

**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 Nos. 08-02 and 08-03  
Respondents )

**RESPONDENTS' UNOPPOSED JOINT MOTION  
FOR ADDITIONAL EXTENSION OF TIME  
TO FILE APPEAL BRIEF(S)**

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") strike the current October 6, 2008, due date and grant until **Friday October 31, 2008**, to file Respondents' Appellate Brief(s) in support with regard to Region 5's July 23, 2008, Initial Decision and other orders in this matter, on behalf of Respondents in the above-captioned penalty-only matter (in which injunctive relief is not outstanding or at issue).

On September 23, 2008, undersigned counsel notified EPA of the intent to request additional time to file, and a pre-filing copy of a substantially similar Motion to this one was provided on September 24, 2008, by e-mail and facsimile to EPA. Movant represents that, on September 24 and September 25, 2008, EPA indicated in writing it did not oppose or object to the Respondent's extension request or motion (as presented below), such writing being attached hereto. *See Attachment A - EPA e-mail.* Respondents have agreed to similarly consider concomitant extensions to EPA should EPA determine such is necessary after receipt of Respondents' Briefs.

Respondent Klockenkemper's counsel, a solo practitioner, and Rocky Well Service, Inc., seek this additional time because of due to certain circumstances beyond counsel's control that developed the subsequent to our initial request and the extension to 10/6/08. To wit:

- 1) Counsel's son's mother, with whom the undersigned shares joint custody and residency for our 9 y.o. son, decided subsequent to the filing of our initial extension request and EPA's and E.A.B.'s gracious grant of the extension request, to take a week vacation in Florida beginning last Friday until this weekend, a decision over which counsel had no control and could not realistically oppose. The absence has left counsel with unanticipated full child care duties this week which have drastically curtailed the workday, given that counsel was unable to obtain pre or after school care arrangements for this semester, and given that the school day does not begin until 9:30 am and ends at 3:15 pm. Consequently, having to drop off and pick up, and then supervise afterward until lights out, counsel's available workday hours this week have been sharply curtailed.
- 2) Due to further unanticipated developments and delays in the previously described unrelated litigation matter (*Marx v. NHM*) which took up counsel's time later into August and September than anticipated (e.g. Ms. Marx's deposition was moved back to a later date and now has been completed, and additional unanticipated work on that file was required prior to and after the September 3, 2008, hearing in that matter), and due to the promised camping trip in the last week of August with counsel's son, and given the Labor Day weekend, counsel was unable to begin full scale work on this matter until the second week of this month.
- 3) Relatedly, counsel was only able to begin oral arguments at the September 3, 2008, hearing on the Motions for Summary Judgment being opposed, and other extant motions, in the *Marx v. NMH* matter and only the first, simplest summary judgement motion was decided. *See Att. B - Hogan Order Continuing Hearing*. The rest of the multi-motion hearing was rescheduled until 10/8/08. *Id.* Consequently, counsel will be forced to focus on that matter and re-prepare for the hearing during the first days of October, further depriving counsel of time to complete the Brief during that first week of October 2008 as previously anticipated.
- 4) Counsel has a potential hearing on an outstanding subpoena on September 30, 2008, and other obligations in a third matter which lawsuit was refiled on August 29, 2008 (*Laing v.*



*Simmons*), which will require attention away from the instant matter prior to and on that date.

- 5) Counsel has another lawsuit that requires filing prior to the end of September 2008, that I did not anticipate having to prosecute until late October.
- 6) Counsel is handling an ICC matter on which informal proceedings ensued this month and on which pre-hearing negotiations began today, and for which a formal hearing may be scheduled during September and which will require attention now and later this month as well.
- 7) Counsel has other legal and personal matters that also require that time be spent away from this matter.

**WHEREFOR, Respondents respectfully MOVE that the October 6, 2008, due date for submission of Respondents' Briefs be stricken and a new date of October 31, 2008, be set for same, for the reasons set forth above.**

Respectfully Submitted By: *s:/Felipe N. Gomez* Date: September 25, 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, U.S. First Class Mail postage paid, a copy of this Motion/Notice to: 1) Counsel Ms. Cynthia Kawakami and 2) Counsel Ms. Mary McAuliffe, both 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: September 25, 2008

Felipe N. Gomez, Esq.

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Chicago, IL. 60622  
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Attachment **A** to  
Respondents' Unopposed Joint Motion For Extension of Time  
EPA v Rocky Well Service, Inc., EAB Dkt. Nos. 08-02 and 08-03

From: McAuliffe.Mary@epamail.epa.gov  
To: gomzfng1@netscape.net  
Cc: kawakami.cynthia@epa.gov; daylaw@csuol.com  
Subject: Re: Draft Motion  
Date: Thu, 25 Sep 2008 12:12 pm  
Attachments: joint.motion.additional.time.file.brief.final.wpd (12K)  
*[Extraneous Material Deleted - FNG]*

Felipe,

As we said in our last message, based upon the circumstances you described, we do not oppose your request for an extension of time, and you may include that in your motion. Thank you. --Mary

Order

CCG N002-300M-2/24/05 ( )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Stacy May et al  
 v.  
Northwestern Memorial Hospital

No. 05 L 8614

ORDER

This cause coming to be heard on NMFF Defendants' Motions for Summary Judgment, due notice having been given, the Court having heard arguments of counsel and being fully advised on the premises, it is hereby ordered:

- ① Dr. Grobman's motion for Summary Judgment is granted on his second argument (the Court not yet having considered whether a private right doctrine exists under the Code) at today's hearing
- ② the remaining Defendants' motions for Summary Judgment are entered + continued for argument on Oct. 8, 2008 at 12:30pm.
- ③ Defendants' motion for leave to withdraw their MST Reply and file an amended Reply is granted, subject to Plaintiff's objection to any new material

Atty. No.: 40917

Name: Andrew S

Atty. for: NMFF

Address: 180 N. La Salle

City/State/Zip: Chicago, IL 60601

Telephone: 312-768-7500

Dated: Judge Thomas L. Hogan

SEP - 3 2008

Judge Circuit Court-1739 Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Att. B