Attachment B-2

AO 440 (Rev. 12/09; DC 03/10) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Peter Bormuth

Plaintiff

v.

EAB, Tinka Hyde & EPA

Defendant

Case: 1:13-cv-00958
Assigned To : Kessler, Gladys
Assign. Date : 6/25/2013
Description: Admn Agency Review

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Environmental Protection Agency - Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

A lawsuit has been filed against you.

Within ~~21~~ 45 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: 6/25/2013

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

PETER BORMUTH,

Civil No: 13-cv-00958

Plaintiff,

Judicial Officer: Hon. Gladys Kessler

v. Magistrate:

THE ENVIRONMENTAL APPEALS BOARD,

TINKA G. HYDE, DIRECTOR, REGION 5

WATER DIVISION & THE UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

Defendants. **PLAINTIFF'S COMPLAINT**

Peter Bormuth	**Kris P. Vezner**	**Eurika Durr**
In Pro Per	**Associate Regional Counsel**	**Clerk of the Board**
142 West Pearl Street	U.S. EPA, Region 5	EPA – EAB (MC 1103B)
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CONSTITUTIONAL PROVISIONS

Amendment V, United States Constitution in pertinent part provides:

"No person shall be deprived of life, liberty, or property, without due process of law."

Article 2, Section 3, United States Constitution in pertinent part provides:

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority..."

STATUTORY PROVISIONS

44 U.S.C. Section 1510(a) in pertinent part provides:

"the Federal Register [shall contain] complete codifications of the documents of each agency of the Government having general applicability and legal effect, issued or promulgated by the agency by publication in the Federal Register or by filing with the Administrative Committee,

and are relied upon by the agency as authority for, or are invoked or used by it in the discharge of, its activities or functions..."

5 U.S.C. Section 551(4) in pertinent part provides:

"['Rule'] means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or proscribe law or policy or describing the organization, procedure, or practice requirements of an agency."

5 U.S.C. Section 702 in pertinent part provides:

"A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."

5 U.S.C. Section 704 in pertinent part provides:

"Agency action made reviewable by statue and final agency action for which there is no other adequate remedy in a court are subject to judicial review."

5 U.S.C. Section 706(1) *in pertinent part provides:*

"The reviewing court shall compel agency action unlawfully withheld..."

5 U.S.C. Section 706(2)(A)(B)(C)(D)(F) in pertinent parts provide:

"The reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be – (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C)...short of

statutory right; (D) without observance of procedure required by law; (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the forgoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error."

16 U.S.C. Section 1531(c)(1) in pertinent part provides:

"It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of this chapter."

40 C.F.R. Section 124. 19(a)(3) in pertinent part provides:

"A petition for review must be filed with the Clerk of the Environmental Appeals Board within 30 days after the Regional Administrator serves notice of the issuance of a RCRA, UIC, NPDES, or PSD final permit decision under § 124.15..."

40 C.F.R. Section 124.19(j) in pertinent part provides:

"The Regional Administrator, at any time prior to 30 days after the Regional Administrator files its response to the petition for review under paragraph (b) of this section, may, upon notification to the Environmental Appeals Board and any interested parties, withdraw the permit and prepare a new draft permit under § 124.6 addressing the portions so withdrawn."

40 C.F.R. Section 146.62(a)(b)(c) in pertinent part provides:

"(a) All Class I hazardous waste injection wells shall be sited such that they inject into a formation that is beneath the lowermost formation containing within one quarter mile of the well bore an underground source of drinking water. (b) The siting of Class I hazardous waste injection wells shall be limited to areas that are geologically suitable. The Director shall determine geologic suitability based upon: (1) An analysis of the structural and stratigraphic geology, the hydrogeology, and the seismicity of the region; (2) An analysis of the local geology and hydrogeology of the well site, including, at a minimum, detailed information regarding stratigraphy, structure and rock properties, aquifer hydrodynamics and mineral resources; and (3) A determination that the geology of the area can be described confidently and that limits of waste fate and transport can be accurately predicted through the use of models. (c) Class I hazardous waste injection wells shall be sited such that: (1) The injection zone has sufficient permeability, porosity, thickness and areal extent to prevent migration of fluids into USDWs. (2) The confining zone: (i) Is laterally continuous and free of transecting, transmissive faults or fractures over an area sufficient to prevent the movement of fluids into a USDW; and (ii) Contains at least one formation of sufficient thickness and with lithologic and stress characteristics capable of preventing vertical propagation of fractures."

28 U.S.C. Section 2201(a) in pertinent part provides:

"In a case of actual controversy within its jurisdiction,...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

TREATIES

The Treaty of Tripoli (1797), Article 11 in pertinent part states:

"As the Government of the United States of America, is not in any sense, founded on the Christian Religion;"

TREATISES

Kenneth Culp Davis & Richard J. Pierce, Jr.; *Administrative Law Treatise* (4th ed. 2002)

Harold J. Krent, *Reviewing Agency Action For Inconsistency With Prior Rules and Regulations;* 72 Chi. –Kent L. Rev. 1187 (1996-1997)

Thomas W. Merrill, *The Accardi Principal;* 74 Geo. Wash. L. Rev. 569 (2005-2006)

David A. Straus, *Due Process, Government Inaction, and Private Wrongs*; Sup. Ct. Rev. 53 (1989)

TABLE OF ATTACHMENTS

Appendix F: Comment documents filed by Sandra K. Yerman with EPA.

BACKGROUND TO CASE

The Plaintiff, Peter Bormuth, proceeding *pro se*, respectfully files this Complaint against Tinka Hyde, Director of the Water Division of the Environmental Protection Agency, Region 5, and the Environmental Appeals Board for their actions in dismissing Petition UIC Appeal No. 13-01 as Moot. The Plaintiff seeks Judicial Review of this decision. The Petition involved a UIC permit application for a Class II Oil Waste Disposal Well filed by West Bay Exploration Co. of Traverse City Michigan for the purpose of non-commercial disposal of brine from multiple producing wells. The West Bay #22 application proposed the Salina A-2 Evaporite at a depth of 2,634 feet to 2,662 feet as the upper confining zone. West Bay's lithologic description of this 28 foot thick barrier to the potential upward migration of effluent is: "Anhydrite, dense, hard, white, excellent barrier to flow."

In January 2012 Region 5 issued the draft West Bay #22 permit, UIC Permit No. MI-075-2D-0009. The public comment period ran for 30 days from January 30, 2012. The Plaintiff did not comment during this period. Region 5 received numerous requests for a public hearing and created a second public comment period running from April 17, 2012 through June 1, 2012. This period included a public meeting at Columbia Central High School on May 23, 2012. The Plaintiff provided timely oral comments to Region 5 at the public meeting and expanded on those comments with timely written comments to Region 5 permit writer Anna Miller via e-mail dated May 29, 2012.

On December 6, 2012, the EPA issued a Response to Comments that superficially addressed the Plaintiff's comments regarding Draft Permit No. MI-075-2D-0009. The Plaintiff received this mailing in a timely fashion.

Region 5 EPA issued the final permit on December 10, 2012, with an effective date of January 9, 2013. Plaintiff then filed a timely Petition for Review on January 8, 2013 (see Appendix A). On January 14, 2013, Erica Durr, Clerk of the Board sent a letter to Regional Counsel Robert Kaplan requiring a Response no later than February 26, 2013. On January 25, 2013 the EPA published final (revised) rule 40 C.F.R. § 124 in the Federal Register with an effective date of March 26, 2013. On February 12, 2013 the Plaintiff filed a change of e-mail address with the Board because security on his former e-mail had been breached. On February 13, 2013, 35 days after the effective date of January 9, 2013, the EPA & the EAB allowed Sandra K. Yerman to file a Petition for Review (13-02). The Plaintiff was never notified by Yerman, by the EPA Region 5, or by the EAB that this petition was filed. On February 25, 2013 Region 5 Associate Regional Counsel Kris P. Vezner filed a Response to the Plaintiff's Petition. On April 8, 2013 Region 5 Director Tinka Hyde sent the Plaintiff a letter of notification of the withdrawal of Permit No. MI-075-2D-0009 (see Appendix B). This action was taken under the authority of 40 C.F.R. § 124.19(j), a new subsection replacing 40 C.F.R. § 124.19(d) under the final rule published in the Federal Register by the EPA on January 25, 2013 which went into effect on March 26, 2013. On April 8, 2013 Petitioner Yerman (13-02) requested a certified index of the entire administrative record. On April 16, 2013 the EAB issued an order Dismissing Petitions 13-01 and 13-02 for Review as Moot (see Appendix C). On April 17, 2013 Associate Regional Counsel Kris P. Vezner finally provided the Plaintiff with a copy of Yerman's Petition (13-02). On April 19, 2013 the

Plaintiff filed a Motion To Deny with the EAB. On April 19, 2013 Yerman filed a Motion for Clarification and Request for Explanation. On April 22, 2013 Yerman filed a Motion for Reconsideration, Clarification and Stay of Order. On April 23, 2013 the Plaintiff filed a Motion for Reconsideration under 40 C.F.R. §124.19(m). On April 24, 2013 the Plaintiff filed a Motion to Stay EAB Order of 4-16-13. On April 24, 2013 Yerman filed something labeled Response to the Petition for Review. On April 30, 2013 the Plaintiff made comments at the public hearing at Columbia Central High School on the permit application by West Bay for a second SWD well in Jackson County, Haystead #9, and added additional comments sent by e-mail to EPA permit writer Timothy Elkins on April 30, 2013 and May 2, 2013 (see Appendix D). On May 7, 2013 Associate Regional Counsel Kris P. Vezner filed a Response to Motions for Reconsideration. On May 15, 2013 the Plaintiff filed a Reply to the EPA Response under 40 C.F.R. § 124.19(F)(4). On May 29, 2013 the EAB issued an Order Denying Reconsideration (see Appendix E). The Plaintiff now files this complaint in Federal Court seeking statutory review under the Administrative Procedure Act and the Fifth Amendment Due Process Clause.

GROUNDS FOR COMPLAINT

The Plaintiff files for statutory review on multiple grounds:

1) Tinka Hyde, Director, Water Division, Region 5, EPA abused her discretion and violated 40 C.F.R. § 124.19(j) by not filing a Motion to Withdraw the West Bay UIC Permit No. MI-075-2D-0009 since over 30 days had elapsed since the EPA responded to the Plaintiff's Petition for Review (13-01).

2) Tinka Hyde and the EPA were negligent, abused their discretion, and violated 40 C.F.R. § 124. 19(a) by filing Sandra K. Yerman's Petition for Review (13-02) dated February 13, 2013.

3) Tinka Hyde, the EPA, and the EAB caused substantial prejudice to the Plaintiff by filing Sandra K. Yerman's Petition for Review (13-02) dated February 13, 2013.

4) The EAB abused their discretion and acted in an arbitrary and capricious manner by issuing April 16, 2013 Order dismissing the Plaintiff's Petition for Review (13-01) as moot.

5) Tinka Hyde, the EPA, and the EAB violated the Plaintiff's right to Due Process under the Fifth Amendment.

6) Tinka Hyde, the EPA, and the EAB violated the Plaintiff's right to administrative due process under the Administrative Procedure Act and the *Arccadi* doctrine by failing to follow their own final rules and procedures, failing to provide notice, and denying an administrative hearing.

7) Tinka Hyde, the EPA, and the EAB discriminated against this Pagan Plaintiff by granting special privileges to Christian petitioner, Sandra K. Yerman.

RELIEF SOUGHT

1) The Plaintiff seeks Judicial Review under the authority of 5 U.S.C. § 702, 5 U.S.C § 704, and 44 U.S.C. § 1510(a) of the EPA Region 5 agency action taken by Water Division Director Tinka Hyde in withdrawing Permit No. MI-075-2D-0009 in direct violation of the language of 40 C.F.R. § 124.19(j).

2) The Plaintiff seeks Judicial Review under the authority of 5 U.S.C. § 702, 5 U.S.C § 704, and 44 U.S.C. § 1510(a) of the EAB Order of April 16, 2013 granting that withdrawal and declaring Plaintiff's Petition for Review "moot".

3) The Plaintiff seeks Judicial Review under the authority of 5 U.S.C. § 702, 5 U.S.C § 704, and 44 U.S.C. § 1510(a) of the EPA Region 5 agency action taken by Water Division Director Tinka Hyde in allowing the filing of Sandra K. Yerman's Petition for Review (13-02) in direct violation of the language of 40 C.F.R. § 124. 19(a)(3).

4) The Plaintiff seeks Judicial Review under the authority of 5 U.S.C. § 702, 5 U.S.C § 704, and 44 U.S.C. § 1510(a) of the subsequent upholding of that action by the EAB in their Order of May 29, 2013.

5) The Plaintiff seeks statutory relief compelling an agency decision on the merits of his Petition for Review unlawfully withheld and asks this Court set aside the EPA actions and EAB orders which were arbitrary, capricious, an abuse of discretion, contrary to constitutional right, short of statutory right, violations of due process, and without observance of procedure as required by law. The Plaintiff makes these requests under the authority of the Fifth Amendment; 5 U.S.C. § 706(1); 5 U.S.C. § 706(2)(A)(B)(C)(D)(F); 16 U.S.C. § 1531(c)(1); 40 C.F.R. § 124. 19(a)(3); 40 C.F.R. § 124.19(j); 40 C.F.R. § 146.62(a)(b)(c) and the doctrines and case law the Plaintiff will present to the Court in his legal argument below.

6) The Plaintiff also seeks declaratory relief as an equitable remedy against the EPA's discrimination against a Pagan citizen of the United States under the authority of 28 U.S.C. § 2201, the Treaty of Tripoli, Article 11, and the U.S. Constitution Article 2, Section

The Plaintiff believes that the First Amendment and Title 42 U.S.C. § 1983 are not available in this case and thus it is appropriate to ask the Court for discretionary relief under the Declaratory Judgment Act.

