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

In re:	)	
	)	Appeal Nos. UIC 13-01, UIC 13-02
West Bay Exploration Company,	)	
Traverse City, Michigan,	)	
West Bay 22 SWD,	)	
Permit No. MI-075-2D-0009	)	
	)	

RESPONSE TO MOTIONS FOR RECONSIDERATION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutory and regulatory materials

Case law

Treatises

TABLE OF ATTACHMENTS

STATEMENT OF COMPLIANCE WITH THE WORD LIMITATION

This response brief complies with the length limitation at 40 C.F.R. § 124.19(d)(3). See 40 C.F.R. § 124.19(d)(1)(iv).

I. INTRODUCTION

The United States Environmental Protection Agency, Region 5 ("Region 5") here responds to and opposes multiple motions by Petitioners Peter Bormuth (dated April 19, 23 and 24, 2013) and Sandra Yerman (dated April 19, 22 and 24, 2013). These motions request that the Environmental Appeals Board ("Board") reconsider its order dismissing as moot their Petitions in Appeal Nos. UIC 13-01 and 13-02. The Petitions in Appeal Nos. UIC 13-01 and 13-02 sought reversal of Region 5's decision to issue a final Class II Underground Injection Control ("UIC") permit, Permit No. MI-075-2D-0009, to West Bay Exploration Company of Traverse City, Michigan ("West Bay") for the well designated West Bay 22 SWD ("West Bay 22"), pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq. ("SDWA"). Region 5 withdrew the final permit for West Bay 22 pursuant to UIC regulations, rendering the Petitions moot, as the Board properly found in its April 16, 2013 Order Dismissing Petitions for Review as Moot.

Petitioners have filed a total of six motions with the Board, generally seeking to have the Board disallow Region 5's withdrawal of the West Bay 22 permit and to instead rule on the merits of the Petitioners' respective Petitions. Petitioner Bormuth additionally seeks to have the Board dismiss Petitioner Yerman's Petition. Petitioners' six motions all violate Board procedural requirements and are improperly before the Board, because Petitioners failed to make appropriate contacts with the other parties in this matter before filing any of their motions. Additionally, the arguments in Petitioners' six motions all fail on their merits, for the reasons described below. For these reasons, Region 5 recommends that the Board deny all six motions.

II. FACTUAL AND PROCEDURAL BACKGROUND

Region 5 set forth the factual background for the West Bay 22 permit in its February 25, 2013 response to Petitioner Bormuth's Petition. Region 5 will here provide only additional information relevant to this Response to Motions for Reconsideration.

On December 6, 2012, EPA issued a Response to Comments that addressed all public comments regarding draft Permit No. MI-075-2D-0009. EPA also issued the final Permit No. MI-075-2D-0009 on December 6, 2012, with an effective date of January 9, 2013.

When the December 6, 2012 Response to Comments was to be mailed, 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 research, Region 5 employees were able to determine addresses for all of the commenters except Petitioner Yerman. Region 5 mailed the December 6, 2012 Response to Comments to the commenters for whom it had addresses, which was every commenter except Petitioner Yerman.

The December 6, 2012 Response to Comments stated that the Board must receive any petitions for review by January 9, 2013. This date was based on the 30 day period provided in the regulations, plus an additional three days allowed for service of notice by mail. 40 C.F.R. §§ 124.19(a), 124.20(d). On January 8, 2013, Petitioner Borman filed his Petition with the Board.

On January 7, 2013, Petitioner Yerman contacted Region 5 and pointed out that Region 5 had not issued her a Response to Comments. On January 9, 2013, Region 5 issued Petitioner Yerman a Response to Comments that 1) was substantively identical to the December 6, 2012 Response to Comments; and 2) removed the appeal deadline of January 9, 2013, extending it by

an additional 30 days. App. A. The January 9, 2013 Response to Comments also pointed Petitioner Yerman to the regulations regarding timing of appeals.

