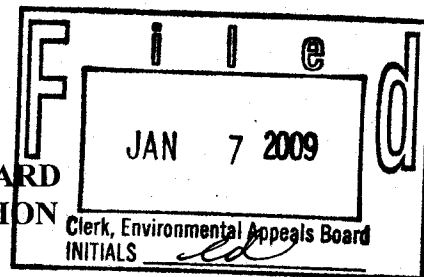


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION
WASHINGTON, D.C.



In re:)
Rocky Well Service, Inc. &)
Edward J. Klockenkemper)
Docket No. SDWA-05-2001-002)

SDWA Appeal Nos. 08-03 & 08-04

**ORDER DENYING MOTION TO RECONSIDER AND
EXTENDING TIME TO FILE REVISED BRIEF**

By order dated December 15, 2008, the Board rejected a 221 page brief filed on October 31, 2008, by Mr. Edward Klockenkemper in the above-captioned matter, and ordered Mr. Klockenkemper to file a revised brief of no more than 70 pages. Order Rejecting Brief Because of Excessive Length and Requiring Revised Brief (Dec. 15, 2008) ("Dec. 15 Order"). The Board concluded that the 221-page brief was of excessive length and that a revised brief was necessary in order to ensure the efficient use of Agency resources. *Id.* at 1 (citing 40 C.F.R. § 22.4(a)(2)). Rocky Well Services, Inc. has also filed an appeal in this matter. Brief of Respondent Rocky Well Service, Inc. (October 30, 2008).¹

By joint motion, the parties seek reconsideration of the Dec. 15 Order, or, in the alternative, an extension of time to submit a revised brief. *See* Joint Objections to EAB December 15, 2008, Order Imposing Page Limits and Revision of Respondent Klockenkemper's Appellate Brief and Joint Motion to Reconsider, and/or Grant Additional Pages and to Grant

¹ Hereinafter, Mr. Klockenkemper and Rocky Well Service, Inc. will be referred to jointly as "the parties."

Time to Revise Both Respondents' Appellate Briefs (Dec. 29, 2008) ("Joint Motion").

According to the Joint Motion, the Board's Dec. 15 Order is arbitrary and "disregard[s] the fact that 9 orders are under appeal, and the fact that Respondent Klockenkemper's brief addressed both respondents' similar arguments, and that, combined, both briefs allot a combined average of only approximately 26 pages per order for the 2 respondents." Joint Motion at 2 (emphasis in original). According to the parties, the Board's 70-page limit is unreasonable because it does not allow the issues to be fully briefed and "prejudicially limit[s] the record for later judicial appeal in favor of EPA." *Id.* In addition, the Joint Motion states that the Dec. 15 order causes unfair prejudice to Rocky Well Services, Inc. ("Rocky Well") because Rocky Well's brief refers to specific page numbers in Mr. Klockenkemper's brief and would have to be withdrawn and revised.

Upon review, to the extent that the Joint Motion seeks reconsideration of the portion of the Board's Dec. 15 Order requiring that Mr. Klockenkemper submit a revised brief or no more than 70 pages in length, the Joint Motion is denied. As the Board stated, Mr. Klockenkemper's 221-page brief is "unnecessarily verbose and redundant, resulting in a lack of clarity and an excessive page count." Dec. 15 Order at 1 (citing 40 C.F.R. § 22.4(a)(2)). Nothing in the Joint Motion convinces us that this determination was erroneous. However, to the extent that the Joint Motion seeks additional time to submit a revised brief, the Joint Motion is granted. Mr. Klockenkemper will now have until March 2, 2009, to file a revised brief that meets the requirements of the Dec. 15 Order.² Similarly, Rocky Well will have until March 9, 2009, to file

² Documents are "filed" with the Board on the date they are *received*.

a revised brief solely for the purpose of correcting internal citations and page references to Mr. Klockenkemper's brief should Rocky Well wish to do so. Any revised briefs must be limited solely to the issues previously raised. The Board will not consider additional issues not previously raised by the parties in their respective briefs.

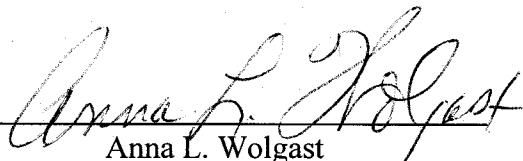
So ordered.

Dated:

January 7, 2009

ENVIRONMENTAL APPEALS BOARD

By:



Anna L. Wolgast
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Motion to Reconsider and Extending Time to File Revised Brief in the matter of *Rocky Well Service & Edward J. Klockenkemper*, SDWA Appeal Nos. 08-03 & 08-04, were sent to the following persons in the manner indicated:

By U.S. First Class Mail and Facsimile:

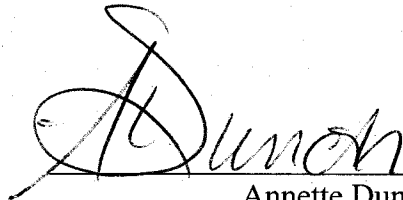
Filipe Gomez
Law Office of Filipe Gomez
P.O. Box 220550
Chicago, IL 60622
Facsimile: (773) 278-6226

Richard J. Day, P.C.
413 N. Main St.
St. Elmo, IL 62458
Facsimile: (618) 829-3340

By EPA Pouch Mail and Facsimile:

Cynthia Kawakami
Mary McAuliffe
Office of the Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604
Facsimile: (312) 886-0747

Date: **JAN - 7 2009**



Annette Duncan
Secretary