INTRODUCTION

The Plaintiff wishes to inform this Honorable Court that he followed all the procedures and legal steps required by the EPA and the EAB in this case. He spent countless hours researching the geology of the injection site, reading technical studies on the behavior of anhydrite bearing rocks, learning about the effects of water, salt, pressure, and temperature on such rocks. He examined studies on underground fluid migration. He reviewed the scientific literature on the habitat and behavior of the Indiana bat. He read studies on seismic induced activity created by injection wells. He then made timely comments at the EPA public hearing on the proposed West Bay #22 permit (UIC Permit No. MI-075-2D-0009). He followed those comments up with timely e-mails within the official comment period. The Plaintiff did additional research after receiving the EPA's inadequate response to his comments on December 6, 2012. Upon receiving notification from the EPA that the permit was issued, he filed a timely petition for review with the EAB raising his concerns over legitimate issues of material fact. After Associate Regional Counsel Vezner responded to his petition and 30 days had elapsed, the Plaintiff waited patiently for the EAB to make a determination on the issues he raised. Instead of receiving his legal right to this administrative hearing and decision, the carpet was yanked out from under the Plaintiff because the EPA, without notice to the Plaintiff, allowed one of his Christian opponents to file an untimely petition. The filing date of this untimely and materially deficient

petition was then used to dismiss the Plaintiff's petition for review as 'moot'. The Plaintiff cannot believe this subterfuge is legally permissible and requests that this Honorable Court review the Plaintiff's complaint and grant appropriate relief.

LEGAL ARGUMENT

The Plaintiff notes that he has standing and is entitled to judicial review under the authority of 5 U.S.C. § 702 (*"A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."*). The Plaintiff has been denied due process, discriminated against, suffered legal wrong, been adversely affected, and is most definitely aggrieved.

5 U.S.C. § 704 also grants standing to the Plaintiff to request judicial review (*"Agency action made reviewable by statue and final agency action for which there is no other adequate remedy in a court are subject to judicial review."*). The Plaintiff notes that the EAB Orders of April 16, 2013 and May 29, 2013 are reviewable under the APA and constitute final agency action.

The Plaintiff observes that this Court has the power to set aside the EAB Orders of April 16, 2013 and May 29, 2013 under the authority of 5 U.S.C. § 706(2)(A)(B)(C)(D)(F). (*"The reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be – (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C)...short of statutory right; (D) without observance of procedure required by law; (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the forgoing determinations, the court shall review the whole record or those parts of it cited by a party, and*

due account shall be taken of the rule of prejudicial error."). The Plaintiff argues that the agency action in this case was arbitrary, capricious, an abuse of discretion, not in accordance with law, contrary to constitutional right, short of statutory right, without observance of procedure required by law and unwarranted by the facts. Therefore the Court should set aside the EAB Orders of April 16, 2013 and May 29, 2013 and the Plaintiff requests this Court take full and due account of the rule of prejudicial error.

This Court has the authority to compel the EAB to issue a ruling on the merits of the Plaintiff's Petition for Review filed January 8, 2013 under the authority of 5 U.S.C. § 706(1) (*"The reviewing court shall compel agency action unlawfully withheld..."*) and the Plaintiff requests such compelling action.

It is also within the discretion of the Court to issue declaratory relief to the Plaintiff as an equitable remedy to prevent the EPA from discriminating against Pagans in the future. The Court may act under 28 U.S.C. § 2201 (*"In a case of actual controversy within its jurisdiction,...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."*). The Plaintiff requests a declaration from this Court preventing this federal agency from further or future discrimination against Pagans under the U.S. Constitution Article 2, Section 3 and the Treaty of Tripoli.

The Plaintiff wishes to remind the Court that he is proceeding *pro se* and the Supreme Court ruled in *Erickson v. Pardus*, 551 U.S. 89 (2007) that, "A document filed *pro se* is "to be liberally construed," *Estelle*, 429 U.S., at 106, and "a *pro se* complaint, however inartfully pleaded, must

be held to less stringent standards than formal pleadings drafted by lawyers," *ibid.* (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice")." *Erickson v. Pardus,* 551 U.S. 89, 127 S.Ct. 2197, 167 L.Ed.2d. 1081 (2007)." The Plaintiff has no formal legal training and recognizes that his writing style does not always meet with a Court's expectations or approval. Therefore he requests tolerance of his writing style and prays that this Court 'liberally construe' his legal arguments.

The Plaintiff claims that the EPA violated 40 C.F.R. § 124.19(j) by not filing a Motion to Withdraw UIC Permit No. MI-075-2D-0009 since over 30 days had elapsed since the EPA responded to Petitioner. REVISED RULE 40 CFR 124.19(j) effective March 26, 2013, states: (j) *"Withdrawal of permit or portions of permit by Regional Administrator.* The Regional Administrator, at any time prior to 30 days after the Regional Administrator files its response to the petition for review under paragraph (b) of this section, may, upon notification to the Environmental Appeals Board and any interested parties, withdraw the permit and prepare a new draft permit under § 124.6 addressing the portions so withdrawn." The Plaintiff filed his Petition for Review on January 8, 2013. Region 5 responded on February 25, 2013. Region 5 did not issue their letter of withdrawal until April 8, 2013. 42 days had elapsed. Once the 30 day period has expired the Regional Administrator must obtain, **by motion**, a voluntary remand of the permit before withdrawing it. The EPA would be required to give reasons for their withdrawal in such a motion and the opportunity to respond and contest the motion would be available to the Plaintiff. No Motion was filed by Region 5, therefore the Plaintiff has never had the opportunity to make his substantive arguments against the withdrawal of the permit. According to published final rule 40 CFR 124.19(j) the Withdrawal of Permit by the Region 5

Administrator must be by motion after 30 days and thus should have been denied by the Environmental Appeals Board. The ends of justice did not require a modification or relaxing of 40 CFR 124.19(j) in this case. Indeed, the 30 day provision was added to the new Final Rules with the deliberate intention to streamline the appeals process and to deny unilateral withdrawal by the Region if they failed to act within 30 days. The plain and unambiguous language of 40 C.F.R. § 124.19(j) must be applied to this case. (see *Barnhart v. Sigmon Coal, Inc.* 534 U.S. 438, 450 (2002) holding, "the first step in a statutory construction case is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case"). Where the language is plain and unambiguous, the analysis ends, and that plain language must be given effect. (see *Sullivan v. Stroop*, 496 U.S. 478, 482 (1990)). The Courts have previously held to the established maxim that agencies are required to adhere to their own rules (see *Vitarelli v. Seaton*, 359 U.S. 535, 539, 79 S.Ct. 968, 972, 3 L.Ed.2d 1012 (1959); *Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Service v. Dulles,* 354 U.S. 363, 77 S.Ct. 1152 1 L.ED.2d 1403 (1957); *Morton v. Ruiz*, 415 U.S. 199 (1974) (holding "Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.") The D.C. Circuit in particular has ruled that this maxim extends to substantive and procedural rules and policies. (see *Lucas v. Hodges*, 730 F.2d 1493 (D.C. Cir 1984) (holding "It is a familiar principle of federal administrative law that agencies may be bound by their own substantive and procedural rules and policies"); see also *Padula v. Webster*, 822 F.2d 97, 100 (D.C. Cir. 1987); *Doe v. Hampton,* 566 F.2d 265, 281 (D.C. Cir. 1977); *Jolly v. Listerman*, 672 F.2d 935, 940-41 (D.C. Cir. 1982); *Mazaleski v. Treusdell*, 562 F.2d 701, 717 n. 38 (D.C. Cir. 1977); *Air Transport Assoc. v. DOT*, 900 F.2d 369 (D.C. Cir. 1990) (holding rules affecting the right to avail

oneself of an administrative adjudication are substantive); *Sangamon Valley Television Corp. v. United States*, 269 F.2d 221, 225 (D.C. Cir. 1959) (holding cutoff dates are binding).

In their Order of May 29, 2013 denying Reconsideration the EAB states that they have "granted requests by the Regions for remand of permits in cases even more advanced than the present litigation" (*In re West Bay Exploration Co.* EAB Order 5-29-13, p.4) but then cites administrative cases that preceded the adoption of the new rules on March 26, 2013. The former rule, 40 C.F.R. § 124.19(d), allowed unilateral withdrawal by the Regions anytime in the proceeding, so this is to be expected. Most telling of all, in footnote 4 on the same page the EAB states: "To avoid any confusion in the future, the Board recommends that the Regions should not unilaterally withdraw a permit after the expiration of the 29-day period following their response to the earliest-filed petition. If a region decides to withdraw the permit after the expiration of that 29-day period but prior to the expiration of the 29-day period applying to later-filed petitions, the Region should first request a voluntary remand of the permit by motion." (*In re West Bay Exploration Co.* EAB Order 5-29-13, p.4, fn.4) This reasonable interpretation of the plain and unambiguous language of 40 C.F.R. § 124.19(j) must be given effect in this case, as well as in future cases. Why doesn't the EAB follow the rules in this case? Because the Plaintiff is a Pagan and his opponent is a Christian? How can the EAB recommend the EPA follow the published rules in future cases, but still dismiss the Plaintiff's petition as moot in this case? This is outrageous. "[T]here may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case." *Mary Carter Paint Co. v. FTC*, 333 F.2d 654, 660 (5th Cir. 1964), *rev'd on other grounds*, 382 U.S. 46 (1965).

Before proceeding to his other claims, the Plaintiff wishes to address the EAB contention that "neither petitioner provided a single plausible reason why, if the Region had filed a motion for voluntary remand, the Board should have denied it." The EAB footnote to this text expresses the opinion that the EAB, following the practice of Federal Courts, does not issue advisory opinions on "hypothetical permits" (*In re West Bay Exploration*, EAB Order May 29, 2013, p.3 fn.3). The Plaintiff's Motion for Reconsideration and his Reply to the EPA Response were appropriately concerned with the Constitutional, statutory, and procedural inequities created by the EPA action in withdrawing the permit and the Plaintiff believes his claims establish demonstrable error of law. Had the EPA made the required motion for voluntary remand, the Plaintiff would have responded with a brief detailing the underlying issue of material fact: the MDEQ and the EPA are permitting Class II oil waste injection wells at similar strata with similar deficiencies throughout the entire southern Michigan basin. Indeed, West Bay Exploration Co. has applied for Permit Number MI-075-2D-0010, Haystead #9 SWD, at a location less than 3 miles (as the crow flies) from the site of West Bay #22. The geological and surface setting of Haystead #9 SWD are nearly identical to West Bay #22. In the case of Haystead #9 the upper confining zone is Niagaran dolomite, an argillaceous carbonate with anhydrite cement. The anhydrite in this carbonate will also dissolve upon contact with water and thus allow for vertical migration of injected fluid through the rock strata. Haystead #9 is located along the Raisin River corridor and actually borders the river (and a small creek). The well site is less than ¼ mile from the river and is prime Indiana bat summer habitat. This is not a hypothetical permit situation where the Plaintiff is seeking an advisory opinion. This is a real well and reproduces every issue of material fact the Plaintiff has already put forward in his Petition for Review of West Bay #22.

What the EAB and the EPA have effectively done is to turn the comment and appeal process into a farce, making the Plaintiff go through the entire comment and petition process a second time without a determination of the legality of the first well. This is arbitrary, capricious, and without observance of procedure. "In reviewing an underground injection well permit application, the Region has a regulatory obligation to consider whether geological conditions may allow the movement of any contaminant to underground sources of drinking water." *In re Stonehaven Energy Management,* UTC Appeal No. 12-02 LLC Permit No. PAS2DOIOBVEN (EAB March 28, 2013). Under 16 U.S.C. § 1531(c)(1) the EPA must *"...seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of this chapter."* The Plaintiff quotes these passages to demonstrate to the Court the EAB's non-compliance and error in this case. The Plaintiff made comments on Haystead #9 (see Appendix D). The Plaintiff has also made a Freedom of Information Act request of the MDEQ for a list of all Class II oil waste injection wells operating in lower Michigan complete with a lithologic description of the upper confining layer of the injection zone and the depth to which the well has been drilled so the Plaintiff can provide this Court with additional factual information showing neglect of the EPA's statutory duty to examine concrete issues of material fact that affect our underground sources of drinking water, the public health, and conservation of endangered species. The Plaintiff previously showed demonstrable errors of law in his Motion for Reconsideration and Reply brief before the EAB and has now provided this Court with a plausible reason why untimely withdrawal of UIC Permit No. MI-075-2D-0009 should not be allowed and why the EAB should be compelled to render a decision on the geological and topographical issues raised by the Plaintiff in Petition 13-01.

The Plaintiff claims that Tinka Hyde, the EPA and the EAB abused their discretion and violated 40 C.F.R. § 124. 19(a) by filing Sandra K. Yerman's Petition for Review (13-02) dated February 13, 2013. 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). Specifically, petitions must be filed within thirty days after issuance of the permit. 40 C.F.R. § 124.19(a). The EPA issued the final permit on December 10, 2012, with an effective date of January 9, 2013. Yerman did not file her petition until February 13, 2013, over a full month after the closing date. 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). Region 5 claims that Yerman's untimely petition was filed because "the Region 5 employee assigned to West Bay #22 had been unavailable for over a month and Region 5 employees could not locate several commenters addresses. Through methods including file review and internet search, Region 5 employees were able to determine addresses for all of the commenters except petitioner Yerman." (EPA Response to Motions For Reconsideration, Associate Regional Counsel Vezner, May 6, 2013, p.2). The Plaintiff questions the veracity of this statement. The EPA had at least two separate documents containing Yerman's address in their files (see Appendix F). The Plaintiff, who has suffered substantial prejudice and discrimination, is not responsible for

Region 5's bureaucratic negligence or incompetence. If an employee was ill or on leave for over a month then someone else should have been assigned to the task. The EPA failed to locate preexisting material in their own files. This failure is negligent action by the EPA. This negligence created a violation of the threshold procedural requirements serving to undermine the new regulations which seek to streamline the appeals process and resulted in substantial prejudice to the Plaintiff. This is abuse of discretion.

