

BEFORE THE ENVIRONMENTAL APPEALS BOARD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY **RECEIVED**
U.S. EPA, HEADQUARTERS
WASHINGTON, D.C.

MAY 21 2018

In the Matter of:)
West Bay Exploration Co. of)
Traverse City, Michigan)
Haystead #9 SWD)
Permit No. MI-075-2D-0010)
Jackson County, Michigan)

ENVIRONMENTAL APPEALS BOARD

Permit Appeal No. UIC 18-01

PETITIONER PETER BORMUTH'S CORRECTED MOTION FOR CLARIFICATION UNDER 40 C.F.R. § 124.19(m)

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40 C.F.R. Part 124.19

40 C.F.R. § 124.19(m)

40 C.F.R § 146.3

40 C.F.R. § 146.22

INTRODUCTION

The Michigan DEQ is funded by a 1% tax on all oil and gas production in the State, giving it a vested interest in permitting oil & gas wells. This naturally leads to a need for underground injection wells to dispose of the unwanted brines, waste products and fracking fluids. Michigan Governor Snyder appointed Heidi Grether, a Christian, as head of the Michigan DEQ. Grether worked for BP America from 1993 to 2012, where she was a lobbyist and manager heavily involved in the company's response and cover-up of the 2010 Deepwater Horizon accident in the Gulf of Mexico. Before that, she worked for Amoco Corp. as director of government affairs. The selection of an oil lobbyist to head the Department responsible for environmental quality and safety in our State means that both the financing of the agency and the direction of the agency are under the control of oil/energy companies.

As then President Nixon said in 1970 when establishing the EPA: "Our national government today is not structured to make a coordinated attack on the pollutants which debase the air we breathe, the water we drink, and the land that grows our food. Indeed, the present governmental structure for dealing with environmental pollution often defies effective and concerted action." Sounds like the executive intent was to control and curb pollutants. But Region 5 EPA administrator Cathy Stepp, a Christian, claimed on appointment that the EPA "is a permitting agency, not an enforcement agency." And her boss, Scott Pruitt, another Christian, seems determined to destroy our environment. Mr. Pruitt announced that he would bar wide swaths of peer-reviewed scientific research from being considered in EPA decisions. To

the cheers of timber industry officials, Mr Pruitt directed the EPA to treat the burning of wood and other "biomass" as a carbon-neutral energy source. Pruitt named new leadership and members to three key EPA advisory boards — the Science Advisory Board, Clean Air Scientific Advisory Committee, and the Board of Scientific Counselors. As part of his directive, Pruitt bared appointees who currently are in receipt of EPA grants or who are in a position to benefit such grants, but allowed appointees accepting research funding from corporate interests regulated by EPA. As Sen. Tom Udall of New Mexico, the ranking Democrat on the appropriations subcommittee that approves EPA's funding said: "Pruitt is purging expert scientists from his science boards — and replacing them with mouthpieces for big polluters."

REQUEST FOR CLARIFICATION

- 1. The Petitioner seeks clarification on the time frame within which the EPA Region 5 must respond to his request to terminate an Underground Injection Control permit for a waste disposal well in Jackson County, Michigan under 40 C.F.R. § 124.5(a).**

On April 26, 2018 this BOARD dismissed an informal appeal filed by the Petitioner. (See Petitioner Peter Bormuth's Informal Letter of Appeal under 40 C.F.R. § 124.5(b), (Jan. 16, 2018) ("Informal Appeal"). This BOARD determined that the Petitioner's action was filed prematurely and that the 14 month period (now 17 months) of inaction by Region 5 since the Petitioner filed his request to terminate the Haystead #9 SWD did not constitute an effective denial of the Petitioner's Request to Terminate under 40 C.F.R. § 124.5(a).

Unfortunately this BOARD failed specify a time frame in which the Region must respond to the Petitioner's Request to Terminate. The Petitioner specifically asked this BOARD to designate a time frame in which Region 5 must respond, if the BOARD chose to dismiss this informal appeal

on the basis that it was filed prematurely and therefore could not be considered by the Board under section 124.5(b).

The BOARD acknowledged familiarity with the specifics of the Petitioner's challenge to the Haystead #9 well, based on his successful challenge to the West Bay #22 well, also in Jackson County, with nearly identical geological features and a mere four miles from the Haystead #9 well site. (See generally *In re W. Bay Explor. Co.* ("W. Bay II"), 17 E.A.D. 204 (EAB 2016). The BOARD acknowledged the fact that the Haystead #9 well has the same injection zone and relies on the same upper confining layers as the West Bay #22 well. This Board granted review of the West Bay #22 SWD permit, and remanded it to the Region because (1) there were "unexplained discrepancies" in the record that suggested that "[f]ive of the geologic formations that the Region cited as confining any injected brine may be absent from the wellsite," and (2) the Region had not adequately responded to a series of "complex, scientific arguments" in Mr. Bormuth's comments on the draft permit. *Id.* at 224-25." Both Permits allow injection "only into a formation which is separated from any underground source of drinking water by a confining zone, as defined in 40 C.F.R. § 146.3, that is free of known open faults or fractures within the Area of Review as required by 40 C.F.R. § 146.22." The Petitioner's "complex scientific arguments" challenged both the injection zone (of anhydrite, anhydritic shales, and salt layers) and the upper confining layers at these well sites. The petitioner believes that the record shows EPA Region 5 misrepresented relevant facts at the time the permit was issued and the permitted activity endangers human health and/or the environment and can only be regulated to acceptable levels by permit termination.

The worst case scenario is that the Haystead #9 well endangers our underground sources of drinking water and that continued injection only makes this danger more acute. At the very minimum, "unexplained discrepancies" and "a failure to answer complex scientific arguments" backed by peer reviewed studies and evidence from the EPA's own files are acknowledged to exist in this case (EPA Permit #MI-163-3G-A002, for underground injection which was issued June 14, 2006 for the Sunoco Inkster Facility in Wayne County clearly shows that salt and anhydrite layers of the Salina Group will not act as a confining layer). Given these facts, the Petitioner respectfully requests clarification on how long the Region may have to respond to the Petitioner's Request for Termination. It has been 17 months now since the EPA Region 5 received the Petitioner's request. Do they get 24 months? 36 months? More? At what point does their failure to respond constitute an effective denial of the Petitioner's Request to Terminate under 40 C.F.R. § 124.5(a)?

CONCLUSION

The Petitioner respectfully requests clarification from the BOARD on how long the Region may have to respond to the Petitioner's Request for Termination.

Respectfully submitted,



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Dated: May 15, 2018

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2018 I did send a copy of my Corrected Motion for Clarification under 40 C.F.R. § 124.19(m) to John Steketee, EPA Region 5, Environmental Protection Agency, 77 West Jackson Boulevard (C-14J), Chicago, IL 60604 and to William Horn, Mika, Meyers, Becket & Jones, 900 Monroe Ave. NW, Grand Rapids, MI 49503 by regular mail.

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