On February 13, 2013, Petitioner Yerman filed her Petition with the Board. Pursuant to a February 20, 2013 letter from the Board to Region 5, Region 5's deadline to respond to Petitioner Yerman's Petition was April 9, 2013. On April 8, 2013, Region 5 unilaterally withdrew the final permit for West Bay 22 in its entirety pursuant to 40 C.F.R. § 124.19(j). The notice of permit withdrawal that Region 5 filed with the Board on April 8, 2013 and mailed to the permittee, the Petitioners and all other concerned parties is the sole EPA document effecting the permit withdrawal. On April 16, 2013, the Board issued an order dismissing Petitioners Bormuth's and Yerman's Petitions as moot based on EPA's withdrawal of the underlying permit.

On April 19, 23 and 24, 2013, Petitioner Bormuth filed motions that generally requested that the Board reconsider its order dismissing his Petition as moot. In advance of filing his April 19 and 23, 2013 motions, Petitioner Bormuth contacted Region 5 pursuant to 40 C.F.R. § 124.19(f)(2) to determine whether Region 5 would concur in the subject matter of those motions. Region 5 stated that it would object. App. B. On April 19, 22 and 24, 2013, Petitioner Yerman filed motions that generally requested that the Board reconsider its order dismissing her Petition as moot. Petitioner Yerman did not contact Region 5 in advance of filing her motions pursuant to 40 C.F.R. § 124.19(f)(2) to determine whether Region 5 would concur in those motions.

III. ARGUMENT

As explained in greater detail below, Petitioners' six motions all violate Board procedural requirements and are improperly before the Board, because Petitioners failed to make

appropriate contacts with the other parties in this matter before filing any of their motions. Additionally, the arguments in Petitioners' six motions all fail on their merits, largely due to misconstruing the facts of this matter or misinterpreting the Board's procedures, including 40 C.F.R. § 124.19(j). Petitioners' misinterpretations of 40 C.F.R. § 124.19(j) contradict the regulation's plain language and intent.

A. Petitioner Bormuth's arguments that Region 5's permit withdrawal was untimely or that the Board erred in dismissing his Petition based on such withdrawal are not properly before the Board and in any event fail on their merits

As a preliminary matter, Petitioner Bormuth's April 19, 23 and 24, 2013 motions violate 40 C.F.R. § 124.19(f)(2) and Region 5 requests that the Board deny them all on that ground. 40 C.F.R. § 124.19(f)(2) requires that in advance of filing a motion, parties must attempt to ascertain whether the other parties concur or object to the motion and must indicate in the motion the attempt made and the response obtained. As far as the record shows, Petitioner Bormuth 1) failed to contact either West Bay Exploration Company or Petitioner Yerman (whose Petition he seeks to have dismissed) pursuant to 40 C.F.R. § 124.19(f)(2) before filing any of his April 19, 23 and 24, 2013 motions; and 2) failed to state in those motions any response obtained from those parties if he did contact them. Petitioner Bormuth failed to contact Region 5 pursuant to 40 C.F.R. § 124.19(f)(2) before filing his April 24, 2013 motion, whose subject matter (a stay of permit withdrawal) is different from the subject matter of his April 19 and 23, 2013 motions (reconsideration of dismissal of petitions as moot). And Petitioner Bormuth failed to state in his April 19, 2013 motion the response that he obtained from Region 5 to that motion, which Region 5 provided on April 17, 2013. Att. B. Accordingly the Board should deny Petitioner Bormuth's April 19, 23 and 24, 2013 motions for failing to comply with threshold Board notice

requirements.

Should the Board nonetheless wish to consider Petitioner Bormuth's April 19, 23 and 24, 2013 motions, they all fail on their merits. In his April 19 and 23, 2013 motions, Petitioner Bormuth argues that because Region 5 did not withdraw the West Bay 22 permit within 30 days of responding to his Petition, Region 5's withdrawal of that permit was not timely and the Board may not dismiss his Petition as moot. This argument contradicts both the plain language and the intent of the UIC regulations.

