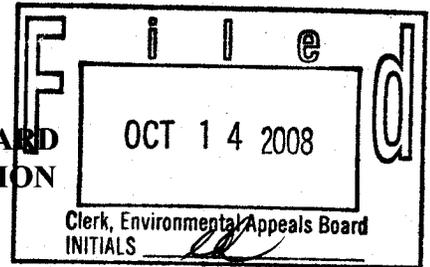


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION
WASHINGTON, D.C.



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

SDWA Appeal Nos. 08-03 & 08-04¹

**ORDER GRANTING KLOCKENKEMPER'S MOTION FOR LEAVE
TO FILE AMENDED NOTICE OF APPEAL**

By motion dated October 7, 2008, Edward J. Klockenkemper ("Klockenkemper") requests leave to file an amended notice of appeal on or before October 31, 2008, simultaneously with the brief in support of his appeal. Motion for Leave to File Amended Notice of Appeal (Oct. 7, 2008) ("Motion"). Klockenkemper filed the initial notice of appeal on August 5, 2008; after the Board granted two extensions, the briefs in support of Klockenkemper and co-appellant/respondent Rocky Well Services, Inc.'s notices of appeal are due on or before October 31, 2008.

Klockenkemper now seeks to amend his notice of appeal to clarify that certain interlocutory orders that he seeks to appeal were issued by not only the Presiding Officer who issued the Initial Decision, Marcy Toney, but also by "Ms. Toney's predecessor, Regina Kossek." *Id.* at 1. Klockenkemper states that this proposed amendment is one of "form rather than substance." *Id.* Klockenkemper's notice of appeal currently seeks "review with regard to Region 5's July 23, 2008, Initial Decision assessing a civil penalty of \$105,590 under

¹ The Board has received two notices of appeal in connection with Docket No. SDWA 05-2001-002. The Board has designated Klockenkemper's appeal as SDWA Appeal No. 08-03. An appeal filed by Rocky Well Service, Inc. is designated as 08-04. Prior Board orders incorrectly stated the appeal numbers for this matter.

Section 1423(c) of the Safe Drinking Water Act, and other decisions and orders by Region 5 Presiding Officer Marcy Toney, Esq. * * *.” Klockenkemper Notice of Appeal (July 28, 2008).

He seeks to amend the Notice of Appeal to include review of certain aspects of the following orders:

- Order Granting Leave to Amend Complaint (Feb. 6, 2003), issued by Regional Judicial Officer (“RJO”) Kossek;
- Decision and Order Denying Respondent’s Motion to Dismiss Amended Complaint (May 3, 2005), issued by RJO Kossek;
- Decision and Order on Motions (May 17, 2006), issued by RJO Toney;
- Partial Accelerated Decision (Dec. 27, 2006), issued by RJO Toney; and
- Order on Motions to Conform (Oct. 2, 2007), issued by RJO Toney.

On October 10, 2008, U.S. Environmental Protection Agency, Region 5, filed a Response to Klockenkemper’s Motion requesting that in the event the Motion is granted, the issues for appeal be limited to those detailed in Attachment A to the Motion, “Respondent Klockenkemper’s Amended Notice of Appeal.” Response to Respondent Klockenkemper’s Motion for Leave to File Amended Notice of Appeal (Oct. 10, 2008) at 3.

The Board adheres to the generally-accepted legal principle that “administrative pleadings are liberally construed and easily amended.” *In re Port of Oakland*, 4 E.A.D. 170, 205 (EAB 1992), *quoted in In re City of Marshall*, 10 E.A.D. 173, 179 n.19 (EAB 2001). We also note that here, the Board has granted Klockenkemper two extensions to file his brief in support of his appeal. *See* Order Granting Joint Motion for Extension of Time to File Appeal Brief (Aug. 12, 2008); Order Granting Joint Motion for Additional Extension of Time to File Appeal Brief (Oct. 1, 2008).

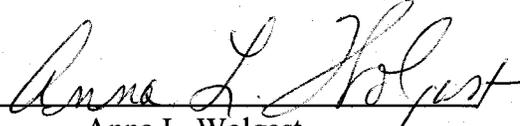
We grant Klockenkemper's Motion to the extent that the amendments to the original July 28, 2008 notice of appeal conform to the issues raised in Attachment A to the present Motion. The filing date remains October 31, 2008. No further extensions of time to file the amended notice or brief in support of appeal will be granted.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: October 14, 2008

By: _____


Anna L. Wolgast
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Klockenkemper's Motion for Leave to File Amended Notice of Appeal 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:

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Date: OCT 14 2008


Annette Duncan
Secretary