It cannot be denied that the Plaintiff suffered substantial prejudice due to the untimely filing of Yerman's petition. Yerman's filing provided Regional Administrator Tinka Hyde with an excuse to withdraw the permit issued by the EPA for the West Bay #22 well without making the required motion for voluntary remand under 40 C.F.R. § 124.19(j) thus depriving the Plaintiff of his due process right to a hearing. The Plaintiff notes that while established case law gives the EAB the authority to relax or modify their procedural rules in the interests of justice, it also prevents them from doing so when their action creates substantial prejudice to another party to the proceeding, as in this case. *American Farm Lines v. Black Ball Freight Service,* 397 U.S. 532 (1970) is the most quoted case ("It is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it. The action of either in such a case is not reviewable except upon a showing of substantial prejudice to the complaining party." *American Farm Lines v. Black Ball Freight Service,* 397 U.S. 532, at 539) but it specifically creates an exception for a showing of substantial prejudice. If substantial prejudice exists, "an executive agency must be rigorously held to the standards by which it professes its action to be judged." *See Securities & Exchange Commission v. Chenery Corp.,* 318

U. S. 80 (1943). Since substantial prejudice exists in this case, the EPA and EAB must be rigorously held to the published statutory and procedural standards by which they profess their action to be judged. The EPA action in filing Yerman's petition is reviewable by this Court as a negligent abuse of discretion because of the showing of substantial prejudice to the Plaintiff. This adverse agency action has prejudiced and injured the Plaintiff's concrete interest in an adequate hearing.

The EAB has violated the Plaintiff's right to Due Process. Amendment V, United States Constitution in pertinent part provides: *"No person shall be deprived of life, liberty, or property, without due process of law."* The Fifth Amendment's procedural Due Process Clause places limits on federal administrative agencies adjudicatory (judicial) power. The Administrative Procedure Act (5 U.S.C.A. §§ 551–706 [Supp. 1993]) governs the practice and proceedings before federal administrative agencies. The Right to Prior Notice is ordinarily a due process requirement. The notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The Plaintiff was never informed by the EPA or the EAB that Yerman's untimely petition was placed on the docket or he would have filed a motion objecting to that action. There was absolutely no notice given to the Plaintiff of this untimely and suspect action. This is contrary to the intention of 40 C.F.R. § 124.19(i)(3). The EPA has used that untimely filing to withdraw their permit under 40 C.F.R. § 124.19(j), depriving the Plaintiff of his right to a hearing. Ordinarily, a "hearing" encompasses the right to present evidence and argument. Under the flexible due process standard, however, a "paper hearing" will provide adequate protection of due process

protected interests. (see *Hewitt v. Helms*, 459 U.S. 460, 472 (1983)). The EAB's Order of April 16, 2013 is a direct violation of the Plaintiff's right to such a paper hearing. The Plaintiff notes that while Due process does not constrain an agency's choice of decision making procedures when it acts in a legislative manner, i.e., when it makes a policy-based decision that purports to apply to a class of individuals, Due process does limit the agency's choice of procedures when it makes a decision that uniquely affects an individual on grounds that are particularized to the individual. (see Kenneth Culp Davis & Richard J. Pierce, Jr., *Administrative Law Treatise* § 4.6 at 167 (4th ed. 2002). The Plaintiff notes that the failure of an administrative agency to follow its own procedural rules violates the principle that agencies are bound by their own regulations. See David A. Straus, *Due Process, Government Inaction, and Private Wrongs;* Sup. Ct. Rev. 53 (1989) "The language of 5 U.S.C. § 552(a)(2) "strongly suggests" that if an agency does comply with the APA's publication requirements, the materials identified in APA § 552(a) "may be `relied on, used, or cited as precedent' *against the agency* although they do not serve to bind the public." Strauss, *supra*, at 1467-68 (footnote omitted). The Supreme Court has held that "Procedural fairness and regularity are of the indispensable essence of liberty." *Shaughnessy v. United States ex rel. Mezei,* 345 U.S. 206 at 224 (1953) (see also *McNabb v. United States*, 318 U.S. 332 (1943) holding, "The history of liberty has largely been the history of procedural safeguards."). The Court has stated that "the most common manner in which the State creates a liberty interest is by establishing 'substantive predicates' to govern official decision-making and, further, by mandating to outcome to be reached upon a finding that the relevant criteria have been met." *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 462 (1989) (citation omitted) (quoting *Hewitt v. Helms*, 459 U.S. 460, 472 (1983)). Such liberty interests have fallen

by the wayside in this case as the EAB orders have been arbitrary, capricious, an abuse of discretion, contrary to constitutional right, short of statutory right, violations of due process, and without observance of procedure as required by law. The Plaintiff claims that nothing leaves the EPA with as much room for venality, favoritism, discrimination, error, or carelessness as the power to ignore the applicable rules.

The Plaintiff claims the EAB abused their discretion by dismissing Petition 13-01 as moot. The Plaintiff set forth a legitimate scientific argument on the geological site of the well, complete with peer reviewed scientific studies. "In reviewing an underground injection well permit application, the Region has a regulatory obligation to consider whether geological conditions may allow the movement of any contaminant to underground sources of drinking water." *In re Stonehaven Energy Management*, UTC Appeal No. 12-02 LLC Permit No. PAS2DOIOBVEN (EAB March 28, 2013). The Plaintiff's claim that the anhydrite will transform to gypsum upon contact with water must be addressed by the EAB and cannot be dismissed under 40 C.F.R. § 124.19(j) because the EPA and EAB allowed Yerman to file a late and deficient petition. 40 C.F.R. § 146.62(c)(1)(2) specifically states that the injection zone must have "sufficient permeability, porosity, thickness and areal extent to prevent migration of fluids into USDWs" and be free of faults and fractures that might allow fluid movement. The Courts have ruled that permitting authorities have "an affirmative duty to inquire into and consider all relevant facts" pertaining to the specific statutory and regulatory criteria established for each permit program, and they must ensure they have developed an adequate record upon which to make a reasoned permit decision. (see *Scenic Hudson Pres. Conference v. Fed. Power Comm'n*, 354 F.2d 608, 620 (2d Cir. 1965). The Plaintiff claims he has provided the EAB with reasonably trustworthy information

and data such that the totality of the facts and circumstances within the Board's knowledge are sufficient to warrant a *firm belief* that migration of hazardous constituents from the injection zone will occur. [referencing 69 Fed. Reg. 15,328, 15,330 (Mar. 25, 2004)]. Moreover in Region 5 Response to Comments document of December 6, 2012, they admit that the fluid will migrate into the next confining zone that will accept it. The Plaintiff has also shown a strong likelihood that the Indiana bat will be found on the property. 16 U.S.C. § 1531(c)(1) demands that the EPA *"shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of this chapter."* The EAB refusal to address the presence of the Indiana bat is a violation of this statutory requirement. The Board has abused its discretion in dismissing Petition 13-01 as "moot". The APA provides that reviewable exercises of discretion are reviewed under the "abuse of discretion" standard. 5 U.S.C. § 706(2)(A). Discretion can be abused in many ways. For example, a departure from agency precedent is an abuse of discretion. "[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored. . . ." *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971); see also *Greyhound Corp. v. ICC*, 551 F.2d 414, 416 (D.C. Cir 1977) (holding, "This court emphatically requires that administrative agencies adhere to their own precedents or explain any deviations from them.") The Plaintiff argues that the EPA action produces an unjust and absurd consequence: a timely petition that sets forth a legitimate scientific argument on both the geological site of the well and possible harm to endangered species, complete with peer reviewed scientific studies, is dismissed as moot after the 30 day period following response has expired because an untimely petition was filed. (see *United States v. Meyer*, 808 F. 2d 912, 919

(1st Cir. 1987) holding an unreasonable result is reason to reject an interpretation); see also *Sierra Club v. Train,* 557 F. 2d 485, 490 (5th Cir. 1977) holding, "...where the result of one interpretation is unreasonable, while the result of another interpretation is logical, the latter should prevail."). The frankly ludicrous result produced by the EPA's interpretation should have been rejected by the Board according to their own administrative case law. (see *In the Matter of Deutsch Co.* 1999 EPA ALJ LEXIS 117, *11 (EPA ALJ, May 26, 1999) holding, "...frankly ludicrous results are to be avoided in ascertaining the meaning of statutory or regulatory provisions..."). The dismissal of Appeal No. 13-01 is an arbitrary and capricious abuse of discretion producing a ludicrous result which violates logic, violates the Boards regulatory obligation under statue, is contrary to administrative case law, is unwarranted by the facts, and is without observance required by law. This is prejudicial error and abuse of discretion.

Under the *Accardi* principal "any violation by an agency of its own regulations, at least one that results in prejudice to a particular individual, offends due process." (see Thomas W. Merrill, *The Accardi Principal;* 74 Geo. Wash. L. Rev. 569 (2005-2006), p.576). The cases from which this principle is derived are *Vitarelli v. Seaton*, 359 U.S. 535, 539, 79 S.Ct. 968, 972, 3 L.Ed.2d 1012 (1959); *Accardi v. Shaughnessy*, 347 U.S. 260 (1954); and *Service v. Dulles,* 354 U.S. 363, 77 S.Ct. 1152 1 L.ED.2d 1403 (1957). The Courts have clearly applied this doctrine to procedures, especially if they have been published in the Federal Register by the agency. (see *Morton v. Ruiz,* 415 U.S. 199 (1974) holding "Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures."; *Lucas v. Hodges*, 730 F.2d 1493 (D.C. Cir 1984) (holding "It is a familiar principle of federal administrative law that agencies may be bound by their own substantive and procedural rules and policies"); *Nat'l Conservative*

Political Action Comm. V. FCC, 626 F.2d 953 at 959 (D.C. Cir. 1980) holding "Agencies are under an obligation to follow their own regulations, procedures, and precedents" and observing the procedural regulations are subject to the *Accardi* doctrine, provided that they are binding.); see also *Vietnam Veterans of Am. v. Sec. of the Navy*, 43 F.2d 528 (D.C. Cir. 1988). In *Nat'l Conservative Political Action Comm. V. FCC*, 626 F.2d 953 (D.C. Cir. 1980) the Court specifically noted that this does not mean such regulations need to be adopted pursuant to notice-and-comment rulemaking procedures, because the APA exempts procedural rules from this requirement. Merrill claims that the definitional provisions of the APA define "rule" in a way that clearly presupposes some rules will have the force of law (Merrill, *The Accardi Principal;* 74 Geo. Wash. L. Rev. 569 (2005-2006), p.595). Publication in the CFR is probative of agency intent because the statue establishing the Code specifies that it shall contain only documents "having general applicability and legal effect" (see 44 U.S.C. § 1510 (2000); see also *Brock v. Cathedral Bluffs Shale Oil Co.*, 796 F.2d 533, 539 (D.C. Cir. 1986)). In *Sangamon Valley Television Corp. v. United States*, 269 F.2d 221, 225 (D.C. Cir. 1959) the Court held cutoff dates are binding while in *Air Transport Assoc. v. DOT*, 900 F.2d 369 (D.C. Cir. 1990) the Court held rules affecting the right to avail oneself of an administrative adjudication are substantive. The Plaintiff notes that the EPA has violated both substantive regulations (40 C.F.R. 146.62(a)(b)(c) & 16 U.S.C. § 1531(c)(1) rendering its action "not in accordance with law" and procedural regulations (40 C.F.R. § 124.19(a)(3) & 40 C.F.R. § 124.19(j)) creating action "without observance of procedure as required by law." Under modern reasoned decision making or "hard look" norms, departure from nonlegislative rules is subject to review and reversal under the APA and *Accardi* principal, no less than departure from legislative rules (see *Motor Vehicle Mfrs. Ass'n of the U.S. v. State*

Farm Mutual Auto Ins. Co., 463 U.S. 29, 41 (1983); see also *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410-14 (1971). Tinka Hyde, the EPA, and the EAB have violated both statutory regulations and procedural regulations in an arbitrary and capricious manner subjecting their actions to review and reversal by this Court under the *Accardi* doctrine and the APA.

Finally the Plaintiff wishes to address the discriminatory element in this case. The Plaintiff is a Pagan. A governmental decision which operates to discriminate against a religion, including a non-traditional religion, violates the Equal Protection and Non-Establishment Clauses (See *Larson v. Valente*, 456 U.S. 228 (1982)). Webster's online Dictionary observes that pagan comes from Latin meaning *"rural dweller"*, connoting a *"non-christian"* or *"follower of a polytheistic religion"* and notes that the word: *"has recently evolved to become a general term for the followers of magical, shamanistic, and polytheistic religions which hold a reverence for nature as a central characteristic of their belief system."* The Plaintiff claims that these are legitimate beliefs under the law and that the Plaintiff has held these views publicly and sincerely since 1978, publishing books, essays, poetry, & music on the subject. The *Civil Rights Act of 1964* states: *"To be a bona fide religious belief entitled to protection under either the First Amendment or Title VII, a belief must be sincerely held, and within the believer's own scheme of things religious." (USCA Const. Amend 1: Civil Rights Act 1964 701 et seq., 717 as amended 42 USCA 2000-16).* The EPA was fully aware of the Plaintiff's beliefs from statements made in his petition for review, e-mail communications with EPA staff, and Plaintiff's public comments on the West Bay Haystead #9 SWD. Yet the EPA acted in a discriminatory fashion causing substantial prejudice to the Plaintiff. The Plaintiff believes the role of the Courts (*U.S.*

Constitution, Article 2, Section 3, "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority...") requires them to defend our Constitution and the stated intent of our Founders as expressed in the *Treaty of Tripoli, Article 11* ("As the Government of the United States of America is not, in any sense, founded on the Christian religion;..."). The Plaintiff observes that the Courts seem to be establishing the Christian religion and giving Christian citizen's rights that other citizens do not possess in direct violation of this duty. Christians have the right to use imprecatory prayer to pray for the death of our President but when the Plaintiff sought to use a Pagan curse to pray for harm, he was denied that right by the Courts (see *Bormuth v. Dahlem,* Case No. 12-2070, 6th Cir. 2012 (cert denied)). Christian Minister's Terry Jones and Wayne Sapp were given the right to use Christian hate speech critical of Islam in the City of Dearborn, Michigan (see *Stand Up America Now v. City of Dearborn*, Case No. 12-11471, E.D. MICH 2012) but the Plaintiff was arrested for trespassing when attending a limited public forum in the City of Jackson, Michigan for using his Pagan poetry to criticize Christianity (see *Bormuth v. City of Jackson*, Case No. 12-11235, E.D. MICH). Meanwhile Thomas Monaghan, Catholic, was given an injunction to discriminate against his female employees by not providing contraception coverage under the Affordable Care Act on the basis of Pope Paul's encyclical *Humanae Vitae* (see *Monaghan v. Sebelius*, Case No. 12-15488, E.D. MICH 2012). What does Pope Paul's pronouncement have to do with the laws of the United States? Pope Boniface VIII issued the Papal Bull, *Unam Sanitam* and claimed, "It is necessary to salvation that every human creature be subject to the Roman Pontiff." Pope Nicholas V issued the encyclical *Dum Diversas* giving Christians the right to, "attack, conquer, and subjugate

