

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

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In re:)	
)	
Eagle Oil & Gas Co.)	
Sheldon Dome Field)	
)	
Phoenix Production Company,)	
Rolff 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)	
)	
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OPPOSITION TO JOINT MOTION FOR EXTENSION OF TIME

Petitioner Natural Resources Defense Council (NRDC) respectfully requests that the Environmental Appeals Board (Board) deny the Joint Motion for Extension of Time (Joint Motion) submitted by Wesco Operating Co. (Wesco) and the Environmental Protection Agency Region 8 (Region). Wesco and the Region have asked for an additional sixty days—on top of the thirty-day extension the Board already granted them—to finalize Wesco’s petition. Such an extension would prejudice NRDC by unnecessarily delaying the resolution of the claims raised in this consolidated appeal.

I. Wesco and the Region’s proposed sixty-day extension would prejudice NRDC

The Board has already denied Wesco’s previous request to extend the deadline to file its petition by more than thirty days. On April 8, Wesco asked the Board to grant it an extension

until June 17, 2015, sixty days beyond the timeframe permitted by the Board's regulations, *see* 40 C.F.R. § 124.19(a), to submit its petition. Wesco's Mot. for Extension of Time. The Board denied that request. Order Granting Extension of Time to File Pet. for Review. The Board determined that only a thirty-day extension was warranted because Wesco had made "no showing that sixty additional days are required" for consultation with other interested parties. *Id.* at 2. Wesco and the Region now request that the Board push back the deadline to July 17, four months after the Region issued Wesco's permit and three months after Wesco's initial deadline to submit a petition. Wesco and the Region claim that this extraordinary delay is necessary to allow Wesco and the Region to discuss the terms of Wesco's permit, Joint Mot. at ¶ 6, but they offer no explanation as to why these discussions could not have occurred in the more than two months since the Region issued the permit.

A sixty-day delay would significantly prejudice NRDC. NRDC's petition claims that the permits unlawfully authorize Phoenix and Wesco to discharge toxic chemicals to surface water, a practice that presents risks to public health and the environment. This water pollution continues during the pendency of the consolidated appeals. A two-month delay in which the Region and Wesco engage in private negotiations will needlessly postpone the efficient resolution of NRDC's claims.¹

Even if the Joint Motion only seeks an extension of Wesco's deadline to supplement its petition, it is NRDC's understanding that the requested extension would also delay the Region's June 17 deadline to file a joint response to all petitions. If, however, the Joint Motion asks the Board to create different deadlines for different petitions, NRDC submits that such a disjointed schedule would not serve the "purposes of economy and administrative convenience" that led the

¹ NRDC does not oppose the request by Phoenix Production Company (Phoenix) for an additional thirty days to allow all of the parties to negotiate. NRDC does, however, oppose Wesco and the Region's Joint Motion because it proposes a longer delay.

Board to consolidate the petitions and establish the current set of unified deadlines. Order Consolidating Pets. for Review and Establishing Briefing Schedule at 4.

The Joint Motion’s explanation for why NRDC will not suffer prejudice from the requested extension is inconsistent with the Region’s prior explanations in support of its previous request for an extension. The Joint Motion contends that an extension will not prejudice NRDC “[b]ecause Region 8 and Wesco are discussing issues pertaining [to] a different set of effluent limits with a different legal basis” from the issues raised in NRDC’s petition. Joint Motion at ¶ 8. But, in its April 29 request for a thirty-day extension to its response deadline, the Region noted that regardless of the specific claims ultimately raised in the petitions, all “claims by necessity arise out of the same basic facts and law.” Region’s Mot. for Extension of Time to Respond at 2. The Region predicated its request for an extension on the efficiencies derived from putting the petitions on a common schedule, so that the parties could decide as a group whether to enter into ADR and so that the Region could file a single response to multiple petitions. *Id.* at 3. Now, the Region contends that NRDC’s claims are so different from Wesco’s that NRDC need not be included in settlement discussions. The argument that Wesco and NRDC raise legally distinct claims goes to whether Wesco and NRDC’s petitions should be consolidated (an issue already decided by the Board), not to whether NRDC will suffer prejudice from further delay.

Because Wesco and the Region have not explained why an additional two months are required for negotiations and because such a delay would prejudice NRDC, NRDC respectfully requests that the Board deny Wesco and the Region’s Joint Motion.

Respectfully submitted this 18th day of May, 2015,

/s/ Peter J. DeMarco

Peter J. DeMarco

Matthew McFeeley

Natural Resources Defense Council

1152 15th Street, N.W., Suite 300

Washington, D.C. 20005

Tel: (202) 717-8199

Fax: (202) 289-1060

Email: pdemarco@nrdc.org;

mmcfeeley@nrdc.org

Sarah Tallman

Natural Resources Defense Council

20 N. Wacker Drive, Suite 1600

Chicago, IL 60606

Tel: (312) 651-7918

Fax: (312) 332-1908

Email: stallman@nrdc.org

*Attorneys for Natural Resources Defense
Council*

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to 40 C.F.R. § 124.19(i), I have, on this 18th day of May, 2015, caused the forgoing Opposition to Joint Motion for Extension of Time to be served upon the following persons, by first class mail, at the addresses below:

Everett Volk, Esq.
US EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Jeff Ruch
Executive Director
Public Employees for Environmental
Responsibility
2000 P Street, N.W., Suite 240
Washington, DC 20036

Daniel H. Leff
John C. Martin
Susan M. Mathiascheck
Crowell & Moring, LLP
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Lee H. Johnson
Johanna Hamburger
Carlson, Hammond & Paddock, LLC
1900 Grant Street, Suite 1200
Denver, CO 80203

Kelly A. Rudd
Berthenia S. Crocker
Andrew W. Bladwin
Baldwin, Crocker, Rudd, P.C.
P.O. Box 1229
Lander, WY 82520

/s/ Peter J. DeMarco
Peter J. DeMarco
Natural Resources Defense Council
1152 15th Street, N.W., Suite 300
Washington, D.C. 20005
Tel: (202) 717-8199
Fax: (202) 289-1060
Email: pdemarco@nrdc.org

*Attorney for Natural Resources Defense
Council*