Region 5 withdrew the West Bay 22 permit under 40 C.F.R. § 124.19(j), which states in part:

> 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 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. Any portions of the permit that are not withdrawn and that are not stayed under § 124.16(a) continue to apply. [emphasis added]

The Board has long held that when interpreting a regulation, it will apply "the normal tenets of statutory construction." *In re San Pedro Forklift*, CAA Appeal No. 12-02, slip op. at 25 (EAB April 22, 2013), 15 E.A.D. ___ (citing *In re Bil-Dry Corp.*, 9 E.A.D. 575, 595 (EAB 2001)); *In re Seminole Electric Cooperative, Inc.*, PSD Appeal No. 08-09, slip op. at 17 n. 19 (EAB Sept. 22, 2009), 14 E.A.D. ___ (citing *In re Howmet Corp.*, 13 E.A.D. 272, 282 (EAB 2007), *aff'd.* 656 F. Supp. 2d 167 (D. D.C. 2009), *aff'd.* 614 F.3d 544 (D.C. Cir. 2010)).

"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."

Barnhart v. Sigmon Coal, Inc., 534 U.S. 438, 450 (2002). Where the language is plain and unambiguous, the analysis ends and that plain language must be given effect. *In re U.S. Army, Fort Wainwright Central Heating and Power Plant*, 11 E.A.D. 126, 141 (EAB 2003) (citing *Sullivan v. Stroop*, 496 U.S. 478, 482 (1990)); *In re Arecibo & Aguadilla Regional Wastewater Treatment Plants*, 12 E.A.D. 97, 130 n. 60 (EAB 2005) (citing *Barnhart*, 534 U.S. at 450).

Here, a plain reading of 40 C.F.R. § 124.19(j) unambiguously authorized Region 5 to withdraw the West Bay 22 permit. 40 C.F.R. § 124.19(j) allows EPA to withdraw a UIC permit any time before 30 days after filing "its response to the petition for review." Petitioner Yerman's Petition was one of the petitions for review of the West Bay 22 permit, and Region 5 withdrew the permit prior to the due date for filing Region 5's response to this petition. Accordingly, Region 5's withdrawal of the permit was well within the time frame specified in 40 C.F.R. § 124.19(j), and the Board correctly dismissed the Petitions as moot.

40 C.F.R. § 124.19(j) does not state that EPA must withdraw the permit within 30 days of filing the response to the *first* petition for review received by the Board, as Petitioner Bormuth suggests. Region 5 notes that in any permit appeal under 40 C.F.R. § 124.19, the Board may receive multiple petitions for review of the same permit. If EPA had intended for the unilateral withdrawal deadline to begin from the *first* petition for review, then 40 C.F.R. § 124.19(j) would have stated that explicitly. Instead, 40 C.F.R. § 124.19(j) applies to "the petition for review" without limitation, meaning any of the petitions for review. With this plain and unambiguous language supporting Region 5's action, the Board may end its analysis here.

Looking to principles of statutory construction, Region 5 also notes that "legislative terms which are singular in form may apply to multiple subjects", with a presumption in favor of

multiple subjects. *In the Matter of: Firestone Pacific Foods, Inc.*, 2009 EPA ALJ LEXIS 5, *81 (EPA ALJ, March 24, 2009) (citing 2A *Sutherland Statutory Construction* § 47:34 (6th Ed. 2000)). EPA also notes 1 U.S.C. § 1, which states that "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise -- words importing the singular include and apply to several persons, parties, or things . . . ." This only reinforces the conclusion above that the plain language of 40 C.F.R. § 124.19(j) allows EPA to withdraw a permit any time before 30 days after filing its response to any petition for review. Nothing in the plain language of 40 C.F.R. § 124.19(j) disturbs the strong presumption that the term "petition for review" is intended to apply to multiple petitions for review in the same matter. If 40 C.F.R. § 124.19(j) applies to all petitions for review in a matter, then EPA may accordingly withdraw a permit within 30 days of its deadline for responding to any petition for review in that matter.

