

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

In re:)
)
Rocky Well Service Inc., and) SDWA-05-2001-002 (40 CFR Part 22)
Edward J. Klockenkemper,)
) E.A.B. Docket No. _____
Respondents)

JOINT MOTION FOR EXTENSION OF TIME TO FILE APPEAL BRIEF

Respondents Rocky Well Service Inc., by and through its counsel, Richard J. Day, P.C., and Edward J. Klockenkemper, by and through his counsel, Law Office of Felipe N. Gomez, (“Respondents”) respectfully jointly move and request that the Environmental Appeals Board (“EAB”) grant a **45-day extension of time** to file its Appellate Brief(s) in support with regard to Region 5's July 23, 2008, Initial Decision on behalf of Respondents in the above-captioned matter. Respondents have simultaneously mailed for filing their Notices of Appeal of the “penalty only” Initial Decision (injunctive compliance was achieved by Respondents prior to the hearing below) with this Motion.

Respondents seek this additional time because of 1) current serious personal family health issues of Mr. Day preventing immediate attention to this matter; 2) several previously scheduled conflicting obligations for both of Respondents’ counsels similarly hindering immediate substantial work on this matter; and 3) the extremely large record and lengthy initial decision in this matter and the need to coordinate between counsel and with Respondents in analyzing the decision and formulating the formal appellate brief(s). To wit:

1. **Counsel Day** is currently experiencing serious family health problems substantially disrupting over the last 30 days and projected to continue to disrupt his law practice over the next 30 days, including: his son having been taken seriously ill and hospitalized in France within the last 30 days; counsel Day’s having to largely interrupt his solo-practice over the last month to fly to France on moments notice to attend to his son for two weeks there and then accompany him back to the USA; his son having to undergo serious surgery on July 22, 2008, and having been hospitalized until this week in Urbana, Illinois (located over 100 miles from Mr. Day’s home/practice); and Mr. Day’s 82 years young mother-in-law having also been hospitalized in the past week for serious health problems. While released from the hospital, both Mr. Day’s son (convalescing from his surgery at his parents’ home) and mother-in-law are on restricted activity status and require on-going

attention and assistance from Mr. Day and from his wife Mrs. day (who also is the office manager/secretary at Mr. Day's solo practice). Given the past and on-going disruption to his practice, the requested extension is necessary to allow him to attend to his family during this time of crises and also to attempt to catch up on his interrupted legal matters prior to being able to meaningfully engage in preparing the what promises to be lengthy briefing in this matter.

2. **Counsel Day** also has conflicts with regard to legal matters he is handling over the next 30 days.
3. **Counsel Gomez** similarly has several pre-existing obligations resulting in conflicts over the next 30 days, including: a) on-going discovery, including forthcoming motions to compel to be filed by this counsel, and depositions to occur on August 12, 2008 and other dates yet to be determined during the month of August 2008 in the multi-defendant matter *Marx v. Northwestern Memorial Hospital, et al.*, 05 L 8614 (Cook County, Illinois, Circuit Court); b) on-going briefing during the month of August 2008, regarding previously filed motions in the *Marx* matter; c) an evidentiary hearing on 4 of the *Marx* defendants' motions for summary judgement, as well as hearing of several other pending motions in that matter, such hearing to occur on September 3, 2008 (A copy of the applicable June 30, 2008, scheduling order from Judge Thomas Hogan is attached in support as Exhibit 1 to this Motion).

Counsel Gomez also has several other pending and soon to-be-filed legal matters to attend to during the next 30 days which pre-existed the June 23, 2008, Initial Decision in this matter, and, depending on the current schedule, has long-standing plans to attempt to take a short family trip to Michigan during the month of August 2008 (if the current heavy schedule allows).

3. The administrative record in this matter is extremely voluminous and the issues numerous and complex, as is exemplified by the 27-page Initial Decision (which incorporates by reference at footnote 1 the lengthy single-spaced, December 27, 2006, Partial Accelerated Decision in this matter, which, among other prior judgements and rulings, also is a subject of this appeal), making review of the file/orders and formulation, coordination, review, and finalization of the Respondents' briefs more cumbersome and time-consuming than usual. Such process is also complicated and extended by the fact that Respondents and Mr. Day are located at the opposite end of the state from counsel Gomez, making coordination and review/comment between counsel and the Respondents more time consuming.

Movants' counsels believe that a 45-day extension will allow Movants' counsels to address the family issues and other past and pre-existing obligations while allowing for adequate briefing. Such extension will not prejudice the Appellee since the decision being appealed provides no injunctive relief, but solely a penalty award, and since Appellee will have

opportunity to gain a similar extension if so needed given the probable length of the brief(s).

A pre-filing copy of a substantially similar Motion to this one was provided on July 27, 2008, by e-mail and facsimile to the EPA's counsel listed in the Initial Decision¹, and Movant represents that, on July 28, 2008, opposing counsel (Ms. C. Kawakami and Ms. M. McAuliffe of Region 5 ORC) indicated verbally and in writing that they **do not** oppose or object to the motion in a form substantially similar to the draft they reviewed.

Respectfully Submitted By: _____ *s:/Felipe N. Gomez* _____ Date: **July 29, 2008**

Felipe N. Gomez, Esq.

NOTICE AND CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this date I facsimiled and e-filed the original, and mailed the original by U.S. First Class Mail, of this **Motion For Extension** and this Notice/Certificate to the USEPA Environmental Appeals Board Clerk, Ariel Rose Building (MC 11038), 1200 Pennsylvania Ave, N.W., Washington D.C., 20460-0001 (Fx: 202-233-0121). I also certify that I facsimiled and mailed a copy of this Motion/Notice to: 1) Counsel Ms. Cynthia Kawakami and 2) Ms. Mary McAuliffe at Office of Regional Counsel (C-14J), 77 W. Jackson, Chicago, IL. 60604-3590, and to 3) Mr. Richard Day, Esq., 413 North Main Street, St. Elmo, IL. 62458 at 618-829-3340.

Signed: _____ *s:/Felipe N. Gomez* _____ Date: **July 29, 2008**

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¹ The motions differ only in that Mr. Day's son is no longer hospitalized, as he was when the initial motion was drafted and provided to EPA.