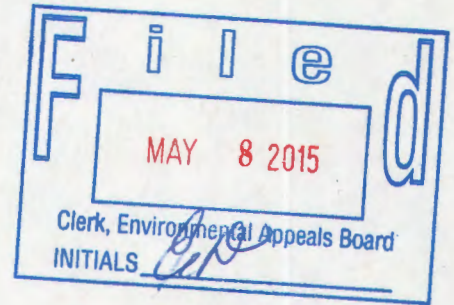


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC**



In re:)
)
)
Eagle Oil & Gas Co.)
Sheldon Dome Field)
)
)
Phoenix Production Co.)
Rolf Lake Unit and Sheldon Dome Field) NPDES Appeal Nos. 15-02, 15-03, 15-04 &
) 15-05
)
Wesco Operating Inc.)
Tensleep #1 (Winkleman Dome) and)
Sheldon Dome Field NW)
)
)
NPDES Permit Nos. WY-0020338,)
WY-0024945, WY-0024953, WY-0025232,)
WY-0025607)

**ORDER CONSOLIDATING PETITIONS FOR REVIEW AND
ESTABLISHING BRIEFING SCHEDULE**

The above-captioned appeals concern five final National Pollutant Discharge Elimination System (“NPDES”) permits the U.S. Environmental Protection Agency Region 8 (“Region”) issued on March 12, 2015, authorizing waste water discharges from conventional oil production facilities operating on the Wind River Indian Reservation in Wyoming. The Region issued one permit to Eagle Oil and Gas Co. (WY-0020338), two permits to Phoenix Production Co. (WY-0024945 and WY-0024953), and two permits to Wesco Operating, Inc. (WY-0025232 and WY-0025607). Natural Resources Defense Council¹ (“NRDC”) and Public Employees for Environmental Responsibility²

¹ NPDES Appeal No. 15-04.

² NPDES Appeal No. 15-05.

("PEER"), Phoenix Production Co.³ ("Phoenix"), and Wesco Operating Inc.⁴ ("Wesco") filed separate petitions (or summary petitions) for review of some or all of the five permits. By this order, and pursuant to 40 C.F.R. § 124.19(n), the Environmental Appeals Board ("Board") administratively consolidates these permit appeals.

Pending before the Board are a Motion for Extension of Time to Respond from the Region and a Motion to Intervene from the Northern Arapaho Tribe. NRDC and PEER filed their petitions for review on April 14, 2015. The Board offered NRDC, PEER and the Region the opportunity to participate in the Board's Alternative Dispute Resolution ("ADR") program and gave the parties until April 30, 2015, to notify the Board of their intent to participate.

Phoenix and Wesco (collectively, "Operators") timely sought extensions of time in which to file their petitions for review of the permits issued to them. The Board granted the requests and ordered the operators to file their petitions by May 18, 2015. *In re Phoenix Prod. Co.*, NPDES Appeal No. 15-03 (Apr. 16, 2015) (Order Granting Extension of Time to File Petition for Review); *In re Wesco Operating Inc.*, NPDES Appeal No. 15-(02) (Apr. 16, 2015) (Order Granting Extension of Time to File Petition for Review). Prior to this deadline, the Operators each filed a summary petition for review. In its summary petition filed April 29, 2015, Phoenix sought to "reserve[] the right to amend this petition in the event that negotiations do not yield a resolution of the issues in this administrative litigation." Phoenix Petition at 1. In Wesco's summary petition, filed April 30, 2015, Wesco sought to stay certain permit conditions "until a final ruling and order on Wesco's Petition for Review has entered." Wesco Petition at 3.

The Region "must file a response to the petition, a certified index of the administrative record, and the relevant portions of the administrative record within 30 days after the filing of a

³ NPDES Appeal No. 15-03.

⁴ NPDES Appeal No. 15-02.

petition.” 40 C.F.R. § 124.19(b)(2). Therefore, absent an extension by the Board, the Region’s responses to the petitions filed by PEER and NRDC are due May 14, 2015, the response to Phoenix’s petition is due May 29, 2015, and the response to Wesco’s petition is due June 1, 2015.⁵

As explained below, the Board GRANTS the Region’s motion and DENIES AS MOOT the Northern Arapaho Tribe’s motion.

Region’s Motion for Extension of Time to Respond

By motion filed April 29, 2015, the Region seeks to extend the deadline for responding to the petitions submitted by PEER and NRDC to June 17, 2015. Region’s Motion at 2. The Region represents that it conferred with counsel for both PEER and NRDC, and neither opposes the Region’s motion. *Id.* at 3.

In support of its motion, the Region stated that “engaging in separate, essentially parallel, processes with PEER and NRDC, and Wesco and Phoenix, will require significant time and resources from Region 8. While Region 8 cannot predict what issues will be raised by Wesco and Phoenix, their claims by necessity arise out of the same basic set of facts and law, and may overlap with the claims raised by PEER and NRDC. Region 8 believes that to the extent the four parties’ claims relate to operational aspects and production technologies of the permitted facilities, such claims may be amenable to clarification, and possibly resolution, through an ADR proceeding that includes both the operators of the permitted facilities and representatives of the environmental groups. Even if some or all of the parties decline to participate in ADR, given the same underlying basis of facts and law, Region 8 believes the claims raised in the various parties’ petitions would be best addressed in the same response brief from EPA.” *Id.* at 2-3.