Moors, Pagans and other enemies of Christ wherever they may be found." Are these Papal pronouncements also to be taken seriously? Is Christianity now an established religion? The Plaintiff notes that Pagan women believe they have a religious right to control over their moon cycle and to abortion. The ancient Law of the Goddess states: "She who gives birth, may terminate." Why do Christian employers get to impose their moral beliefs on employees and other United States citizens who do not share belief in the jesus myth and christian morality? This is contrary to our Constitution and the clear intent of our Founders. In one of his last letters to Thomas Jefferson, John Adams wrote in 1825, *"Do you think that a Protestant Popedom is annihilated in America? Do you recollect, or have you ever attended to the ecclesiastical Strifes in Maryland, Pennsylvania, New York, and every part of New England? What a mercy it is that these people cannot whip and crop and pillory and roast, as yet in the United States! If they could they would."* James Madison, the 'Father of the Constitution' was extremely clear about the Founders views on an established religion. Madison wrote: *"During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been Its fruits? More or less in all places, pride and indolence in the clergy; ignorance and servility in the laity; in both superstition, bigotry, and persecution. What influence in fact have ecclesiastical establishments had on civil society? In some places they have been seen to erect a spiritual tyranny on the ruins of the civil authority. In many instances they have been seen upholding the throne of political tyranny. In no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty have found an established clergy convenient auxiliaries."* Thomas Jefferson wrote, *"It matters not to me if my neighbor worships twenty gods or no god. It neither picks my purse nor breaks my leg."* And he

also said, *"I find nothing of value in orthodox Christianity."* And he noted, *"Coercion in religion makes one half of the world fools and the other half hypocrites."* And Jefferson explained the view of the Founders on the expected behavior of Federal officials in his letter to the Danbury Congregation of twenty six Baptist churches written while he was sitting President in 1802: *"Believing with you that religion is a matter which lies solely between man and God(s), that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions. I contemplate with sovereign reverence that act of the whole American people which declared that their (federal) legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between church and state."* Given these direct statements in the historical record, the Plaintiff wants to know why Christians are currently being given rights and privileges by the Courts that other citizens do not possess? Why did Christian petitioner Yerman get to file an untimely and deficient petition with the EPA that caused substantial prejudice to this Pagan Plaintiff? Since the EPA claims no knowledge of Petitioner Yerman's religious beliefs the Plaintiff is not seeking monetary damages or bringing action under the Equal Protection and Non-Establishment Clauses and Title 42 USC § 1983. But the Plaintiff believes it is important for this Court to enforce the clearly established Constitutional principal that no religion is to be given special treatment and no religion is to be discriminated against and thus requests that this Court issue declaratory relief to prevent the EPA from further or future acts of discrimination against the Plaintiff or other Pagan petitioners.

CONCLUSION

WHEREFORE, for the reasons stated herein, the Plaintiff respectfully requests that this Honorable Court review the Plaintiff's Complaint and provide the statutory and declaratory relief requested.

Respectfully submitted by,

Dated: June 19, 2013

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Appendix A

PETITION FOR REVIEW

I, Peter Bormuth, file this petition postmarked January 7, 2013, (sent overnight express mail to USEPA, Clerk of the Board, Environmental Appeals Board, Colorado Building, 1341 G Street NW, Suite 600, Washington DC 20005) for review of the Underground Injection Control Permit #MI-075-2D-0009 issued to West Bay Exploration Company for the West Bay #22 well in Jackson County Michigan for the purpose of disposal of oil and gas related brine.

According to 40 CFR § 124.19(a) *"Any person who filed comments on [the] draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision."* I claim the right of petition since I participated in the May 23, 2012 public hearing held at Columbia Central High School in Brooklyn Michigan. I also filed comments with Anna Miller on May 29, 2012 by e-mail. Additionally under Section 124.13 *"the person filing the petition for review does not necessarily have to be the one who raised the issue"* during the comment period. *See In re Broward County, Florida*, NPDES Appeal No. 92-11, at 11 (EAB, June 7, 1993).

The petitioner challenges the permit decision since it is based on clearly erroneous findings of fact. Under the rules governing this proceeding, an erroneous finding of fact demands and warrants review. *See* 40 CFR § 124.19; FED. REG. 33, 412 (1980).

The burden of demonstrating that review is warranted rests with the petitioner. *See In re Avery Lake Property Owners Ass'n*, UIC Appeal No. 92-1, at 3 (EAB, Sept. 15, 1992).

The burden of demonstrating that the injection is safe and will not harm drinking water or the health of person's rests with West Bay Exploration and now since the permit has been issued, that burden rests with the EPA. *See* 40 CFR § 144.12(a). *"No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this paragraph are met."*

The petitioner claims that the EPA clearly erred in finding that underground sources of drinking water would not be endangered by the injection of brine at this specific location. The geological formation at this site is clearly inappropriate for injection purposes since conversion of the Anhydrite cap to Gypsum will definitely take place upon exposure to the injected water. The combination of the pressure from the injected liquid, the pressure created by the contained swelling of the anhydrite cap, and the natural upward flow gradient in the Michigan

Basin would then force migration of the brine through the overlying rock layers into the USDW. The petitioner states that both laboratory and field data show that it is likely that the brine containing naturally occurring toxic chemicals will breach the cap through naturally occurring fault lines, pressure induced fractures, and areas where the converted anhydrite-to-gypsum dissolves in solution. The breaching of the anhydrite cap and the upward migration of the brine clearly would violate the Safe Drinking Water Act and endanger the health of persons.

The EPA lists these common components of oil field brines:

Benzene is a "conclusively" known human carcinogen and a notorious cause of bone marrow failure. Vast quantities of epidemiological, clinical, and laboratory data link benzene to aplastic anemia, acute leukemia, kidney cancer, and bone marrow abnormalities. Benzene exposure has been linked directly to neural birth defects, spina bifida, and anencephaly. **Ethylbenzene** exposure can irritate the eyes, nose, and throat. Very high levels can cause paralysis, trouble breathing, and death. High exposure may also damage the liver and chronic long term effects can last for months or years. **Toluene** exposure is associated with effects such as psychoorganic syndrome, visual evoked potential, toxic polyneuropathy, optic atrophy, brain lesions, and cerebellar, congnitive and pyramidal dysfunctions. Low to moderate levels can cause tiredness, confusion, weakness, drunken-type actions, memory loss, nausea, and loss of appetite, hearing, and color vision. **Xylene** is an irritant of the eyes and mucous membranes at concentrations below 200 ppm. Ingestion of xylene causes gastrointestinal distress, disturbances of liver and kidney function and may cause toxic hepatitis. Chronic exposure may cause central nervous system depression, anemia, mucosal hemorrhage, bone marrow hyperplasia, liver enlargement, and liver necrosis. **Naphthalene** is classified as "possibly carcinogenic to humans" and may damage or destroy red blood cells. Exposure may cause confusion, nausea, vomiting, diarrhea, cataracts, blood in the urine, and jaundice. Under California's Proposition 65, naphthalene is listed as "known to the State to cause cancer". **Polycyclic aromatic hydrocarbons** are known for their carcinogenic, mutagenic, and teratogenic properties. Prenatal exposure is associated with lower IQ and childhood asthma. The Center for Children's Environmental Health reports that exposure to PAH during pregnancy is related to adverse birth outcomes including low birth weight, premature delivery, and heart malformations.

Obviously if these naturally occurring toxic chemicals reach our USDW a serious hazard to human health would result. The petitioner claims this outcome is likely because the Salina A-2 Evaporite will be breached and the injected brine will migrate upwards.

Under Response #1, **Geologic Siting** the EPA claims that *"the injection zone is topped by the Salina A-2 Evaporite, an approximately 28-foot thick layer of anhydrite which will act as a confining layer to prevent flow out of the injection zone."*

The petitioner contends that this statement is an erroneous finding of fact which contradicts the known scientific data. Laboratory experiments show that anhydrite readily reverts to gypsum when brought into contact with water (See Hardie, *The American Mineralogist,* Vol. 52, January-February 1967 – THE GYPSUM-ANHYDRITE EQUILBRIUM AT ONE ATMOSPHERE PRESSURE; see also Zen, *Journal of Petrology,* Vol. 6, Part 1, 1965 – SOLUBILITY MEASUREMENTS IN THE SYSTEM CaSO4-NaCl-H2O at 35, 50, & 70 degrees C and ONE ATMOSPHERE PRESSURE – publication approved by the Director, U.S. Geological Survey)

In response #34 the EPA rejects this laboratory evidence as *"not relevant to gauging the behavior of the Salina A-2 Evaporite layer at approximently 2630 feet below the surface, where the pressure and temperature regime is much different and influences mineral reactions and rock behavior."* This is faulty logic.

First, temperature and pressure variables for the approximate depth of 2630 feet can easily be calculated and utilized in the same conversion formulas developed in the laboratories. There is no volcanic activity in lower Michigan and the temperature 100 feet below the surface is 55 degrees. There is 1 degree of temperature increase for each 100 feet you descend so i believe an estimate of the temperature at 2600 feet as 80 degrees is reasonable and usable in all calculations.

Second, while calculating the pressure is more difficult since it must take into account the 1,200 BWPD of water injected into the Anhydrite rock strata at a pressure of 682 psi, the pressure of the overbearing rock strata, and the potential pressure created by the swelling of the Salina A-2 Evaporite formation upon contact with the injected fluid, it is still possible to create a mathematical model. Anhydrite rock layers of similar size have been observed to swell and increase in volume up to 60% upon exposure to water and when such swelling is prevented due to confining conditions immense swelling pressures from 1.7 up to 4.7 MPa have been monitored and recorded. (*see* Steiner, *International Journal of Rock Mechanics and Mining Sciences & Geomechanics Abstracts*, 30, 4, (1993) – SWELLING ROCK IN TUNNELS; see also Sass & Burbaum, *ACTA Carsologica* 39/2 Postonjna (2010) – DAMAGE TO THE HISTORIC TOWN OF STAUFEN (GERMANY) CAUSED BY GEOTHERMAL FRILLINGS THROUGH ANHYDRITE-BEARING FORMATIONS). The model of Monnin allows the calculation of the solubility and saturation indices of both anhydrite and gypsum as a function of the solution composition, temperature (up to 200 degrees C) and pressure (up to 1kbar) in the Na-K-Ca-Mg-Sr-Ba-Cl-SO4-H2o system. (see Monnin, *Computers and Geosciences* 20, (1994) – DENSITY CALCULATION AND CONCENTRATION SCALE CONVERSIONS FOR NATURAL WATERS; also *Chemical Geology* 153 (1999) – A THERMODYNAMIC MODEL FOR THE SOLUBILITY OF BARITE AND CELESTINE IN ELECTROLYTE SOLUTIONS AND SEAWATER FROM 0 TO 200 DEGREES C AND TO 1KBAR; also *Geochimica et Cosmochica Acta* 70 (2006) – THE SATURATION OF THE WORLD'S OCEANS WITH

RESPECT TO S04 SOLID SOLUTIONS; also *Marine Chemistry* 65 (1999) – THE MARINE BARITE SATURATION STATE OF THE WORLD'S OCEANS; also *Geochimica et Cosmoshimica* 67 (2003) – A THERMODYNAMIC INVESTIGATION OF SULFATE AND CALCIUM SULFATE STABILITY IN SEDIMENTS; also *Marine Geology*, November (2011) – THE STABILITY OF GYPSUM IN MARINE SEDIMENTS USING THE ENTIRE ODP/IODP POREWATER COMPOSITION DATA BASE; see also Moller, *Geochimica et Cosmochimica Acta* 52, (1988) – THE PREDICTION OF MINERAL SOLUBILITIES IN NATURAL WATERS: A CHEMICAL EQUILIBRIUM MODEL).

The EPA in Response #34 stated that the evidence described in these papers *"is not relevant to the permit decision, because the geologic setting of the German town is very different from the geologic regime at the West Bay #22 site and geothermal heat exchange technology is different that Class II injection well technology."* The purpose of the petitioner quoting these studies is to show that anhydrite transforms to gypsum upon exposure to water in actual locations. The surrounding formations in a geologic setting will not alter this basic chemical reaction. It is an accepted fact of science that anhydrite will convert to gypsum upon exposure to water. Many researchers have reported evidence of this conversion at shallower depths with Murray reporting it at a depth of 3500 feet below the surface. (see Murray, *Journal of Sedimentary Petrology*, Vol. 34, No. 3 September 1964 – ORIGIN AND DIAGENESIS OF GYPSUM AND ANHYDRITE). The EPA is demanding an exactly similar situation before it accepts the scientific evidence that is available showing what happens when water is introduced into anhydrite formations. But the burden of proof rests on the EPA to show that this commonly accepted reaction studied both in laboratories and in situa locations will not occur at the West Bay site. What makes this anhydrite formation so unique? Give me specific reasons why this anhydrite will not hydrate and convert to gypsum. Vague generalities about temperature and pressure are not sufficient.

The EPA can argue that the geothermal and tunneling technologies described in the respective Steiner and Sass & Burbaum papers introduced fresh water and not brine into the anhydrite formations (which then reported swelling which is the first stage of the conversion of anhydrite to gypsum). But the scientific literature shows that certain salts activate rather than inhibit the hydration of anhydrite and thus promote the conversion of anhydrite to gypsum. In laboratory studies the best activators were found to be sodium, potassium sulfate and sulfuric acid. Anhydrite reacts very rapidly with concentrated Na2SO4 solutions to form Ca-Na double sulfates. These double-salts are unstable in dilute solutions and decompose to gypsum and/or glauberite. Need I mention that West Bay is planning on injecting 1,200 BWPD of water with a sodium content of 37,600 mg/l into the anhydrite strata? (see Conley and Bundy, *Geochimica et Cosmochimica Acta*, v. 15 (1958) – MECHANISM OF GYPSIFICATION; see also Hardie, *The American Mineralogist,* Vol. 52, January-February 1967 – THE GYPSUM-ANHYDRITE EQUILBRIUM AT ONE ATMOSPHERE PRESSURE); see also Singh, *Amer. Ceram. Soc.* Vol. 88

(January 2005) - EFFECT OF ACTIVATOR K2SO4 ON THE HYDRATION OF ANHYDRITE OF GYPSUM (CASO4.II).

