

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

In the Matter of:)	
West Bay Exploration Company,)	Appeal No. UIC 15-03
Traverse City, Michigan,)	
West Bay #22 SWD,)	
Permit No. MI-075-2D-0009)	

**SUBMISSION OF INFORMATION
PURSUANT TO BOARD CLARIFICATION ORDER**

This matter involves Petitioner Peter Bormuth’s petition for review of a Class II Underground Injection Control permit, Permit No. MI-075-2D-0009 (“West Bay #22 Permit), which permit the U.S. Environmental Protection Agency Region 5 issued to permittee West Bay Exploration Company under the Safe Drinking Water Act, 42 U.S.C. §§ 300h-300h-8, and under the regulations at 40 C.F.R. Parts 124, 144-148. On February 11, 2016, the Environmental Appeals Board (“Board”) issued in this matter an Order Directing EPA Region 5 to Clarify Public Availability of Certain Documents and Modifying Briefing Schedule (“Order”). UIC 15-03, Filing # 27. In part the Order addressed two memoranda that appear in the administrative record; are dated October 2014; and relate to geologic siting and seismic issues, respectively. UIC 15-03, Filing #25, Atts. 7, 15. The Order required Region 5 “to clarify when, and by what means, these memoranda were made available to the public.” UIC 15-03, Filing #27, p. 2.

Region 5 here responds to the Order.¹

Both memoranda were finalized and became part of the administrative record for the West Bay #22 Permit on October 8, 2014. These memoranda were among the documents reviewed by Region 5 prior to issuing the draft permit decision on or about October 14, 2014 (“2014 draft permit”). UIC 15-03, Filing #25, Att. B-8. These memoranda were available to the public beginning on October 8, 2014, when Region 5 included them in the administrative record for the 2014 draft permit. A member of the public could have seen these memoranda by contacting Region 5 by mail, telephone or email and requesting to see them or the administrative record index referencing them.

However, most likely an interested person would have first had new reason to inquire about documents in the West Bay #22 Permit’s administrative record after receiving notice of the 2014 draft permit, issued October 14, 2014. As discussed below, the 2014 draft permit cited to documents in the administrative record and provided information regarding how the public could view related documents such as the contents of the administrative record. Thus, both the availability and the notice of availability of the two memoranda pre-date Region 5’s final permit decision on December 8, 2015.

As one small part of the extensive administrative record for the West Bay #22 Permit, the memoranda like the administrative record index or any other part of the administrative record were available for review by contacting Region 5 permit writer Jeffrey Wawczak by mail,

¹ Due to its lack of different sections and lack of attachments, this submission requires neither a table of contents nor a table of attachments. The only citations to authority appear in this first paragraph of this submission. Region 5 hopes that under these circumstances, no table of authorities is necessary. This submission complies with the 7,000 word limitation found at 40 C.F.R. § 124.19(d)(3). See 40 C.F.R. § 124.19(d)(1)(iv).

telephone or email. The Statement of Basis for the 2014 draft permit was placed in the Jackson District Library for public review, as part of the 2014 draft permit; it was also available electronically as part of the 2014 draft permit, at an EPA website to which Region 5's public notice directs interested persons. UIC 15-03, Filing #25, Att. B-9. However obtained, the Statement of Basis itself cites documents from the administrative record and on p. 4 states that one should submit requests for additional information relating to the 2014 draft permit to Mr. Wawczak by mail, telephone or email. UIC 15-03, Filing #25, Att. B-8, Statement of Basis. Region 5's public notice of the 2014 draft permit states that interested persons could view documents related to the 2014 draft permit at Region 5's Chicago office and should contact Mr. Wawczak by telephone or email to do so. UIC 15-03, Filing #25, Att. B-9.

During 2014 and 2015, Mr. Wawczak never received any requests to review either the administrative record index for the West Bay #22 Permit, or any documents comprising the administrative record.

Respectfully submitted,



Kris P. Vezner
Associate Regional Counsel

U.S. EPA, Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604

Tel: (312) 886-6827
Fax: (312) 697-2019
Email: vezner.kris@epa.gov

Dated: February 24, 2016

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

In the Matter of:)	
West Bay Exploration Company,)	Appeal No. UIC 15-03
Traverse City, Michigan,)	
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CERTIFICATE OF SERVICE

I hereby certify that the original of this **SUBMISSION OF INFORMATION PURSUANT TO BOARD CLARIFICATION ORDER** in the matter **WEST BAY EXPLORATION COMPANY OF TRAVERSE CITY, MICHIGAN, WEST BAY #22 SWD, PERMIT NO. MI-075-2D-0009, JACKSON COUNTY, MICHIGAN, EAB Appeal No. UIC 15-03**, was filed electronically with the Board.

Further, I hereby certify that one copy of the **SUBMISSION OF INFORMATION PURSUANT TO BOARD CLARIFICATION ORDER** in the matter **WEST BAY EXPLORATION COMPANY OF TRAVERSE CITY, MICHIGAN, WEST BAY #22 SWD, PERMIT NO. MI-075-2D-0009, JACKSON COUNTY, MICHIGAN, EAB Appeal No. UIC 15-03**, was sent to the Petitioner and Permittee, via express mail, to the following addresses:

Peter Bormuth
142 West Pearl Street
Jackson, Michigan 49201

and

Timothy Brock
West Bay Exploration Company
13685 South West Bay Shore Drive, Suite 200
Traverse City, Michigan 49684


Patricia Jeffries

February 24, 2016
Date