The Region’s requested extension until June 17, 2015, to file its response was based on the

⁵ “If the final day of any time period falls on a weekend * * *, the time period shall be extended to the next working day.” 40 C.F.R. § 124.20(c).

presumption that Phoenix and Wesco would file petitions for review no earlier than May 18, 2015.

With the filing of the Operators' petitions on different days prior to May 18, three different response deadlines currently exist.

For the reasons the Region articulates, a single deadline for the Region's response will conserve resources. Moreover, the Board is cognizant that the Operators have filed summary, rather than full, petitions. A set, single deadline for Phoenix and Wesco to supplement their petitions and to complete full briefing will further serve the purposes of economy and administrative convenience. The Board also extends this opportunity to supplement to PEER and NRDC so long as any such supplement does not raise new issues not presented in their petitions and are not repetitive of already-filed arguments.

Accordingly, PEER, NRDC, Phoenix, and Wesco may file supplements to their petitions on or before **May 18, 2015**.⁶ The Region's consolidated response to the petitions, along with a certified index of the administrative record, and the relevant portions of the administrative record, shall be filed on or before **June 17, 2015**.

The Northern Arapaho Tribe's Motion to Intervene

By motion dated May 1, 2015, the Northern Arapaho Tribe ("NAT"), which has "a fifty percent (50%) undivided property interest in the surface estate at issue with the permits in dispute" and "a fifty percent (50%) undivided property interest in the mineral estate at issue with the permits in dispute," seeks to intervene as a party. NAT Motion at 1. NAT stated that it would like to participate in any ADR proceedings, and should such negotiations fail to resolve the issues in the permit appeals, NAT would like to participate in briefing on the merits. NAT Motion at 2.

⁶ For ease of reference, each Petitioner should file one consolidated petition on or before May 18, 2015, rather than having multiple documents with different filing dates that comprise the petition.

The Tribal authority where the permitted facility is located (if that authority is not the permit issuer) may participate in an existing NPDES permit appeal by filing a notice of appearance and a response brief within 30 days after a petition has been filed. 40 C.F.R. § 124.19(b)(2), (4); *see also* Revisions to Procedural Rules to Clarify Practices and Procedures Applicable in Permit Appeals Pending Before the Environmental Appeals Board, 78 Fed. Reg. 5281, 5283 (Jan. 25, 2013). Thus, Board consent is not required for NAT to participate in this proceeding, and NAT's motion is DENIED AS MOOT.

As discussed above, any supplements to already-filed petitions by PEER, NRDC, Phoenix, and Wesco must be filed with the Board by May 18, 2015, and the Region's response must be filed no later than June 17, 2015. Accordingly, NAT's response, if any, shall be filed no later than **June 17, 2015.**⁷

ADR Deadline

By letter dated May 4, 2015, the Board offered Phoenix, Wesco, and the Region the opportunity to resolve all or part of NPDES Appeal Nos. 15-02 and 15-03 through the Board's ADR program. Letter from Eurika Durr, Clerk of the Board, Env'tl. Appeals Bd., U.S. EPA, to Robert Kirkwood, President, Wesco Operating Inc., et al. 1 (May 4, 2015). The letter instructed Phoenix, Wesco, and the Region to inform the Clerk of the Board if they wished to participate in the Board's ADR program by no later than June 2, 2015. The Board previously sent a similar letter to PEER, NRDC, and the Region, setting an April 30, 2015 deadline to inform the Board if they wished to participate in ADR to resolve NPDES Appeal Nos. 15-04 and 15-05. Letter from Eurika Durr, Clerk of the Bd., Env'tl. Appeals Bd., U.S. EPA, to Peter J. DeMarco, NRDC 1 (Apr. 17, 2015). The Region moved to extend this latter deadline for responding to the Board's offer for ADR

⁷ Documents are considered "filed" on the date they are received by the Clerk of the Board.

to June 2, 2015. Region's Motion at 3.

The Board now establishes a single deadline, **June 2, 2015**, for all parties to inform the Board of whether they would like to participate in ADR.⁸ This deadline is also applicable to NAT. Those who wish to participate in ADR shall inform the Clerk of the Board of their interest either through the Board's electronic filing system, by facsimile at (202) 233-0121, or by letter filed with the Clerk of the Board by the deadline.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated:

May 8, 2015

By: _____

Kathie A. Stein

Kathie A. Stein
Environmental Appeals Judge

⁸ Accordingly, this Order supercedes April 17, 2015 letter to PEER, NRDC, and the Region, and the deadline established therein. Moreover, the Region's Motion for Extension of Time to Respond is GRANTED.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Consolidating Petitions for Review and Establishing Briefing Schedule** in the matters of *Eagle Oil & Gas Co., Phoenix Production Co.,* and *Wesco Operating Inc.*, NPDES Appeal Nos. 15-02, 15-03, 15-04 & 15-05, were sent to the following persons in the manner indicated:

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By EPA Pouch Mail and Facsimile:

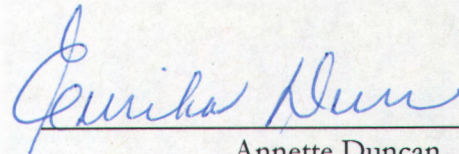
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Date:

May 8, 2015


Annette Duncan
Secretary 