In the laboratory Singh proposes the following mechanism for the conversion of anhydrite to gypsum: as soon as anhydrite comes into contact with water, a part of it is dissolved, making a solution saturated with respect to Ca^{2+} and SO_4^{2-} ions. These ions, which are hydrated in the solution, rapidly get absorbed at the surface of anhydrite, giving a higher surface area. The thickness of the absorbed layer increases over time. When the thickness of the absorbed layer increases beyond a certain limit, cracks are formed. Water molecules enter through the cracks and come in contact with a fresh surface of anhydrite. When there are sufficient numbers of Ca^{2+} and SO_4^{2-} ions and water molecules at the surface, nuclei of gypsum are formed (Singh, *Amer. Ceram. Soc.* Vol. 88 (January 2005) - EFFECT OF ACTIVATOR K2SO4 ON THE HYDRATION OF ANHYDRITE OF GYPSUM (CASO4.II). The natural cracking is significant since under pressure the Anhydrite can be expected to fracture along naturally occurring fault lines. In a private communication with the petitioner, Dr. Timothy Bechtel PhD. P.G. stated: "the biggest problem with anhydrite is the 60% volumetric expansion it suffers when hydrating to gypsum. I have been involved with an anhydrite case in Germany (Google Staufen im Breisgau) in which introduction of water into an anhydrite bed has produced swelling and cracking of the earth. Oilfield brine could produce similar results...swelling and cracking to produce conduits for fluid migration." (e-mail – Bechtel to wardance@live.com – 7-18-12). And Suthersan in his study of hydraulic and pneumatic fracturing notes that "The injection pressure required to create hydraulic fractures is remarkably modest (less than 100 psi)." (See Suthersan, Boca Raton: CRC Press LLC, (1999) – HYRDAULIC AND PNEUMATIC FRACTURING). Other researchers have found that gypsum fractures at pressures as low as 300 psi. West Bay will be injecting fluid at 682psi.

As a last resort the EPA argues in Response #34 that even if the anhydrite was breached ***"the fluid would migrate up into the next rock unit that would accept fluid."*** The petitioner agrees with this statement. After this point of agreement the EPA the launches this absurdity: *"The injection zone is separated from the lowest USDW by 2436 feet of geologic strata. Many of the formations between the injection zone and the USDW are layered with impermeable shale and other rock types which will also prevent movement of the injected fluid into the USDW."*

First the EPA ignores the fact that the defendants are planning on injecting 1,200 BWPD of water with a sodium content of 37,600 mg/l into the Anhydrite rock strata at a pressure of 682 psi for 30 years. It is my understanding that one atmosphere (101 kPa or 14.7 psi) can lift water by 34 feet so if West Bay's permit allows them to inject at 682 psi, they could conceivably lift the brine/water 1530 feet (45 atmosphere's times 34 feet) if the anhydrite cap is breached. This does not take into account the additional pressure dynamics resulting from the swelling and expansion of the anhydrite. As I mentioned previously, these forces can be immense and would

surely push the liquid even farther than the injection pressure alone once the anhydrite cap was breached.

Nor does the EPA take into account the fact that there is a known vertical component to the Michigan hydraulic gradient which will move this brine upwards naturally through pre-existing fractures in the overburden rock formations which the EPA cites. I have looked at maps of the entire overburden in the Michigan basin. Contrary to the EPA's glib statements, none of the overlying layers are impermeable. Transport of fluid upwards, even considered as simple particle velocity, will occur. It is clear from the basic scientific facts that the fluid could be transported vertically into the USDW and the burden of proof lies with the EPA to show that this will not occur.

There are several studies that document cross-formational pathways in the Michigan basin which have allowed deeper saline water to migrate into shallower freshwater aquifers. This upward migration of saline fluid into the overlying glacial sediments was interpreted to reflect isostatic rebound following the retreat of the glaciers, leading to fracture intensification and increased permeability of the near surface layers above 1000 feet. (see Weaver, Frape, Cherry, *Geol. Soc. Am. Bull.* 107 (1995) – RECENT CROSS-FORMATIONAL FLUID FLOW AND MIXING IN THE SHALLOW MICHIGAN BASIN; see also Long, Wilson, Takacs, Rezabek, *Geol. Soc. Am. Bull.* 100 (1988) – STABLE-ISOTOPE GEOCHEMISTRY OF SALINE NEAR-SURFACE GROUNDWATER: EAST-CENTRAL MICHIGAN BASIN).

The EPA must also document which formations it believes to be impermeable. It cannot just make off-the-cuff general statements. The strata of the intervening layers include limestone, sandstone, dolomite, cherty limestone, gypsum, and a band of narrow bell shale. (see Briggs, *Journal of Sedimentary Petrology*, Vol. 28 No. 1 (March 1958) EVAPORITE FACIES; see also Landes, Geological Survey Circular 133 (September 1951) DETROIT RIVER GROUP IN THE MICHIGAN BASIN) None of these layers are impermeable. The EPA must provide a specific stratigraphic column showing the layers, thickness, and depth and designate which layers it claims to be impermeable.

Finally the petitioner believes that recent scientific findings show that migration of injected fluid through strata is far more common and widespread than previously believed. The reason the EPA and the oil & gas industry has been able to claim that waste injection and fracking are safe is because there has never been sufficient investigation of their claims. A Duke University study (see Warner; Jackson; Darrah; Osborn; Down; Zhao; White; Vengosh. *Proceedings of the National Academy of Sciences*, (May 2012) GEOCHEMICAL EVIDENCE FOR POSSIBLE NATURAL MIGRATION OF MARCELLUS FORMATION BRINE TO SHALLOW AQUIFERS IN PENNSYLVANIA) demonstrates that deep formation brine may migrate to shallow aquifers. The EPA in Document # 600/R-00/000 (December 2011) INVESTIGATION OF GROUND WATER

CONTAMINATION NEAR PAVILLION WYOMING concluded that "...when considered together with other lines of evidence, the data indicates likely impact to ground water that can be explained by hydraulic fracturing." In another study independent researcher Tom Myers used computer modeling and concluded that "...fluid can migrate through thousands of feet of rock and endanger water supplies." (see Myers, *Ground Water*, (April 2012) POTENTIAL CONTAMINANT PATHWAYS FROM HYDRAULICALLY FRACTURED SHALE TO AQUIFERS).

While these studies dealt with hydraulic fracturing, the mechanism of pressure, cracking, and gas or fluid migration does not differ from this Waste Injection situation. The EPA cannot claim that the findings of these studies may not also be applied to the waste injection process.

Clearly the petitioner has proven that there is a sufficient likelihood and danger of the anhydrite cap being breached which would then allow vertical vector fluid migration and possible contamination of our underground sources of drinking water. Given these circumstances, the EPA is under legal obligation to revoke this permit upon review.

The petitioner also claims that the Indiana bat will be endangered by this activity within its known habitat. 40 CFR § 144.4(c) specifically states: *"The Endangered Species Act, 16 U.S.C. 1531 et seq. Section 7 of the Act and implementing regulations (50 CFR part 402) require the Regional Administrator to ensure, in* consultation *with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species."* The Indiana bat was listed as an Endangered Species by the USFWS on March 11, 1967.

The petitioner personally sighted and identified an Indiana bat roosting under the 124 bridge over the Raisin River slightly over a mile from the well site on Ladd Rd. (see Affidavit of Peter Bormuth). The site of the permitted well on Ladd Rd. is open space with wooded borders and nearby are several wetland areas including two small ponds. It is within ½ mile of Vineyard Lake and within 1.5 miles of the Raisin River. That is perfect bat feeding habitat.

In Response #8 the EPA erroneously states: *"Briefly, the Indiana bat uses river corridors, woodlands and caves and mines;... -The area around the well is farmland, which generally provides no habitat for these species."*

Allan Kurta and Susan Murray are two scientists who have done significant research on the Indiana Bat. Kurta found that in southern Michigan, the general landscape occupied by Indiana bats consisted of open fields and agricultural lands (55%), wetlands and lowland forest (19%), other forested habitats (17%), developed areas (6%), and perennial water sources such as ponds and streams (3%). Kurta's scientific findings clearly contradict the EPA's statement. If

55% of the general landscape used by Indiana bats is open fields and agricultural lands, then bats will be found on the well site property.

Kurta found roosts in southern Michigan in an elm-ash-maple forest, a woodland/marsh edge, a lowland hardwood forest, small wetlands, a shrub wetland/cornfield edge, and a small woodlot. Moreover the EPA notes that Indiana bats use river corridors and the Raisin River corridor is less than a ½ mile away from the proposed well site. Kurta found that when switching between day roosts, Indiana bats may travel as far as 3.6 miles (5.8 km) though the average move was 0.6 miles (1.0 km). This means the Ladd Rd. property is well within the range of the Indiana bat and may possibly be used for day roosts as well as for feeding.

Murray and Kurta made some qualitative assessments of Indiana bat foraging habitat in Michigan: the majority of bats were found foraging in forested wetlands and other woodlands, while 1 bat foraged in an area around a small lake and another in an area with 50% woodland and 50% open fields. Another Indiana bat foraged over a river, while 10 others foraged in areas of farmland greater than 0.6 mile (1 km) from the same river. The farmland adjacent to the well site is therefore a foraging site of significance and cannot be dismissed by the EPA.

Distances seen between roosts and other habitat features may be influenced by the age, sex, and reproductive condition of the Indiana bats. In Illinois, most roosts used by adult females and juveniles were about 2,300 feet (700 m) or more from a paved highway, while adult males roosted less than 790 feet (240 m) from the road. In Michigan, roosts were only slightly closer to paved roads: 2,000 feet (600 m) on average for all roosts located. In general, roosts were located 1,600 feet (500 m) to 2,600 feet (800 m) from unpaved roads in Illinois and Michigan. Roost trees used during autumn in Kentucky were very close to unpaved roads at an average of 160 feet (50 m). This data indicates that the well site could conceivably be used both for foraging and adult male roosts.

Mass plays a significant role in mammalian toxicity. The Indiana bat, this endangered and protected species is already fighting a losing battle against the fungus *Geomyces destructans* that causes white-nose syndrome. Some scientists think herbicide/pesticide toxicity build-up in the cells of bats makes them more susceptible to the disease. Now the EPA is willing to expose these poor relatives of ours to toxic chemicals at this well site. Spills associated with these injection wells, pipelines, and trucks are frequent. In North Dakota 1,073 spills were reported in 2011. And this number does not include the many unreported spills. Why doesn't the EPA just say that the only thing they really care about is the political power of oil/gas/chemical companies and that there is no political will to protect the Indiana bat from extinction? The Christian concept of dominion and the Christian belief in forgiveness are the two great errors of western thought. There is no forgiveness for polluting this Earth. Humans are not separate from the web of life. Already 3 out of five Americans get some form of cancer in their lifetimes. We

will also face extinction. It will just take a little longer because we are bigger and more adaptable than bats. The petitioner requests that the EPA comply with 40 CFR § 144.4(c) and protect the Indiana bat.

Sources cited:

Kurta; Kath; Smith; Foster; Orick; Ross. *The American Midland Naturalist.* 130(2) [53799] (1993) A MATERNITY ROOST OF THE ENDANGERED INDIANA BAT (MYOTIS SODALIS) IN AN UNSHADED, HOLLOW, SYCAMORE TREE (PLATANUS OCCIDENTALIS).

Kurta; King; Teramino; Stribley; Williams. *The American Midland Naturalist.* 129(1) [53800] (1993) SUMMER ROOSTS OF THE ENDANGERED INDIANA BAT (MYOTIS SODALIS) ON THE NORTHERN EDGE OF ITS RANGE

Kurta; Murray. *Bat Research News.* 42(2) [53801] (2001) PHILOPATRY AND MIGRATION OF BANDED INDIANA BATS.

Kurta; Murray; Miller. In: Kurta; Kennedy, eds. The Indiana bat: biology and management of an endangered species. Austin, TX: *Bat Conservation International* [53802] (2002) ROOST SELECTION AND MOVEMENTS ACROSS THE SUMMER LANDSCAPE

Kurta; Murray; Miller. *Bat Research News.* 42(2) Abstract. [54765] (2001) THE INDIANA BAT: JOURNEYS IN SPACE AND TIME.

Kurta; Whitaker. *The American Midland Naturalist.* 140(2) [53811] (1998) DIET OF THE ENDANGERED INDIANA BAT (MYOTIS SODALIS) ON THE NORTHERN EDGE OF ITS RANGE.

Kurta; Williams; Mies. In: Barclay, R. M. R.; Brigham, R. M., eds. Bats and forests. Victoria, BC: Ministry of Forests Research Program [53812] (1996) ECOLOGICAL, BEHAVIOURAL, AND THERMAL OBSERVATIONS OF A PERIPHERAL POPULATION OF INDIANA BATS (MYOTIS SODALIS)

Murray; Kurta. *Journal of Zoology.* 262(2) [53825] (2004) NOCTURNAL ACTIVITY OF THE ENDANGERED INDIANA BAT (MYOTIS SODALIS).

Murray. *Bat Research News.* 42(2) [Abstract]. [53903] (2001) VARIATIONS IN THE DIET OF THE INDIANA BAT.

Murray; Kurta. In: Kurta, Allen; Kennedy, Jim, eds. The Indiana bat: biology and management of an endangered species. Austin, TX: *Bat Conservation International* [53828] (2002) SPATIAL AND TEMPORAL VARIATION IN DIET.

CONCLUSION

The petitioner has demonstrated that review is warranted. The EPA reached a conclusion that the geologic siting of this well was safe and that the Virginia bat would not be found on this property. Both of these conclusions have been shown by the petitioner to be erroneous findings of fact.

Respectfully submitted,

Peter Bormuth
142 West Pearl St.
Jackson, Michigan 49201
(517) 787-8097
wardance@live.com

The petitioner regrets that he cannot include copies of the scientific studies he cites. He does not own a computer and does all his research and work at public libraries where printing costs are exorbitant. Presumably the EPA can afford to print the sources referenced.

