

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

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MAY 29 2018

ENVIRONMENTAL APPEALS BOARD

In the Matter of:)	
West Bay Exploration Co. of)	Permit Appeal No. UIC 18-01
Traverse City, Michigan)	
Haystead #9 SWD)	
Permit No. MI-075-2D-0010)	
Jackson County, Michigan)	

PETITIONER PETER BORMUTH'S REPLY TO REGION 5 RESPONSE TO MOTION FOR CLARIFICATION UNDER 40 C.F.R. § 124.19(m)

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Statutes

40 C.F.R. § 124.5(b)

40 CFR § 144.40(2)(3)

Reply

40 C.F.R. § 124.5(b) is unconstitutionally vague in that no time frame for the Director's response is specified at all. As a result, "men of common intelligence must necessarily guess at its meaning." *Connally v. General Construction Co.*, 269 U. S. 385, 391. This Board was requested by the petitioner to either determine that the 14 month (now 17 month) period of inaction by Region 5 was an effective denial of the Petitioner's Request to Terminate under 40 C.F.R. § 124.5(a) or to specify a time frame in which a response was required. This Board determined that the 14 month period did not constitute an effective denial, but did not specify a time frame in which the Region must respond. Thus the petitioner filed his Motion for Clarification.

In the West Bay #22 proceeding, this Board itself concluded that: "(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. *In re W. Bay Explor. Co.* ("W. Bay II"), 17 E.A.D. 204 (EAB 2016). at 224-25."

40 CFR §§ 144.40(2) & (3) list possible reasons for termination:

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

Since the Board has already concluded that there are "unexplained discrepancies" which misrepresent relevant facts and since the petitioner has both made "complex scientific

arguments" showing that the permitted activity endangers human health and the environment and since the EPA region 5 failed to fully disclose the relevant fact that EPA Permit #MI-163-3G-A002, for underground injection 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 as claimed in the Haystead #9 permit, the Petitioner strongly believes there should be an urgency to the time frame given that a Request to Terminate an issued permit for these established reasons is obviously a serious matter.

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 21, 2018

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2018 I did send a copy of my Reply to Region 5 Response to 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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