Even should the Board find 40 C.F.R. § 124.19 ambiguous on this point, Petitioner Bormuth's argument finds no support in any principles of statutory construction. Where interpretation of a regulation is necessary, "the Board looks first to the plain meaning of the regulatory text, then considers the regulations as a whole, the regulatory history, and the Agency's post-promulgation guidance documents on the topic." *In re San Pedro Forklift*, slip op. at 26 (citing *In re Clarksburg Casket Co.*, 8 E.A.D. 496, 502-504 (EAB 1999)). Regulatory history assists the Board in interpreting regulations. *San Pedro Forklift*, slip op. at 26 (citing *In re Friedman*, 11 E.A.D. 302, 328 (EAB 2004)). Analogizing from the rules of statutory construction, the words of a regulation must be read in their context and with a view to their place in the regulation's overall scheme. *In re Deseret Power Electric Cooperative*, PSD Appeal No. 07-03, slip op. at 32 (EAB Nov. 13, 2008) 14 E.A.D. ___(citing *Davis v. Michigan Dep't. of*

Treasury, 489 U.S. 803, 809 (1989)); *In re U.S. Army, Fort Wainwright*, 11 E.A.D. at 141 (citing *Davis,* 489 U.S. at 809).

In the preamble to 40 C.F.R. § 124.19(j), EPA stated its intent in promulgating this regulation:

> . . . before today, § 124.19 authorized the Regional Administrator to unilaterally withdraw a permit and prepare a new draft permit at any time prior to the Board's grant of review under what was § 124.19(c). The provision served to prevent unilateral withdrawal of a permit by the Region after the Environmental Appeals Board had begun substantive consideration of an appeal. This rule revises § 124.19 to allow the Regional Administrator to unilaterally withdraw the permit at any time prior to 30 days after the Regional Administrator files its response to the petition under paragraph (b) of this section. **This revision 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) (emphasis added)]

This language indicates that EPA intended 40 C.F.R. § 124.19(j) to promote efficiency and judicial economy. 40 C.F.R. § 124.19(j) does this by allowing EPA to unilaterally withdraw a permit to address issues raised in any petition or petitions, prior to the Board devoting significant resources to the appeal. Where the Board accepts multiple petitions for review on a given permit, it will address all of those petitions in its eventual ruling. 40 C.F.R. § 124.19(j) contemplates that the Board would not have devoted significant resources to considering a permit appeal until at least *30 days after* EPA's filing of a response. Here, where there were multiple petitions, EPA withdrew the permit *before* filing a response on one of the petitions. Even more so than the deadline at 40 C.F.R. § 124.19(j), Region 5's early action here protected in the Board's interest in allowing for withdrawal prior to devoting significant resources to an appeal.

And again, in drafting 40 C.F.R. § 124.19(j) EPA had the perspective of experience that

multiple petitions for review in a matter will likely be filed with the Board on different days. If EPA wished to limit unilateral permit withdrawal as Petitioner Bormuth argues and wished to cut against the strong presumption that the term "petition for review" applies to any petition for review, then EPA would have drafted 40 C.F.R. § 124.19(j) accordingly.

Looking at the purpose of the 40 C.F.R. § 124.19 regulations as a whole, they seek to provide an efficient structure for administering permit appeals. 78 Fed. Reg. at 5281. Efficiency would also allow an EPA Region a sufficient amount of time to consider each petition for review before losing the opportunity to efficiently withdraw the underlying permit. A later petition may raise issues counseling withdrawal that an earlier petition does not. Allowing EPA to meaningfully act on a later petition thus serves efficiency. And analogizing from statutory construction, no regulatory interpretation should cut against the purpose of that regulation. *In the Matter of Montco Research Products, Inc.*, 1986 EPA ALJ LEXIS 20, *16-17 (EPA ALJ, March 4, 1986) (citing *National Petroleum Refiners Ass'n. v. FTC*, 482 F.2d 672, 689 (D.C. Cir. 1973), *cert. den.* 415 U.S. 951 (1974) ("In determining the [regulator's] intent, our duty is to favor an interpretation that would render the [regulatory] design effective in terms of the policies behind its enactment and to avoid an interpretation which would make such policies more difficult of fulfillment . . . .")); *Deseret Power*, PSD Appeal No. 07-03, slip op. at 32 (citing *Davis*, 489 U.S. at 809); *U.S. Army, Fort Wainwright*, 11 E.A.D. at 141 (citing *Davis,* 489 U.S. at 809). For all of the above reasons, Petitioner Bormuth's argument fails on its merits.