Appendix B

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 8 2013

REPLY TO THE ATTENTION OF:

WU-16J

Re: Withdrawal of Permit by Regional Administrator
West Bay Exploration Company, Jackson County, Michigan
Permit Number: MI-075-2D-0009
UIC Appeal Nos. 13-01, 13-02

Dear Sir or Madam:

The U.S. Environmental Protection Agency is withdrawing the final underground injection permit that it issued for the West Bay #22 well, Permit No. MI-075-2D-0009. EPA is withdrawing this permit in its entirety. EPA will prepare a new draft permit for this well, pursuant to 40 C.F.R. § 124.6. EPA is taking this action under 40 C.F.R. § 124.19(j), which allows EPA to withdraw a permit and prepare a new draft permit before a certain stage of the permit appeal proceedings regarding a well's permit.

You are receiving this letter because you 1) are on EPA's mass mailing list for draft permits in the State of Michigan; 2) provided comments regarding the draft permit for this well; 3) petitioned the Environmental Appeals Board to review the permit for this well; 4) are the Environmental Appeals Board; or 5) are the permit applicant, West Bay Exploration Company. This letter and decision do not require any action on your part regarding the new draft permit for this well. When EPA issues the new draft permit for this well, EPA will provide you and the general public with notice of this event and the opportunity to provide public comment regarding that draft permit.

The Safe Drinking Water Act authorizes EPA to regulate the underground injection of fluids through wells, to protect underground sources of drinking water. EPA classifies the proposed West Bay #22 well as a Class II non-hazardous brine disposal well. Class II wells are typically used to inject fluids that result from oil and gas production into the ground. West Bay Exploration Company proposed to use this well to dispose of brine deep beneath the earth's surface.

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For more information and for answers to Frequently Asked Questions about this permit, please check EPA's website at www.epa.gov/region5/water/uic/uicpub.htm. You may also contact Anna Miller, permit writer, at (312) 886-7060.

Sincerely,

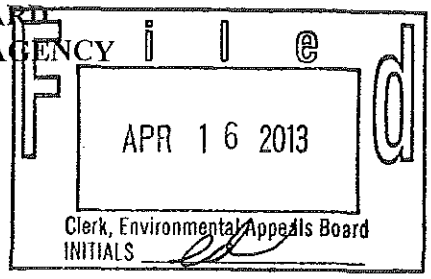
Tinka G. Hyde, Director
Water Division

cc: Environmental Appeals Board
Tim Baker, West Bay Exploration Company
Mass mailing list
Public commenter list (MI-075-2D-0009)

miller.anna@Epamail.epa.gov

Appendix C

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



In re:	)	
West Bay Exploration Co.	)	UIC Appeal Nos. 13-01 & 13-02
UIC Permit No. MI-075-2D-0009	)	

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.

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[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 BOARD[4]

By: _____

Catherine R. McCabe
Environmental Appeals Judge

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[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
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: APR 16 2013

Annette Duncan
Secretary

Appendix D

West Bay Haystead #9 SWD – Comments at Public Hearing

My name is Peter Bormuth and I am a Pagan Druid.

I note that the EPA lists these common components of oil field brines: **Benzene** is a "conclusively" known human carcinogen and a notorious cause of bone marrow failure. Vast quantities of epidemiological, clinical, and laboratory data link benzene to aplastic anemia, acute leukemia, kidney cancer, and bone marrow abnormalities. Benzene exposure has been linked directly to neural birth defects and spina bifida. **Ethylbenzene** exposure can irritate the eyes, nose, and throat. Very high levels can cause paralysis, trouble breathing, and death. High exposure may also damage the liver and chronic long term effects can last for months or years. **Toluene** exposure is associated with effects such as psychoorganic syndrome, visual evoked potential, toxic polyneuropathy, optic atrophy, brain lesions, and cerebellar, congnitive and pyramidal dysfunctions. Low to moderate levels can cause tiredness, confusion, weakness, drunken-type actions, memory loss, nausea, and loss of appetite, hearing, and color vision. **Xylene** is an irritant of the eyes and mucous membranes at concentrations below 200 ppm. Ingestion of xylene causes gastrointestinal distress, disturbances of liver and kidney function and may cause toxic hepatitis. Chronic exposure may cause central nervous system depression, anemia, mucosal hemorrhage, bone marrow hyperplasia, liver enlargement, and liver necrosis. **Naphthalene** is classified as "possibly carcinogenic to humans" and may damage or destroy red blood cells. Exposure may cause confusion, nausea, vomiting, diarrhea, cataracts, blood in the urine, and jaundice. Under California's Proposition 65, naphthalene is listed as "known to the State to cause cancer". **Polycyclic aromatic hydrocarbons** are known for their carcinogenic,

mutagenic, and teratogenic properties. Prenatal exposure is associated with lower IQ and childhood asthma. The Center for Children's Environmental Health reports that exposure to PAH during pregnancy is related to adverse birth outcomes including low birth weight, premature delivery, and heart malformations. Obviously if these naturally occurring toxic chemicals reach our USDW a serious hazard to human health would result.

40 C.F.R. § 146.62(c)(1)(2) specifically states that the injection zone must have "sufficient permeability, porosity, thickness and areal extent to prevent migration of fluids into USDWs" and be free of faults and fractures that might allow fluid movement. West Bay proposes to use Salina Gray Niagaran 40' feet thick at a depth of 2830' to 2870' feet as the upper confining zone that will prevent migration of injected fluid. West Bay's lithologic description of this clay stone is: argillaceous carbonate, dense, hard, gray, excellent barrier to flow. West Bay proposes White Niagaran at a depth of 2870' feet to 3100' feet as the injection zone and their lithologic description of this rock is: dolomite, hard, sucrosic, vuggular, porous and permeable, brown and gray. The reality of course differs. The commenter observes that West Bay's Attachment for the proposed West Bay #22 well they suggested that the Salina A1/ White Niagaran extended from 2,662' feet to 3,032' feet. A convenient and possibly fraudulent new strata has been inserted in the lithology: Salina Gray Niagaran.

Ronald C. Elowski of the Subsurface & Petroleum Geology Unit, Geological Survey Division, Michigan Department of Natural Resources in Report of Investigation #25 states that: " In the subsurface the formal outcrop terminology is not used. Instead, a series of informal and poorly defined terms has evolved based on drillers' descriptions and, to a minor extent, geophysical

log responses. Such informal terms as 'brown Niagaran', 'gray Niagaran', and 'white Niagaran' are based mainly on color, while the informal term 'Clinton' may or may not be related to the Clinton shale of New York State." This Commenter notes that Gray Niagaran is every bit as porous and permeable as White and Brown.

It may be helpful to define Argillaceous rocks and their properties: Argillaceous refers to a group of sedimentary rocks, commonly clays, shales, mudstones, siltstones, and marls. Two grades of particle size are recognized, silt grade, in which the particles range in size from 1/16 to 1/256 mm, and clay grade, with particles of less than 1/256 mm. In addition to the clay minerals, argillaceous rocks may contain colloidal material, anhydrite, very finely divided quartz, carbonate dust, finely divided carbon and iron pyrite. Argillaceous rocks are almost always laid down in water and their mineralogy is to some extent controlled by their environment of deposition. Sorptive interactions with liquid water can be destructive of shales, siltstones, and argillaceous carbonate rocks. Argillaceous carbonates in particular present a durability problem. Unlike sandstones, carbonates are subject to extreme variations in porosity loss and creation in the shallow, "eogenetic" environment as a result of the high chemical reactivity of carbonate minerals. Anhydrite cements in argillaceous carbonates range from patchy to nodular in distribution, and may include intervals of primary depositional calcium sulphate (probably formed as gypsum and subsequently converted to anhydrite). Cement morphologies range from fine-felty to coarse prismatic crystals, with each type having varying pore-filling to replacive relationship to the host carbonate. Timing of anhydrite cementation may range from early to late. Coarse anhydrite commonly appears to be among the latest

diagenetic products and is associated in many samples with the latest carbonate cement type, saddle dolomite. The commenter adds that his reading shows that solutions of salt are also destructive of argillaceous carbonates. West Bay will be injecting 1200 bbl's of liquid brine a day with a sodium content of 37,600 mg/l into the strata. Immediately above the proposed injection zone is a bed of Salina A 2 Evaporite 28 feet thick. Given the close proximity of this pure anhydrite to the injection zone, it can be assumed that the Salina Gray Niagaran contains anhydrite in either patchy or nodular distribution with possible primary intervals. Laboratory experiments show that anhydrite readily reverts to gypsum when brought into contact with water. Jaworski cites claims that this can happen within a few years or even within a year. She notes that the process takes place in the presence of water at temperatures below 40°C. The temperature 3000 feet deep in the Michigan basin is approximately 85 degrees Fahrenheit so it is a safe assumption that this reaction will occur. Many researchers have reported evidence of this conversion at shallower depths with Murray reporting it at a depth of 3500 feet below the surface. Other researchers note that the solubility of Anhydrite increases sharply with an increase in pressure. Each 0.01Pa increase in pressure results in a 3 to 5 times increase in solubility. The average pressure gradient in the Michigan basin is approximately 0.43 lb/ft, meaning the pressure in the absence of any additional compression is roughly 1290 psi (87.8 atm). Anhydrite rock layers similar to the this 28 foot thick cap have been observed to swell and increase in volume up to 60% upon exposure to water and when such swelling is prevented due to confining conditions immense swelling pressures from 1.7 to 4.7 MPa have been monitored and recorded. Swelling pressures as high as 10,000 psi (70 MPa) were reported by Brune (1965) for anhydrite deposits in Texas. This pressure will rapidly cause the conversion and breaching of

the anhydrite cap. Sodium also accelerates the conversion of anhydrite. Anhydrite reacts very rapidly with brines to form double sulfates. These double-salts are unstable in dilute solutions and decompose to gypsum and this process can occur very quickly even at depths. Other studies show that even massive anhydrite with small fissures will be dissolved to produce hollowed out caverns and runaway seepage flow rates within 13 years. Some researchers predict vertical uplift of portions of the horizontal bed due to conversion pressures. Given the normal chemical reactions that can be expected to occur both the Salina Gray Niagaran and the Salina A 2 Evaporite will be breached within 20 years. This poses a definitive threat to our Underground Sources of Drinking Water and potentially to the Raisin River and Norvell Lake which are located within a 1/2 mile of the injection site.

This commenter also claims that the Indiana bat will be endangered by this activity within its known habitat. 40 CFR SECTION 144.4(c) specifically states: *"The Endangered Species Act, 16 U.S.C. 1531 et seq. Section 7 of the Act and implementing regulations (50 CFR part 402) require the Regional Administrator to ensure, in* consultation *with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species."* The Indiana bat was listed as an Endangered Species by the USFWS on March 11, 1967. While the injection site itself is located on a plowed agricultural field, it is within a ¼ mile of the Raisin River. The field borders a small creek and two marshes, one of which has a significant wooded component making it a prime candidate for Indiana bat maternity or day roosts. The United States Forest Service notes that the Indiana Bat is dependent on well-developed riparian woods or woodlots located approximately 1 to 3 miles away from small to medium rivers and stream corridors. Both woodlot and river exist directly

adjacent to the proposed site. Allan Kurta and Susan Murray are two scientists who have done significant research on the Indiana Bat. Kurta found that in southern Michigan, the general landscape occupied by Indiana bats consisted of open fields and agricultural lands (55%), wetlands and lowland forest (19%), other forested habitats (17%), developed areas (6%), and perennial water sources such as ponds and streams (3%). Kurta found roosts in southern Michigan in an elm-ash-maple forest, a woodland/marsh edge, a lowland hardwood forest, small wetlands, a shrub wetland/cornfield edge, and a small woodlot. Murray and Kurta made some qualitative assessments of Indiana bat foraging habitat in Michigan: the majority of bats were found foraging in forested wetlands and other woodlands, while 1 bat foraged in an area around a small lake and another in an area with 50% woodland and 50% open fields. Another Indiana bat foraged over a river, while 10 others foraged in areas greater than 0.6 mile (1 km) from the same river. The woodland, wooded marsh, small creek, and Raisin River corridor adjacent to the well site are therefore foraging sites of significance and cannot be dismissed by the EPA. Spills associated with these injection wells are frequent and insects will be exposed to and absorb the toxic contaminants contained in these brines which the bats will then absorb while feeding.

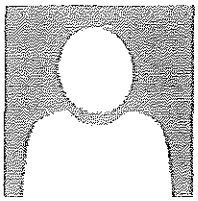
The EPA and the MDEQ are making fraudulent geological assessments and they are ignoring the danger this poses to Michigan's most valuable natural resource: Water. Water is life. Jesus is not life. Jesus is just an evil myth and his followers are ignorant and deluded human beings. Oil is not life. Oil is just a form of stored energy and we can find alternative energy sources and technologies. But Water.....Water is sacred. Water is the bloodstream of the Earth Mother. Water is life.

RE: West Bay Haystead #9

To see messages related to this one, group messages by conversation.

peter bormuth
5/02/13

To: Elkins, Timothy



peter bormuth
Edit profile details

From:**peter bormuth** (earthprayer@hotmail.com)
Sent: Thu 5/02/13 10:08 AM
To: Elkins, Timothy (elkins.timothy@epa.gov)

Tim

Thank you for your consideration.

----------Comment---------

i would like the EPA to consider the recent experience of the Ohio Department of Natural Resources with regard to Class II oil waste injection wells in the Youngstown area. Since March 2011 the Youngstown area experienced 12 low magnitude seismic events along a previously unknown fault line. These events ranged from a 2.1 to 4.0 magnitude events on the Richter scale and were recorded by the Ohio Seismic Network. In their Preliminary Report on the Northstar Class II Injection Well in March 2012 (see

Appendix F) the Ohio DNR concluded that "all of the events were clustered less than a mile around the well."

The report indicates that to induce an earthquake a number of circumstances must be met:

- A fault must already exist within the crystalline basement rock
- That fault must be in a near-failure state
- An injection well must be drilled deep enough and near enough to the fault and have a path of communication to the fault; and
- The injection well must inject a sufficient quantity of fluids at a high enough pressure and for an adequate period of time to cause failure, or movement, along that fault (or system of faults).

