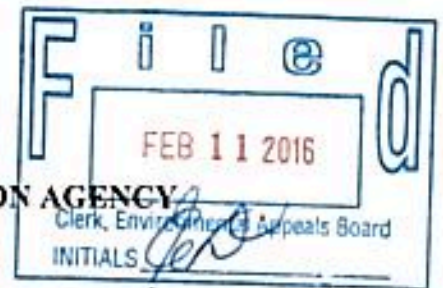


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)

West Bay Exploration Company, Traverse)
City, Michigan, West Bay #22 SWD)

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

) UIC Appeal No. 15-03

**ORDER DIRECTING EPA REGION 5 TO CLARIFY PUBLIC AVAILABILITY OF
CERTAIN DOCUMENTS AND MODIFYING BRIEFING SCHEDULE**

In December 2015, Mr. Peter Bormuth filed a Petition with the Environmental Appeals Board challenging a permit granted by the U.S. Environmental Protection Agency, Region 5, for the construction and operation of a well for underground injection and disposal of non-commercial brine. Region 5 granted the permit under the Safe Drinking Water Act, 42 U.S.C. §§ 300h – 300h-8, and the regulations at 40 C.F.R. Parts 124, 144-148. The Board has completed a preliminary review of Mr. Bormuth's Petition and Region 5's Response to that Petition, as well as many of the attachments to both the Petition and the Response. Based on that review, the Board orders, as described below, the following: (1) Region 5 to clarify the dates upon which certain documents it relies on became public; and (2) a modification of the briefing schedule.

Clarification on Public Availability of Documents

In its Response to the Petition, Region 5 cites to an "October 2014 memorandum regarding geologic siting" and a memorandum on "seismic issues." Response to Petition for Review at 17, 33. Region 5 attached these memoranda to the Response. The memoranda are also included in the index to the Administrative Record. Administrative Record, § I.f. (Document Identification Nos. WB-169, WB-170). The Board, however, cannot determine when

these memoranda were included in the Administrative Record or when they were otherwise made available to the public. The Administrative Record includes the dates of the memoranda but does not explicitly specify the dates upon which they were included in a publicly available version of the Administrative Record. Region 5 is hereby ordered to clarify when, and by what means, these memoranda were made available to the public. If the date upon which either of these memoranda was made public post-dates the granting of the permit, Region 5 must explain to the Board why it is entitled to rely on the memorandum in this proceeding. Region 5's response to this Order is due on Monday, February 29, 2016. Petitioner Mr. Bormuth may file a reply to Region 5's response. If Petitioner chooses to file a reply, it must be filed within 10 days after service of Region 5's response to this Order.

Modification of Briefing Schedule

At the public hearing on the draft permit, Mr. Bormuth presented Region 5 with 23 documents, many of which were scientific articles. His testimony at the public hearing explained his reasoning as to how these documents demonstrated that the draft permit would endanger drinking water supplies. In the Response to Comments document, Region 5 discussed the concerns raised by Mr. Bormuth and explained why it had concluded that the scientific articles he submitted did not support his concerns. Mr. Bormuth continues to rely on these scientific articles in his Petition, and Region 5 uses approximately 15 pages in its Response to the Petition to reassert that these articles do not support Mr. Bormuth's claims. To ensure that Mr. Bormuth has an opportunity to respond to Region 5's arguments regarding the articles and that the Board is fully informed, the Board is extending the due date for Mr. Bormuth's reply to Region 5's

Response to the Petition to Wednesday, March 2, 2016,¹ and enlarging the word count by 7,000 words. See 40 C.F.R. § 124.19(c) - (d).

So ordered.

Dated: _____

2/11/16

ENVIRONMENTAL APPEALS BOARD

By: _____

Mary Kay Lynch
Mary Kay Lynch
Environmental Appeals Judge

¹ Under 40 C.F.R. § 124.19(i), “[a] document is filed when it is received by the Clerk of the Environmental Appeals Board at the address specified for the appropriate method of delivery as provided in paragraph (i)(2) of this section.” Accordingly, if Mr. Bormuth chooses to file a reply to Region 5’s Response to the Petition, that reply must be *received* by the Clerk of the Board on or before Wednesday, March 2, 2016.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER TO REGION TO CLARIFY PUBLIC AVAILABILITY OF CERTAIN DOCUMENTS AND MODIFICATION OF THE BRIEFING SCHEDULE** in the matter of West Bay Exploration Company, UIC Appeal No. 15-03 were sent to the following persons in the manner indicated:

By U.S. First Class Mail:

Peter Bormuth
142 West Pearl Street
Jackson, MI 49201

By Pouch Mail:

Kris P. Vezner
Office of Regional Counsel
USEPA REGION 5
77 West Jackson Boulevard
Mail Code: C-14J
Chicago, IL 60604-3507

Dated: FEB 11 2016


Annette Duncan
Secretary