



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
7 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

FAX REQUEST

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TO: Eurika Durr, Clerk of The Board

FAX NUMBER: (202) 233-0121

TELEPHONE NUMBER: (202) 233-0122

FROM: Cynthia N. Kawakami, Associate Regional Counsel

TELEPHONE NUMBER: (312) 886-0564

DATE: 10-10-2008

NUMBER OF PAGES
(INCLUDING THIS ONE) 8



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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October 10, 2008

C-14J

Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005
Facsimile Number: (202) 233-012 ..

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ENVIR. APPEALS BOARD

In Re: Rocky Well Service, Inc. & E. J. Klockenkemper.
SDWA Appeal No.: 08-02 & 08-03

Dear Ms. Durr:

Attached, please find *Appellee's Response to Respondent Klockenkemper's Motion for Leave to File Amended Notice of Appeal ("Appellee's Response")* in the above-captioned matter for filing with the Environmental Appeals Board.

Sincerely,

Cynthia N. Kawakami
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd. (C-14J)
Chicago, IL 60604-3590
Telephone No.: (312) 886-0564
Facsimile No.: (312) 886-0747

cc: Felipe Gomez, Esq.
Richard Day, Esq.

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

In Re: _____)
)
Rocky Well Service, Inc. & _____)
E. J. Klockenkemper _____)
)
Docket No. SDWA-05-2001-002 _____)
_____)

SDWA Appeal Nos. 08-02 & 08-03

**APPELLEE'S RESPONSE TO RESPONDENT KLOCKENKEMPER'S
MOTION FOR LEAVE TO FILE AMENDED NOTICE OF APPEAL**

Pursuant to 40 C.F.R. §§ 21.16(b) and 22.30(e) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, ("Consolidated Rules" or "CROP"), the United States Environmental Protection Agency, Region 5 ("Appellee/Complainant"), files the instant Appellee's Response to Respondent Klockenkemper's Motion for Leave to File Amended Notice of Appeal ("*Appellee's Response*").

On or about October 7, 2003, Appellant/Respondent Klockenkemper filed his motion for leave to file an amended notice of appeal, ("*Appellant's/Respondent's Motion*" or "*the Motion*"). Appellee/Complainant initially declined to agree with Appellant's/Respondent's initial request to amend his notice of appeal, but reviewed its position and subsequently determined that it does not object to Appellant's/Respondent's proposed amendment of his notice of appeal, as specifically articulated in Attachment A to his Motion. Appellee/Complainant objects, however, to Appellant's/Respondent's request to file "*. . . an Amended Notice of Appeal similar to that attached hereto (give or take an in terlocutory order to two), simultaneously with his Brief, on*

or before October 31, 2008, ... See Appellant's/Respondent's Motion at p. 3. (Emphasis added).

There is no need for Appellant/Respondent to file a notice of appeal that is "... *similar to that attached [to his Motion] ... (give or take an interlocutory order to two) ...*" Appellant/Respondent asked the Environmental Appeals Board ("EAB" or "the Board") on the first page of his Motion (in the first unnumbered paragraph), that he be allowed to file "an Amended Notice of Appeal ... , proposed copy of which Amended Notice is attached hereto." This suggests that Attachment A is the amended notice of appeal that is at issue for acceptance by the EAB. Additionally, Appellant/Respondent represented to the Board that the "... amendment of his notice of appeal *merely seeks to clarify* the fact that Ms. Toney was not the only Presiding Officer whose final and applicable interlocutory orders are being appealed, ..." and that his "... proposed amendment is a *matter of form rather than substance.* ..." See Appellant/Respondent Klockenkerper's Motion at paragraphs 3 and 4. Having clarified any alleged confusion in the record and corrected alleged problematic matters of form with his Motion and proposed amended notice of appeal (at Attachment A to the Motion), Appellant/Respondent should have no need to provide the Board with yet another version of an amended notice of appeal. Therefore, if the EAB grants Appellant's/Respondent's, the amended notice of appeal that is Attachment A to his Motion should be the one that is filed in this matter.

It is also unclear why Appellant/Respondent seeks to file an amended notice of motion at this late date, given that the EAB has already provided Appellants/Respondents with two extensions of time to file their brief in support of their appeal, which now must be filed on or before October 31, 2008. As noted above, Appellant/Respondent represented to the EAB that

the "... amendment of his notice of appeal *merely seeks to clarify* the fact that Ms. Toney was not the only Presiding Officer whose final and applicable interlocutory orders are being appealed, ..." and that his "... proposed amendment is a *matter of form rather than substance*..." See Appellant/Respondent Klockenke nper's Motion at paragraphs 3 and 4. (Emphasis added). Therefore, based on Appellant's/Respondent's representations, there are no new substantive matters in the amended notice of appeal that go beyond what he contemplated in his original notice of appeal that was filed on or about July 28, 2008. Accordingly, Appellants/Respondents should not require any extra time, beyond the twice-extended deadline of October 31, 2008, to craft an appellate brief that addresses all matters for appeal in the initial and amended notices of appeal.

For the reasons set forth above, Appellee/Complainant respectfully requests that, if the EAB grants Appellant's/Respondent's Motion, it issue an order designating Attachment A to the Motion as the amended notice of appeal to be filed with the Board. In addition, Appellee/Complainant respectfully requests that this Board issue an order that clarifies that the twice-extended October 31, 2008 due-date for the Appellants'/Respondents' appeal brief is the final deadline for them to file their brief addressing all matters contained in the notice of appeal and amended notice of appeal, and that no further extensions of time will be granted for their brief.

Respectfully Submitted,

Date: October 10, 2008



Cynthia N. Kawakami
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**In Re: Rocky Well Service, Inc. &
Edward J. Klockenkemper
SDWA Appeal Nos. 08-02& 08-13**

CERTIFICATE OF SERVICE

I certify that, on the date below, I caused to be filed by facsimile, *Appellee's Response to Respondent Klockenkemper's Motion for Leave to File Amended Notice of Appeal*, along with this Certificate of Service, with the U.S. Environmental Protection Agency, Clerk of the Board, Environmental Appeals Board at fax number: (202) 233-0121. I further certify that, on the date below, I caused to be delivered by Federal Express, Next Business Day Delivery, the original and five copies of *Appellee's Response to Respondent Klockenkemper's Motion for Leave to File Amended Notice of Appeal*, along with this Certificate of Service, to the person as follows:

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board (1103B)
Colorado Building
134 G Street, N.W., Suite 600
Washington, D.C. 20005

I further certify that, on the date below, I hand-delivered a copy of *Appellee's Response to Respondent Klockenkemper's Motion for Leave to File Amended Notice of Appeal*, along with this Certificate of Service, to the persons as follows:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 5
77 West Jackson Blvd. - 13th Floor
Chicago, IL 60604-3590

I further certify that, on the date below, I caused to be delivered by facsimile, and by First Class United States Mail, postage prepaid, a copy of *Appellee's Response to Respondent*

**In Re: Rocky Well Service, Inc. &
Edward J. Klockenkemper
SDWA Appeal Nos. 08-02& 08-13
Certificate of Service
Page Two**

Klockenkemper's Motion for Leave to File Amended Notice of Appeal, along with this Certificate of Service, to each of the persons as follows:

Richard J. Day, P.C.
Attorney at Law
413 North Main Street
St. Elmo, Illinois 62558
Facsimile No.: (618) 829-3340

Felipe N. Gomez, Esq.
Law Offices of Felipe N. Gomez
P.O. Box 220550
Chicago, IL 60622
Facsimile No.: (773) 278-6226

Dated: October 10, 2008



Cynthia N. Kawakami
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