The Ohio DNR report, after concluding that the Northstar Class II Injection Well had caused the earthquakes in the Youngstown area called for a number of reforms to the permitting process including the requirement of "a complete suite of geophysical logs (including, at a minimum, gamma ray, compensated density-neutron, and resistivity logs) to be run on newly drilled Class II disposal wells."

I request that these logs be required in Michigan as well "to ensure the health, safety, and general welfare" of the people to protect them from induced seismicity. The

possibility of course exists that there might be a previously unknown fault line here in Jackson County.

----------end of comment----------

I look forward to receiving the drilling logs. Would you know if there are actual core samples that have been preserved? or is this material discarded?

Peter Bormuth

142 West Pearl St.

jackson, MI 49201

(517) 787-8097

From: elkins.timothy@epa.gov
To: earthprayer@hotmail.com
Subject: RE: West Bay Haystead #9
Date: Wed, 1 May 2013 22:42:58 +0000

Mr. Bormuth,

Thank you for your comments and participation at the Haystead 9 public hearing as well. I will make sure your comments are included in the administrative record, and a response to your comments will be included in the EPA's responsiveness summary.

I will be happy to send you the drilling logs which you requested below. Because I need to follow formal FOIA procedures to track your request and my response, I will forward your request to one of our Record Management Analysts who will create a tracking number. I understand this material may be time sensitive to our comment period, so I will help deliver these documents to you as quickly as possible.

Based on the number of pages and time required to fill your request, I do not anticipate any charge for this request.

Again, thank you for your participation and interest in the proposed Haystead 9 SWD injection well.

Tim Elkins

U.S. EPA Region 5

Underground Injection Control

77 W. Jackson Blvd., WU-16J

Chicago, IL 60604

312-886-0263

From: peter bormuth [mailto:earthprayer@hotmail.com]
Sent: Tuesday, April 30, 2013 10:21 PM
To: Elkins, Timothy
Subject: West Bay Haystead #9

Mr. Elkins

Thank you for your presence tonight at the public hearing.

----------Comment----------

During your preliminary introduction you stated that the ultimate confining zone protecting the USDW (not the permitted confining zone) for this well (West Bay Haystead #9) is the Coldwater shale strata and you stated that it was 1000 feet thick.

I would like it entered into the record that the Stratigraphic Succession Map of the Lower Peninsula published by the MDEQ and the Michigan Basin Geological Society in 2000 shows the Coldwater shale to be only 250 feet thick and also shows the inclusion of a significant volume of Berea Sandstone in the shale. As you know Berea Sandstone is porous and permeable.

--------End of Comment----------

You stated that you had specific information on the well site. I assume that must come from the drilling logs on the existing wells on the property. I would like to receive copies of those drilling logs under the Freedom of Information Act if you would so kindly provide me with that information.

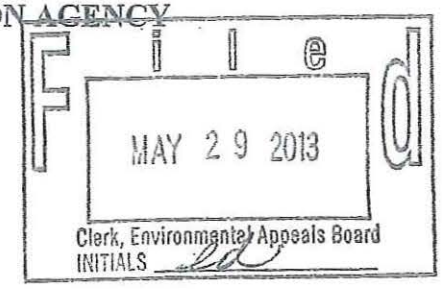
Once again, thank you and your staff for your efforts in holding the public hearing. I have further comments that I am composing and will submit them by e-mail before the filing deadline.

Sincerely,

Peter Bormuth
142 West Pearl St.
Jackson, MI 49201
(517) 787-8097

Appendix E

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



In re:	)	
West Bay Exploration Co.	)	UIC Appeal Nos. 13-01 & 13-02
UIC Permit No. MI-075-2D-0009	)	

ORDER DENYING RECONSIDERATION

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 to West Bay Exploration Company ("West Bay"), Permit No. MI-075-2D-0009. *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 U.S. Environmental Protection Agency Region 5 ("Region") had notified the Board that it had withdrawn this UIC permit in its entirety pursuant to 40 C.F.R. § 124.19(j). Petitioners have moved for the Board to reconsider its decision.

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) (citing cases); *see* 40 C.F.R. § 124.19(m). Petitioners argue that the Region committed a procedural error under 40 C.F.R. § 124.19(j) in withdrawing the permit without first seeking the Board's permission and thus the Board should reconsider its decision to dismiss this

case as moot. The Board disagrees.

Under the regulatory review scheme for permits, a Region may withdraw a permit unilaterally prior to a fixed date in the course of a permit appeal, 40 C.F.R. § 124.19(j), and by motion subsequent to that date. *In re Desert Rock Energy Co., LLC*, PSD Appeal Nos. 08-03 through 08–06, slip op. at 19-20 (EAB Sept. 24, 2009) 14 E.A.D. ___ at __. Section 124.19(j) designates the period for unilateral withdrawal as "any time prior to 30 days after the Regional Administrator files its response to the petition for review * * *." The purpose for this limitation on unilateral withdrawal of a permit that is being appealed is so that the Board may efficiently manage its docket. As EPA recently explained, limiting the period for unilateral withdrawal to "any time" prior to 30 days after the Region's response "will continue to ensure that unilateral withdrawal of a permit will occur before the Board has devoted significant resources to the substantive consideration of an appeal." 78 Fed. Reg. 5281, 5282 (Jan. 25, 2013). The preamble also confirmed that nothing in the new regulation was intended to bar the Region from requesting a voluntary remand of the permit from the Board at any time. *Id.*

In this permit appeal, Mr. Bormuth and Ms. Yerman filed their petitions on different dates: Mr. Bormuth on January 8, 2013, and Ms. Yerman on February 13, 2013. Both petitions were timely appeals of the Region's December 6, 2012 permit decision because the 30-day period for filing appeals runs from the "service of notice of the Regional Administrator's action" not the date of issuance, 40 C.F.R. 124.19(a) (2011) (revised March 26, 2013),[1] and Ms. Yerman

[1] This method for establishing the deadline for filing an appeal is unchanged in the revised rule. *See* 40 C.F.R. § 124.19(a)(3).

was not notified by the Region of its permit decision until January 9, 2013.[2] The Region's responses were due on February 25, 2013, to Mr. Bormuth's petition, and on April 9, 2013, to Ms. Yerman's petition. The Region filed a timely response to Mr. Bormuth's petition, on February 25, 2013.. On April 8, 2013 - one day prior to the day its response to Ms. Yerman's petition was due - the Region unilaterally withdrew the West Bay permit in its entirety.

According to Petitioners, the Region's withdrawal came either too late (Mr. Bormuth) or too early (Ms. Yerman). Mr. Bormuth stresses that the Region withdrew the permit on April 8, 2013, which is 42 days after the Region's response to his petition – well outside the 30-day deadline for unilateral withdrawal allowed by section 124.19(j). On the other hand, Ms. Yerman argues that the Region was not authorized to withdraw the permit in conjunction with her petition because the withdrawal came before the Region had responded to her petition and thus was premature. But neither Petitioner offers any reason why the Region's purported procedural error resulted in the Board having made a "demonstrable error" in concluding this case was moot. Specifically, neither Petitioner provided a single plausible reason why, if the Region had filed a motion for voluntary remand, the Board should have denied it.[3] Hence, Petitioners have not met

---

[2] Ms. Yerman's petition was delayed further because the Region instructed Ms. Yerman to file her petition with the Board at the Board's former address. Mr. Bormuth disputes the Region's conclusion that the Region did not provide notice to Ms. Yerman until January 9, 2013 and also claims that Ms. Yerman's petition was substantively flawed for failure to comply with certain pleading requirements in 40 C.F.R.§ 124.19(a). Even if correct, these contentions do not affect when the Region's response was due to Ms. Yerman's petition, and thus they are irrelevant to the question of whether the Region complied with section 124.19(j).

[3] Although Mr. Bormuth and Ms. Yerman have expressed an interest in obtaining a hearing on the merits of the withdrawn permit, the Board, following the traditional practice of United States federal courts, does not issue advisory opinions. *See Desert Rock Energy*, slip op. at 32, 14 E.A.D. at __ (refusing to issue an advisory opinion regarding changes the Region might make to a permit that had been voluntarily remanded); *In re Cavenham Forest Indus.*, Inc.

the high standard of showing demonstrable error.

Even if the Board were to assume, without deciding, that the Region should have filed a motion seeking a voluntary remand of the permit in the circumstances of this case, the Board finds no prejudice here from the failure to do so.[4] In reviewing the Region's notice of withdrawal and deciding to dismiss this case as moot, the Board essentially treated the notice as a motion for voluntary remand, and after determining there was no docket management reason for retaining the case, summarily disposed of it. The Board notes that, in this case, the Region's actions to withdraw the permit came early in the proceeding, and there was no decision on the merits of the petitions at the time of the permit withdrawal. In fact, the Region had not even responded to the second petition, and so the Board was in no position to make any decision regarding review of the petitions. Thus, the Board's resources were not impacted by the Region's withdrawal of the permit. The Board has granted requests by the Regions for remand of permits even in cases much more advanced than the present litigation. In one case, the Board approved a request for voluntary remand after the Region had responded to all petitions for review, the Board had granted review, and briefing (other than surreply briefs) had been completed on the grant of review. *Desert Rock Energy*, slip op. at 4, 14 E.A.D. at __.

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5 E.A.D. 722, 731 n. 15 (EAB 1995) (stating, in permit appeal dismissed as moot, that the Board would not provide an advisory opinion "even if the request were properly before us"); *In re Simpson Paper Co.*, 4 E.A.D. 766, 771 n.10 (EAB 1993) (stating, in permit appeal dismissed as moot, that issuing an advisory opinion on a "hypothetical permit * * * is inconsistent with EPA's permit review authority").

[4] To avoid any confusion in the future, the Board recommends that the Regions should not unilaterally withdraw a permit after the expiration of the 29-day period following their response to the earliest-filed petition. If a Region decides to withdraw the permit after the expiration of that 29-day period but prior to the expiration of the 29-day period applying to later-filed petitions, the Region should first request a voluntary remand of the permit by motion.

Moreover, this result is consistent with the liberality with which the Board treats motions for remand of permits, *id.* at 4, and the preference for permit decisions, especially decisions involving technical matters, to be decided in the first instance by the Region. *Id.* at 16-17. It would make little sense for the Board to insist on proceeding when the Region, on its own initiative, has decided the permit needs to be reexamined. *See id.* at 17-18 ("The federal courts have recognized the wisdom of granting remand motions because it allows an agency to correct its mistakes, thereby promoting good government and judicial efficiency.").

Finally, as noted above, neither Petitioner is prejudiced by the Region's withdrawal of the permit. The permit withdrawal terminates West Bay's ability to construct the desired UIC well - the result sought by Mr. Bormuth's and Ms. Yerman's challenge to the West Bay permit. Should the Region decide to issue a revised draft permit to West Bay, Petitioners' opportunities to contest that revised draft permit would in no way be restricted by the earlier permit withdrawal or the Board's dismissal of their petitions for review. As EPA regulations make clear, following withdrawal of a permit by the Region, any new draft permit "must proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part." 40 C.F.R. § 124.19(j); *see* 40 C.F.R. §§ 124.10 - .12. If the Region does reissue a new draft permit to West Bay, and if the Petitioners are dissatisfied with the final permit that results from the public participation process, Petitioners once again may petition the Board for review. 40 C.F.R. § 124.19(a).

Accordingly, the Petitioners' assertion that the Region followed an incorrect procedure in withdrawing the permit does not show that the Board demonstrably erred in concluding this case is moot and dismissing it. Should the Region decide to issue a new draft permit to West Bay,

Petitioners retain the ability to contest before the Region and the Board any objections they have to a revised permit. The Board can grant no effective relief to the Petitioners at this time. The motions for reconsideration are denied.

So ordered.

Dated: May 29, 2013

ENVIRONMENTAL APPEALS BOARD[5]

By: _____
Catherine R. McCabe
Environmental Appeals Judge

[5] 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 Reconsideration 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: MAY 29 2013

Annette Duncan
Secretary

Appendix F

6-1-12

EPA (USEPA) (WU-16J)
ANNA MILLER
77. W. JACKSON BLVD
CHICAGO, IL. 60604-3590

RECEIVED
JUN 6 4 2012
UIC BRANCH
EPA, REGION 5

DEAR MS. MILLER, ET AL:
PLEASE DENY THE WEST BAY #22 CLASS II INJECTION WELL DRAFT/(FINAL) PERMIT(S) FOR THESE REASONS:

(1.) TRADE SECRET - LIQUIDS MAY BE BEING EPA WITHHELD FROM CITIZENS DURING THIS REVIEW-PROCESS, WHICH VIOLATES THE OPEN-MEETINGS ACT, & ALL OTHER CITIZEN RIGHT-TO-KNOW ACTS, RULES, FEDERAL/STATE LAWS, ETC.
IT SEEMS SOME AND FRACKING LIQUIDS USED IN SOME OIL/GAS PRODUCTION WELLS COULD BE INJECTED INTO THIS CLASS II INJECTION WELL; SOME/ALL OF THOSE FRACKING LIQUIDS USED COULD BE "ANONYMOUS-TRADE-SECRET" LIQUIDS, AGAIN VIOLATING CITIZENS RIGHT-TO-KNOW, AS ABOVE; A REASON TO DENY THIS PERMIT. AND, IF YOU EPA, SAY THAT WOULD COMPLICATE THE CONTINUED OPERATION OF ALL OTHER CLASS II INJECTION WELLS, I SAY, IF THOSE EPA WELL REVIEWS NEVER BROUGHT FORTH CITIZENS SEEKING RELIEF FOR THIS "TRADE-SECRET" - INJECTION-LIQUIDS REASON. THE CLOCK STARTS TICKING NOW. DENY THIS PERMIT!