At pp. 4-6 of his April 23, 2013 motion, Petitioner Bormuth also argues that the Board committed reversible error in accepting Petitioner Yerman's Petition for review, on two grounds. First, Petitioner Bormuth argues that Petitioner Yerman received the December 6, 2013

Response to Comments in this matter and so her Petition was in fact untimely. As Region 5 set forth in Section II, above, Petitioner Yerman in fact did not receive the December 6, 2013 Response to Comments and her Petition was timely.

Second, Petitioner Bormuth argues that the Board should not have accepted Petitioner Yerman's Petition because it failed to meet the Board's standards for presenting issues on appeal. This argument misconstrues Board process. The Board may ultimately make such findings regarding a petition, after the affected Region has had a chance to respond to that petition. But the Board cannot easily engage in a fair review of such depth without access to the actual administrative record that the Region will provide in its response to that petition. Petitioner Bormuth's claims on these grounds are thus without merit.

At pp. 7-10 of his April 23, 2013 motion, Petitioner Bormuth also argues that the Board denied him due process by denying him a hearing on the issues in his Petition. To the extent that Petitioner Bormuth bases his argument on the Board accepting Petitioner Yerman's "late" Petition, as pointed out in the preceding paragraph her Petition was in fact timely. Region 5 sees no way in which the Board deviated from 40 C.F.R. Part 19 or its own case law in accepting Petitioner Yerman's petition. And to the extent that Petitioner Bormuth complains of being deprived of a hearing on his issues, he misconstrues the facts of this matter.

There is no longer any subject for a hearing in this matter and so there is nothing of which Petitioner Bormuth could be deprived. His Petition is moot. The permit that Petitioner Bormuth appealed has been withdrawn in its entirety. Unless and until Region 5 issues a new draft permit, the underground injections at West Bay 22 to which Petitioner Bormuth objected remain unauthorized.

If Region 5 issues a new draft permit for West Bay 22, then according to the plain language of 40 C.F.R. § 124.19(j) and the remainder of the UIC regulations, Region 5 will provide a new period of public comment on that proposed permit for Petitioner Bormuth and all other interested persons. To the extent that Petitioner Bormuth does not see his current concerns addressed in any subsequent draft permit, he may raise his concerns during the new public comment period as he did previously. Accordingly, Petitioner Bormuth's claims of due process deprivation are without merit.

Finally, at pp. 10-11 of his April 23, 2013 motion, Petitioner Bormuth alleges religious discrimination against himself as a "Pagan Druid and animist shaman" because the Board accepted the Petition of "this Christian woman" Petitioner Yerman. As discussed in this section, above, the Board acted appropriately in accepting Petitioner Yerman's timely Petition for review. Accordingly there was no discrimination. Additionally, Region 5 was unaware in January 2013 and remains unaware of Petitioner Yerman's religious beliefs, if any. Thus this argument is also without merit.

