

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C.**

In re: **WESCO OPERATING, INC.**)
NPDES WY-0025232)
WINKLEMAN DOME FIELD)
WIND RIVER INDIAN RESERVATION)
)
)

SUMMARY PETITION

Wesco Operating, Inc.
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Wesco Operating, Inc., (Wesco), pursuant to 40 C.F.R. §§ 124.16 and 124.19, submits this Summary Petition, stating as grounds the following:

1. On March 12, 2015, the United States Environmental Protection Agency, Region 8, issued Winkleman Dome National Pollutant Discharge Eliminations System Permit WY-0025232 (the "Permit") to Wesco for Winkleman Dome. The Permit becomes effective on May 1, 2015.

2. On April 7, 2015, Wesco filed with the Environmental Appeals Board (EAB) a timely Motion for Extension of Time to File a Petition to Review of the Permit. The EAB granted Wesco's motion and extended the deadline for Wesco to file its Petition for Review until May 18, 2015.

3. Because the Permit becomes effective before the May 18, 2015 deadline by which Wesco must file its Petition for Review, Wesco files this Summary Petition requesting that the EAB suspend certain provisions of the Permit WY-0025232 until such time as the Petition for Review has been resolved.

4. This Summary Petition is not intended to be an exhaustive listing of all the issues Wesco intends to raise in its Petition for Review. EPA's counsel, Everitt Volk, has authorized Wesco to state that the EPA agrees Wesco is not required to set forth in this Summary Petition all matters it intends to raise in its Petition for Review, and that Wesco has not waived, and is entitled to assert in its Petition for Review, any and all factual or legal challenges it has to the Permit or the terms and conditions contained therein.

5. Wesco operates Winkleman Dome Field located in SW ¼ SE ¼ Section 18, Township 2 North, Range 1 West, latitude 43.14291° N and longitude 108.91771°W, in Fremont County, Wyoming. The Permit at issue authorizes Wesco to discharge water from a specified point source at the Winkleman Dome Field located on the Wind River Indian River Reservation in Fremont County Wyoming. The EPA last issued Wesco a NPDES permit on October 4, 2005,

with an effective date of November 1, 2005 (the "2005 Permit"). The 2005 Permit expired in September 2010 and was administratively extended to April 30, 2015. The 2005 Permit authorized, and the Permit authorizes, Wesco to discharge produced water from the Tensleep#1-Winkleman Dome Field at Outfall 001. The Permit contains certain terms and conditions that the 2005 Permit did not contain.

6. Wesco respectively requests that the EAB suspend the Specific Limitations and Self-Monitoring Requirements set forth in Part 1.3 of the Permit, including, but not specifically limited to (1) the Specific Limitation and Compliance Schedule, including specifically the Sulfide (H₂S) effluent limitation of 0.002 mg/l as set forth in Permit Part 1.3.1.3 and 1.3.3; and (2) the Whole Effluent Toxicity (WET) test requirements as set forth in the Permit as set forth in Permit Part 1.3.6.

7. By way of explanation, but not by way of limitation, Wesco maintains that the Specific Limitation and Compliance Schedule, specifically the sulfide effluent limitation, is impermissibly premised upon the Wind River Environmental Quality Commission (WREQC) 2007 Surface Water Quality Standards (WQS) that have not been approved or finalized by the EPA so that they may be reviewed by the regulated community; that Wesco was not provided the opportunity to comment on the WQS; that the EPA does not have the regulatory authority to implement Tribally-adopted water quality standards that have not been formally approved by the EPA; and that the EPA's findings and actions in implementing the WQS contradict previous findings and conclusions made by the EPA, including in the 2005 Permit.

8. Wesco also maintains that Permit's WQBEL requirements, including a WET test, are incorrectly included as conditions of the Permit because the drainage is not a 3B/3E "intermittent and ephemeral stream" under the EPA's classification of that term; there is not sufficient hydrology to normally support and sustain communities of aquatic life so as to warrant the 3B/3E Classification; the drainage is correctly classified as Class 4B/4E (man-made) because, among other reasons, the waters lack the hydrological potential to normally support

and sustain aquatic life under applicable EPA regulations; and the EPA's findings and actions contradict previous findings and actions made by the EPA, as reflected in, among other things, the 2005 Permit.

9. Wesco further maintains that the Sulfide Limitations and Compliance Schedule and the WET test requirements constitute unreasonable restrictive standards that will result in the loss of the discharge because compliance with the limits is not economically feasible; the discharge results in significant beneficial uses to include, by way of example and not limitation, acres of wetland and open water habitat for waterfowl, including migratory bird, as well as livestock grazing; the EPA erred in dismissing the support letter submitted by the USFWS stating that the USFWS has determined that the current (discharge) quality was sufficient for wetland enhancement;. and the EPA erred as a matter of fact and law in failing to find that the water is of sufficient quality to be used in wetland enhancement.

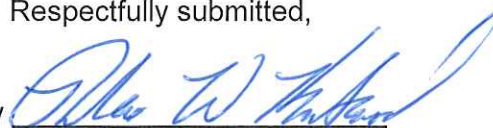
10. Wesco reserves the right to supplement its request for further stay relief as circumstances may warrant. Wesco expressly reserves the right to assert in its Petition for Review any and all legal and factual claims and arguments it may have concerning the issuance of the Permit, as well as the terms and conditions contained therein, whether or not such issues have been set forth in this Summary Petition.

WHEREFORE, Wesco respectfully requests the EAB suspend and stay the Specific Limitations and Self-Monitoring Requirements set forth in Part 1.3 of the Permit and the WET testing requirements until a final ruling and order on Wesco's Petition for Review has entered.

Dated April 30, 2015

Respectfully submitted,

By



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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, I served a true copy of the foregoing **SUMMARY PETITION** via U.S. Mail, postage prepaid, and via email, addressed to the following:

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