(2.) THE MDEQ, THE EPA'S PERMIT PARTNER, CANNOT UPHOLD & EXERCISE THE MDEQ'S COMPLETE OVERSIGHT REQUIREMENTS FOR THIS DRAFT/FINAL PERMIT(S); ANOTHER REASON TO DENY THIS PERMIT,

→

ENCL. EDS CO. PROFILE OF... A.J. RARICK

DURING THE ROMULUS, MICHIGAN MDEQ REVIEW PROCESS FOR THE ENVIRONMENTAL DISPOSAL SYSTEM'S (EDS') COMMERCIAL CLASS I HAZARDOUS WASTE INJECTION WELL(S) PERMITS (IN 2 LOCATIONS) A.J. RARICK, A MDNR SENIOR GEOLOGIST (MDEQ, FORMERLY MDNR) GAVE AN INTEROFFICE COMMUNICATION TO R. THOMAS SEGALL, MDNR SUPERVISOR OF MINERAL WELLS — (GSD), STATING:

"PERSONAL OPINION: I THINK THAT THIS PERMIT FOR A COMMERCIAL DISPOSAL WELL WILL JUST BE THE FIRST OF MANY. COMMERCIAL DISPOSAL IS A LUCRATIVE BUSINESS AND WILL BECOME MORE SO AS THE EPA PUSH ON CLASS V WELLS FORCES INDUSTRY -- LARGE AND SMALL -- TO FIND A FINAL RESTING PLACE FOR MUCH OF ITS UNDESIREABLE WASTE. (FOIA) REQUESTS WILL CERTAINLY GREATLY INCREASE AS THE PUBLIC BECOMES AWARE OF THIS TREND, AND IF WE CANNOT DEMONSTRATE THAT WE HAVE PERFORMED AT LEAST THE MINIMUM SECURITY CHECKS (SURVEILLANCE OF CASING, SEALING AND PRESSURE TESTING), WE (GSD AND MDNR) WILL SUFFER SEVERE CRITICISM. THAT WE HAVE NEITHER THE FUNDS NOR THE PERSONNEL TO CARRY OUT THESE RESPONSIBILITIES ...", SEE ENCLOSED IO MEMO, DATED APRIL 29, 1991 TO: R. THOMAS SEGALL, FROM: A.J. RARICK. I DIDN'T COPY THE LAST PART OF THE LAST SENTENCE QUOTED ABOVE, BECAUSE "ENVIRONMENTALIST RHETORIC" IS NOT WHAT MATTERS HERE! THE FACT THAT THE MDNR, NOW THE MDEQ HAS NEITHER THE FUNDS NOR THE

IO MEMO ENCL.

EMPHASIS ADDED

MANPOWER FOR MINIMUM SECURITY CHECKS IS ANOTHER REASON TO DENY THIS PERMIT. AND, IF YOU, EPA, SAY THIS WEST BAY WELL IS A CLASS II WELL NOT CLASS I HAZARDOUS INJECTION WELL. I SAY, IF THE MDNR - NOW MDEQ, HAS NEITHER FUNDS/PERSONNEL FOR MINIMUM SECURITY CHECKS OF "THE MOST UNDESIRABLE (TOXIC) WASTE" INJECTION WELLS, IT STANDS TO REASON A LESS "UNDESIRABLE" WASTE" WELL WOULD HAVE EVEN FEWER SECURITY CHECKS BY THE MDEQ!

AND, IF YOU, EPA SAY, WELL THAT I.O. MEMO WAS GIVEN IN 1991, A LONG TIME AGO; I SAY THERE HAVE BEEN NO INCREASED RESOURCES PUMPED INTO THE DEQ SINCE. AND WITH THE (R) CONTROLLED GOVERNORSHIP, HOUSE & SENATE AS REPUBLICANS CONTROL ALL NOW, WITH (R) TAX CUT & REGULATION CUT MANTRA THERE MAY BE EVEN DEEPER CUTS INTO DEQ/MDEQ BUDGET. (DON'T FORGET, THE MI. HOUSE & MI. SENATE MAKE THE RULES THE MDEQ LIVES BY!) ALL REASONS TO DENY THIS PERMIT.

AGAIN, IF YOU, EPA, SAY THAT WOULD COMPLICATE THE CONTINUED OPERATION OF ALL OTHER CLASS II (& POSSIBLY CLASS I) INJECTION WELLS; I SAY, IF THOSE EPA WELL REVIEWS NEVER BROUGHT FORTH CITIZENS SEEKING RELIEF FOR THIS "(LACK OF) FUNDS" & "PERSONNEL TO CARRY OUT (MINIMUM SECURITY CHECKS)" REASONS - THE CLOCK STARTS TICKING NOW. DENY THIS PERMIT! (FYI, BOTH A.J. RARICK & R. THOMAS SEGALL BECAME PAID CONSULTANTS TO EDS. AFTER LEAVING MDNR - RARICK 1993, SEGALL 1997)

ENCL. 6-17-97 LETTER FROM EDS. RE: R. THOMAS SEGALL →

(3) AND, FYI, ON/ABOUT 10-22-07 THE EPA REVOKED THE EDS PERMITS BECAUSE OF LEAKS, AND ODORS. SEE THE DETROIT NEWS 10-23-07 ARTICLE FRONT PAGE, BELOW THE FOLD, JUMP TO 5B, ENCLOSED. EPA-THE EDS PERMITS SHOULD NEVER HAVE BEEN ARROVED.

ENCL. D.N. ARTICLE 10-23-07

(4) EARTHQUAKES HAPPENED IN NEARBY OHIO, ABOUT A YEAR — YEAR-AND-A-HALF AGO; A PROFESSOR FROM AN OHIO COLLEGE, I BELIEVE, STATED OHIO INJECTION WELLS WERE THE CAUSE OF THE EARTHQUAKES! (I'VE LOOKED FOR 2 HOURS TODAY FOR THAT ARTICLE, HAVEN'T FOUND IT YET; ITS ARTICLE WAS IN "JACKSON CITIZEN PATRIOT" "THE BLADE," "THE DAILY TELEGRAM," OR SOME OTHER SMALLER LOCAL PAPER WE GET HERE IN BROOKLYN, MI.) MICHIGAN HAS EXPERIENCED EARTHQUAKES IN THE PAST; AND THE EPA MUST HAVE KNOWLEDGE ABOUT FAIRLY RECENT OHIO EARTHQUAKES, AND THE NAME OF THE PROFESSOR/STUDY THAT STATED OHIO INJECTION WELLS WERE THE CAUSE; ANOTHER REASON TO DENY THIS PERMIT! (STILL LOOKING FOR ARTICLE)

(5) WHY ANYONE WOULD PICK AN AREA WITH MANY LAKES, SPRINGS, ARTESIAN WELLS, ETC. TO LOCATE AN INJECTION WELL THERE, SHOWS THE STUPIDITY (A WORD IN THE DICTIONARY) OF THAT PERSON/CO.— WEST BAY EXPLORATION! FOR STUPIDITY'S SAKE, TO PREVENT THE STUPID USE OF MICHIGAN'S NATURAL RESOURCES — DENY THIS PERMIT!

(5)

I FORGOT UNDER (2) TO SAY THAT R. THOMAS SEGALL SENT A LETTER TO DENNIS R. OAKES, FORMER ROMULUS COMMUNITY DEVELOPMENT DIRECTOR, DATED 10-26-1990 IN WHICH SEGALL STATED "... WASTE DISPOSAL WELLS (CLASS I) ARE NOT THE MOST DESIRABLE OF OPERATIONS BUT THEY ARE NECESSARY AND CAN BE OPERATED SAFELY WITH PROPER AND TIMELY INSPECTION AND OTHER REGULATORY OVERSIGHT...") OF COURSE THAT IS BEFORE 4-29-1991 IN WHICH SEGALL TOLD KALICK-IN HOUSE, ONLY -- NOT FOR PUBLIC CONSUMPTION - THE THE MDNR (NOW MDEQ) "HAS NEITHER THE FUNDS NOR THE PERSONNEL..." FOR THAT "REGULATORY OVERSIGHT!" MORE SECRETS! TRADE SECRETS! MDNR/MDEQ SECRETS! - THESE DENY CITIZENS RIGHT-TO-KNOW - DENY THIS PERMIT! (CAN'T FIND 10-26-1990 LETTER FROM SEGALL TO OAKES - WILL KEEP LOOKING FOR IT, BUT COULD BE FOILED BY EPA, IB.)

EPA ✓ PLEASE SEND ME A RESPONSIVENESS SUMMARY, EXECUTIVE SUMMARY ETC. OF ALL COMMENTS. RE: WEST BAY EXPLORATIONS CLASS I INJECTION WELL PERMIT(S).

NOTE: WEST BAYS WELL WILL BE ACCEPTING SOME TOXIC LIQUIDS/CHEMICALS FROM OIL DRILLING AN UNDESIRABLE OPERATION HERE AMONGST ALL THIS H_2O!

SINCERELY SANDRA K. YERMAN [redacted]

[redacted] Ex.6 4 ENCLOSURES Ex.6

Sandra K. Yerman THANK YOU!

RECEIVED
JUN 04 2012
UIC BRANCH
EPA, REGION 5

A.J. Rarick

Senior Geologist

Environmental Disposal Systems, Inc.

A.J. Rarick, senior geologist, serves as a consultant to the management of Environmental Disposal Systems, Inc. (EDS).

As a consulting senior geologist, Mr. Rarick will oversee well-site geology during drilling and construction operations and advise management of EDS on Michigan Department of Natural Resources (MDNR) permitting and operations rules and regulations.

He is a Certified Petroleum Geologist and former head of both the Mineral Wells Unit and Well Design and Injection Evaluation for the Geological Survey Division of the MDNR for a period of twenty years.

* * *

[redacted]

[redacted]

ENVIRONMENTAL
DISPOSAL
SYSTEMS, INC.

P.O. Box 74456 • Romulus, Michigan 48174 • Telephone (313) 955-2100 • Facsimile (313) 955-6917

Sandra Yerman
[redacted] Ex. 6

June 17, 1997

Subject: Response to your June 16, 1997 facsimile (attached)

Dear Ms. Yerman:

In your June 16, 1997 letter you requested the date Mr. Thomas Segall's services were contracted for by our firm, although I do not have a precise date, it did occur during the first week in June of 1997.

We strongly disagree receiving assistance from former agency employees, such as Mr. Segall who was the former State geologist and Supervisor of Mineral Wells, or hiring them represents a conflict of interest or any disregard for residents as you claimed in you letter.

On the contrary, we believe obtaining assistance from former regulators will help our firm better protect the environment and residents. Furthermore, the residents of the area should be comforted knowing former regulators are assisting our firm. Comfort should come from realizing former regulators are taught to be cautious with respect to the environment and they are typically very strict and demanding on private firms after they leave the agencies. If you do not believe that, you are mistaken. In knowing numerous agency people who have gone to work in the waste industry, including myself as a former federal agency member, each of the individuals I have worked with are the most honorable bunch I have ever known. In terms of their concern for doing things right, I often think they are still working for the agencies.

Legally, or in actuality, no conflict of interest is created by our firm receiving assistance from former agency employees. The waste industry seeks such assistance to strengthen it's ability to understand laws and requirements of the agencies. If obtaining such assistance was a conflict of interest, that would be the last thing we would do and we would not do it. This practice is not unique to the waste industry, it is equally practiced by law firms, the banking industry, engineering firms, environmental groups and municipalities, and for the same reasons.

Sincerely,

Austin Marshall

Austin Marshall
Vice President

enclosure * no enclosures were present in fax in this envelope.
MARKUPS BY S.K.Y.

...ed investigation," said Wayne Police Sgt. ...ras. "We are trying to determine if it was a malfunction or judgment error."

Please see Death, Page 5B

Through art, stories, students learn to embrace diversity, respect others

Pupils make art during the program "Every Picture Tells a Story: Teaching Tolerance Through Children's Picture Books."

By Shawn D. Lewis
The Detroit News

WEST BLOOMFIELD — Lauren Harper carefully drew large circles, squares and other shapes in bold oranges, yellows and blues.

"Shapes can be any size or color, and people can, too," said Lauren, 6, of Pontiac. "And you can add that everybody is different."

The first-grader from Green Elementary School in West Bloomfield was on a field trip to learn about tolerance in a program called "Every Picture Tells a Story: Teaching Tolerance Through Children's Picture Books" at the Jewish Community Center for children ages 5-12.

The program is being taught through Shalom Street, an educational center within the JCC that's designed as "a place to see, touch, taste and explore Jewish tradition, values, culture and arts." The ex-

Please see Tolerance, Page 5B

Teaching tolerance

[illegible]

"TERMINATE" EDS '07 D.N. TUES. 10-23-07

Feds terminate permits for toxic waste operation in Romulus

■ EPA cites repeat violations as local officials cheer close of the controversial facility.

By Christine Ferretti
The Detroit News

ROMULUS — Local officials declared victory Monday in a 15-year battle over a controversial toxic waste operation when federal environmental regulators announced they are revoking its permits.

Citing more than 20 violations, the U.S. Environmental Protection Agency announced Monday it is terminating permits for the 15-acre operation near Detroit Metropolitan Airport that drilled liquid waste nearly a mile into the ground. Opposed since the early 1990s, the facility was running less than a year before state regulators shut it down in October 2006 because of a leak and odor issues.

"This is terrific news for Wayne County and the people of Romulus and Taylor. We got everything we wanted from the EPA with this decision," said Kurt Heise, Wayne County's environment director.

"EDS repeatedly violated their permit and really disregarded all of the proper operating procedures."

The decision, which the EPA signaled in April, means any company wishing to resume operations at the idle facility must secure federal permits anew. That's a cumbersome process, and a blow to the Detroit Police and Fire Pension Board.

The system was a heavy backer of the failed facility operated by Bir-

Please see Romulus, Page 5B

Rites remain; only the flocks have changed

When Albert Kahn designed the 1922 building on Woodward, he couldn't have known how aptly he'd chosen its biblical inscription about a "house of prayer for all people."

After 50 years as Temple Beth El, a temple of Reform Judaism, it became the Pentecostal Lighthouse Cathedral. The ark containing the Torah was removed; two menorahs were replaced with crosses on either side of the pulpit.

LAURA BERMAN

But Jewish stars embedded into the ornate ceilings and frieze-work remained. The domed ceiling, the commissioned panels depicting biblical and American scenes stayed. A new cornerstone was placed on top of the original.

And the Jewish congregation took some artifacts — plaques commemorating the dead, the Torahs and the ark that held them, and a few other items — to its current building in Bloomfield Township.

William Lebovich, an architectural historian lecturing on the subject tonight, says the Detroit churches that were once synagogues tell a story of adaptation rather than obliteration, of respect for

Please see Berman, Page 5B