B. Petitioner Yerman's arguments that Region 5's permit withdrawal was untimely or that the Board erred in dismissing her Petition based on such withdrawal are not properly before the Board and in any event fail on their merits

As a preliminary matter, Petitioner Yerman's April 19, 22 and 24, 2013 motions violate 40 C.F.R. § 124.19(f)(2) and Region 5 requests that the Board deny them all on that ground. Petitioner Yerman failed to contact Region 5 pursuant to 40 C.F.R. § 124.19(f)(2) before filing any of her April 19, 22 and 24, 2013 motions. And as far as the record shows, Petitioner Yerman 1) failed to contact either West Bay Exploration Company or Petitioner Bormuth (who seeks to dismiss her Petition) pursuant to 40 C.F.R. § 124.19(f)(2) before filing

any of her April 19, 22 and 24, 2013 motions; and 2) failed to state in those motions any response obtained from those parties if she did contact them. Accordingly the Board should deny Petitioner Yerman's April 19, 22 and 24, 2013 motions for failing to comply with procedural Board notice requirements.

Should the Board nonetheless wish to consider Petitioner Yerman's April 19, 22 and 24, 2013 motions, they all fail on their merits. At pp. 1-2 of her April 24, 2013 motion, Petitioner Yerman, like Petitioner Bormuth, argues that because Region 5 did not withdraw the West Bay 22 permit within 30 days of responding to Petitioner Bormuth's Petition, Region 5's withdrawal of that permit was not timely and the Board may not dismiss her Petition as moot. Like Petitioner Bormuth's argument, and as discussed in detail at Section III.A, above, Petitioner Yerman's argument is without merit because it runs contrary to the plain language of 40 C.F.R. § 124.19(j) and to the intent of the regulation. Region 5 here incorporates the more detailed discussion of this argument at Section III.A.

At p. 1 of her April 22, 2013 motion, Petitioner Yerman also argues that by not filing a response to her Petition, Region 5 violated her civil right to the "knowledge, strategy and tactics" she would have gained from a Board hearing on her Petition. Petitioner Yerman misconstrues the facts of this matter. Region 5 filing a response to Petitioner Yerman's Petition would not have constituted a hearing before the Board. And even if Region 5 had filed a response to Petitioner Yerman's Petition, Petitioner Yerman would not have received a Board ruling on that Petition because Region 5 would still have withdrawn the West Bay 22 permit and the Board would still have dismissed her Petition as moot without ruling on its merits.

To the extent that Petitioner Yerman claims that she had a civil right to receive a response

from Region 5 to her Petition before it was rendered moot, no such right exists. Petitioner Yerman has cited no case law for the existence of such a right and Region 5 has found none. For all of the above reasons, Petitioner Yerman's arguments on this subject are without merit.[1]

At p. 2 of her April 19, 2013 motion, Petitioner Yerman questions whether 40 C.F.R. § 124.19(j)'s requirement to withdraw a permit "prior to 30 days after the Regional Administrator files its response to the petition for review" required Region 5 to literally respond to her Petition and thereby start a 30-day clock on a right to unilateral permit withdrawal. No such obligation exists. By allowing for withdrawal within 30 days after filing a response, the regulation does not somehow preclude EPA from withdrawing the permit anytime prior to this.

Moreover, Petitioner Yerman's reading is inconsistent with the intent of the regulation. As stated at Section III.A, above, EPA's purpose in promulgating 40 C.F.R. § 124.19 was to avoid permit withdrawal after the Board has devoted significant resources to a matter. The further back in time that EPA withdraws a permit, the more Board resources are saved.

Additionally and as stated at Section III.A, above, the 40 C.F.R. § 124.19 regulations seek to provide an efficient structure for administering permit appeals. Having to spend government resources at both the withdrawing Region and the Board to generate, file and manage a petition response cuts against efficiency in any budgetary environment. In the current environment of draconian budget cuts and mandatory furloughs, such an expenditure of resources appears even more inefficient. And a regulatory interpretation should never nullify the purpose of that regulation. *Montco Research Products*, 1986 EPA ALJ LEXIS 20, *16-17 (citing *National Petroleum Refiners Ass'n. v. FTC*, 482 F.2d at 689 (D.C. Cir. 1973)); *Deseret*

1 At p. 2 of her April 22, 2013 motion, Petitioner Yerman lists additional purported violations of her civil rights by Region 5 and the Board. None of these alleged violations concern Region 5's withdrawal of the West Bay 22 permit.

