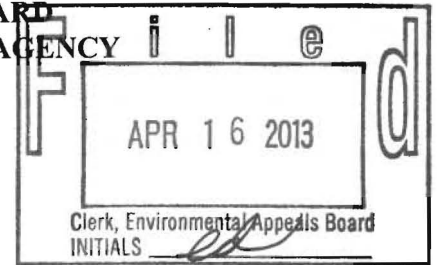


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC



In re:)

West Bay Exploration Co.)

UIC Permit No. MI-075-2D-0009)
_____)

UIC Appeal Nos. 13-01 & 13-02

ORDER DISMISSING PETITIONS FOR REVIEW AS MOOT

Presently pending before the Environmental Appeals Board (“Board”) are petitions from Peter Bormuth and Sandra K. Yerman challenging an Underground Injection Control (“UIC”) permit granted to West Bay Exploration Company (“West Bay”), Permit No. MI-075-2D-0009. On April 8, 2013, however, the U.S. Environmental Protection Agency Region 5 (“Region”) withdrew this UIC permit in its entirety pursuant to 40 C.F.R. § 124.19(j) and announced its intent to prepare a new draft permit.

Section 124.19(j) specifies the circumstances under which a Regional Administrator may withdraw a permit unilaterally. Generally, a Regional Administrator is allowed, upon notification to the Board and any interested parties, to withdraw a permit unilaterally if such action is taken prior to 30 days after the Region files its response to the petition for review. The reason for limiting the period as to when permits may be *unilaterally* withdrawn is “to ensure that unilateral withdrawal of a permit will occur before the Board has devoted significant resources to the substantive consideration of an appeal.” Revisions to Procedural Rules to

Clarify Practices and Procedures Applicable in Permit Appeals Pending Before the Environmental Appeals Board, 78 Fed. Reg. 5281, 5282 (Jan. 25, 2013). Although section 124.19(j) defines a limited period in which a Regional Administrator may unilaterally withdraw a permit, “[n]othing in this regulation prevents the Region from seeking to withdraw the permit by motion at any time.” *Id.* Once the 29-day period following the Region’s response to the petition has expired, a Regional Administrator must obtain, by motion, a voluntary remand of the permit before withdrawing it.¹

In this permit appeal, there are two separate petitioners, Peter Bormuth and Sandra K. Yerman. Mr. Bormuth and Ms. Yerman filed their petitions on January 8, 2013, and February 13, 2013, respectively,² and the Region’s responses were due on February 25, 2013, to Mr. Bormuth’s petition, and April 9, 2013, to Ms. Yerman’s. The Region filed a timely response to Mr. Bormuth’s petition, on February 25, 2013. On April 8, 2013, the Region withdrew the West Bay permit in its entirety, obviating the need for a response to Ms. Yerman’s petition. As part of its withdrawal of the permit, the Region notified the Board, West Bay, and the petitioners, Mr. Bormuth and Ms. Yerman of its action. The Region also sent notice of the permit withdrawal to all persons who commented on the draft permit and all persons on the Region’s mass mailing list for draft permits in the State of Michigan.

¹ A motion for voluntary remand of the permit is also required if oral argument already has been held within the timeframe in which unilateral withdrawal otherwise would be permitted. 40 C.F.R. § 124.19(j).

² Ms. Yerman’s petition was filed later than Mr. Bormuth’s because the Region notified her of its final decision to issue the West Bay UIC permit at a later date than it notified Mr. Bormuth. Ms. Yerman’s petition was further delayed because the Region instructed Ms. Yerman to file her petition with the Board at the Board’s former address. The Board’s current address is provided in 40 C.F.R. § 124.19(i)(2).

As the Region has withdrawn the permit in its entirety, the petitions from Mr. Bormuth and Ms. Yerman challenging the permit are rendered moot. Accordingly, Mr. Bormuth's and Ms. Yerman's petitions are hereby DISMISSED WITH PREJUDICE. The dismissal with prejudice has no effect on the petitioners' right to petition the Board for review of future action by the Region on West Bay's application for a UIC permit.³

So ordered.

Dated:

April 16, 2013

ENVIRONMENTAL APPEALS BOARD⁴

By:



Catherine R. McCabe
Environmental Appeals Judge

³ The Region has indicated its intent to prepare a new draft permit for the West Bay well. As both petitioners raised concerns regarding the adequacy of the notice provided by the prior draft permit and statement of basis, the Board recommends that the Region, in preparing a new draft permit and statement of basis, consider the the Administrator's discussion of a similar issue in the UIC permit decision in *In re Pennzoil Exploration and Production Co.*, 3 E.A.D. 389, 392 (Adm'r 1990). In that case, the Region's statement of basis provided little information in support of the Region's decision to deny the permit other than a statement that the confining zone was "insufficient" to prevent contamination of underground sources of drinking water. Although the Administrator noted that, under 40 C.F.R. §124.7, a statement of basis is only required to "briefly describe" the Region's reasoning, the Administrator held that this statement of basis was inadequate because it was not "sufficiently detailed to afford the applicant a meaningful opportunity to comment." *Id.* at 392. The Administrator remanded the permit to the Region with the instruction that "the Region shall issue a new statement of basis detailing why it thinks the confining zone is insufficient and specifying the parts of the record (including the applications) that the Region deemed pivotal in its decision." *Id.* at 394.

⁴ The three-member panel deciding this matter is composed of Catherine R. McCabe, Leslye M. Fraser, and Kathie A. Stein.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Petitions for Review as Moot 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
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Brooklyn, MI 49230

West Bay Exploration Company
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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: APR 16 2013


Annette Duncan
Secretary