Power, PSD Appeal No. 07-03, slip op. at 32 (citing *Davis*, 489 U.S. at 809); *U.S. Army, Fort Wainwright*, 11 E.A.D. at 141 (citing *Davis,* 489 U.S. at 809).

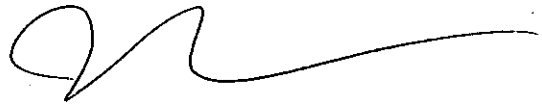
Additionally, "[t]he principles of statutory construction are nothing if not clear that frankly ludicrous results are to be avoided in ascertaining the meaning of statutory or regulatory provisions . . . ." *In the Matter of Deutsch Co.*, 1999 EPA ALJ LEXIS 117, *11 (EPA ALJ, May 26, 1999); see also *In the Matter of District of Columbia (Lorton Prison Facility)*, 1991 EPA ALJ LEXIS 5, *12 n. 18 (EPA ALJ, August 30, 1999) (citing *In re Blalock*, 31 F. 2d 612, 614 (N.D. Ga. 1929) ("If giving a literal interpretation to the words will lead to such unreasonable, unjust or absurd consequences as to compel a conviction that they could not have been intended by the legislature . . . then the court should interpret the statute according to its real rather than its apparently literal meaning."); *United States v. Meyer*, 808 F. 2d 912, 919 (1st Cir. 1987) ("It has been called a golden rule of statutory interpretation that unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result."); and *Sierra Club v. Train*, 557 F. 2d 485, 490 (5th Cir. 1977) ("The interpretation should be reasonable, and where the result of one interpretation is unreasonable, while the result of another interpretation is logical, the latter should prevail."). In this matter, it simply makes no sense to force a Region and the Board to expend public funds and work hours to generate, file and manage a petition response that will immediately be rendered moot upon the withdrawal of the underlying permit. Since Petitioner Yerman's interpretation that a Region must respond to a petition before withdrawing the affected permit is "unreasonable" if not "absurd" or "frankly ludicrous," the Board should reject that interpretation. A reasonable interpretation exists: that the plain language

of 40 C.F.R. § 124.19(j) sets a deadline for permit withdrawal of 30 days past the due date for a response to a petition. Accordingly this argument is also without merit.

IV. CONCLUSION

The Board correctly dismissed Petitioner Bormuth's and Petitioner Yerman's Petitions as moot, based on EPA's proper and timely withdrawal of the underlying permit in this matter. Petitioners' six motions for stay or reconsideration all violate the Board's procedural notice requirements, and are thus improperly before the Board, as discussed above. Moreover, nothing in the Petitioners' motions raises issues warranting a stay or reconsideration of the Board's Order, for the reasons discussed above. Region 5 therefore respectfully requests that the Board deny Petitioner Bormuth's April 19, 23 and 24, 2013 motions and Petitioner Yerman's April 19, 22 and 24, 2013 motions in this matter.

Respectfully submitted,



Dated: May 6, 2013

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CERTIFICATE OF SERVICE

Appeal Nos. UIC 13-01, 13-02

West Bay Exploration Company
West Bay 22 SWD
UIC Permit MI-075-2D-0009

I hereby certify that on this 6th day of May, 2013, I: 1) electronically filed the foregoing Response to Motions for Reconsideration with the Environmental Appeals Board, via Central Data Exchange; and 2) caused to be mailed a true and correct copy to persons including the Petitioners and the permittee, by certified mail, return receipt requested, addressed as follows:

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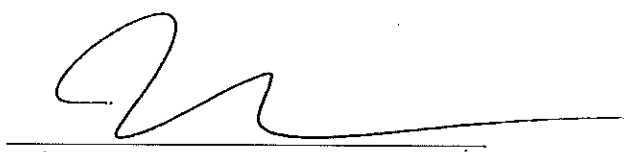

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