



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

JUN 04 2012

REPLY TO THE ATTENTION OF:
Mail Code: C-14J

VIA ELECTRONIC AND FIRST CLASS U.S. MAIL

Felipe N. Gomez, Esq.
116 S. Western Avenue
P.O. Box 12319
Chicago, IL 60612
gomzfnl@netscape.net

Richard J. Day, Esq.
413 N. Main Street
St. Elmo, IL 62458
daylaw@hofnetinc.com

Case # SDWA-05-2001-0002
B#: 27512 48 D001

Re: In the Matter of Rocky Well Service, Inc. and the Estate of Edward J. Klockenkemper; Settlement of Violations of Section 1423(c) of the *Safe Drinking Water Act*, 42 U.S.C. § 300h-2(c); Fully-Executed and Filed Consent Agreement and Final Order.

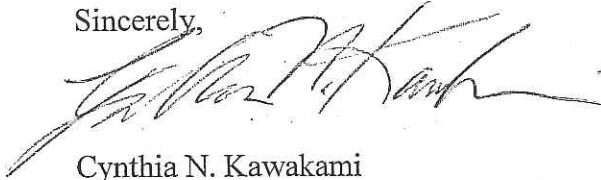
Dear Messrs. Gomez and Day:

With this letter, I am enclosing for each of you an original fully-executed Consent Agreement and Final Order (CAFO) to resolve the above-described case. This document was filed on June 4, 2012 with the Regional Hearing Clerk, Region 5.

The civil penalty in the amount of \$20,000 is to be paid in the manner described in paragraphs 24 and 25 of the CAFO. Please be certain that the docket number is written on both the transmittal letter and the check. Payment is due by July 5, 2012 (which is 30 calendar days of today's filing date, taking into account the national holiday on July 4, 2012).

If you have any questions or comments, please feel free to contact me at (312) 886-0564.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cynthia N. Kawakami', written in a cursive style.

Cynthia N. Kawakami
Associate Regional Counsel

Enclosure

cc. Regional Hearing Clerk, Region 5
Mary T. McAuliffe (C-14J)

RECEIVED
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U.S. EPA REGION 5
JUN -4 PM 3:44

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Rocky Well Service, Inc. and the Estate of)
Edward J. Klockenkemper,) Docket Nos. SDWA-05-2001-002 and
) SDWA Appeal Nos. 08-03 & 08-04
Respondents.)
_____)

CONSENT AGREEMENT AND FINAL ORDER

1. Complainant the Director of the Water Division, U.S. Environmental Protection Agency, Region 5 (EPA) brought this administrative action seeking a civil penalty under Section 1423(c) of the Safe Drinking Water Act ("SDWA" or "the Act"), 42 U.S.C. § 300h-2(c).
2. On July 9, 2001, Complainant filed its original Complaint in this matter against Respondent Rocky Well Service, Inc. (Respondent RWS), alleging that it had violated Section 1423 of SDWA and the Illinois Underground Injection Control (UIC) regulations when it failed to timely test the mechanical integrity of six Class II underground injection wells (Counts I and II) and failed to timely submit Annual Well Status Reports for the six wells (Count III).
3. Respondent RWS timely filed its Answer.
4. On February 20, 2002, Complainant filed an Amended Complaint, alleging that Respondent RWS and Respondent Edward J. Klockenkemper (Respondent EJK) failed to timely test the mechanical integrity of six Class II underground injection wells and failed to timely submit Annual Well Status Reports for the six wells and thus violated the SDWA and the Illinois UIC regulations.
5. On March 24, 2003, Respondent RWS filed an Answer to the Amended Complaint and requested a hearing under Section 1423(c)(3)(A) of SDWA, 42 U.S.C. § 300h-2(c)(3)(A).

6. On July 11, 2005, Respondent EJK filed an Answer and a request for hearing under Section 1423(c)(3)(A) of SDWA, 42 U.S.C. § 300h-2(c)(3)(A).
7. On December 27, 2006, the RJO issued her Partial Accelerated Decision (PAD) granting Complainant's Motion for Partial Accelerated Decision on Liability, finding Respondents each liable for violating the SDWA and the Illinois UIC regulations; and granting, in part, Respondents' Joint Motion for Partial Accelerated Decision and dismissing certain claims in Count III of the Amended Complaint regarding Respondents alleged failure to submit Annual Well Status Report for calendar years 1991, 1993, 1994, 1995, and 2001.
8. From April 24, 2007 through April 26, 2007, a hearing in this matter was held in Mt. Vernon, Illinois with regard to the penalty in this case-
9. On July 23, 2008, the RJO issued her Initial Decision on penalty, finding that Respondents were jointly and severally liable for a \$105,590 penalty in this matter for their violations of the SDWA and the Illinois UIC Program.
10. On March 30, 2010, the EAB issued a Final Order in this matter, upholding the RJO's orders finding Respondents liable for violations of the SDWA and the Illinois UIC Program, and liable, jointly and severally, for a \$105,590 penalty, among other things.
11. During the administrative proceedings, EPA determined the violations of the six wells had been abated, leaving only the penalty at issue and subject to this consent agreement and final order (CAFO).
12. On April 27, 2010, Respondents filed a Petition for Review of Final Agency Action and Orders in the U.S. District Court for the Southern District of Illinois (Estate of E.J. Klockenkemper et al. v. EPA, 10cv325).

13. On November 23, 2010, the Court allowed the Estate of Edward J. Klockenkemper to substitute for the deceased Edward J. Klockenkemper as a Petitioner in this matter.

14. On June 6, 2011, the United States, on behalf of EPA filed a Motion for Voluntary Remand to the EAB and Vacatur of the EAB's March 30, 2010 Final Order (Motion for Remand) alleging the order had been based, in part, on unapproved state UIC regulations.

15. On March 21, 2012, the Court issued an order vacating the EAB's March 30, 2010 Final Order and remanding the case back to the EAB for reconsideration under the appropriate legal standards, among other things.

16. On May 21, 2012, Respondents filed a Notice of Appeal in the U.S. Court of Appeals for the Seventh Circuit, Docket No. 12-2235.

Stipulations

17. Respondent RWS and Respondent Estate of Edward J. Klockenkemper (Respondent Estate) each admit the jurisdictional allegations in the Amended Complaint and neither admits nor denies the factual allegations in the Amended Complaint or any other U.S. pleading or brief filed in any of the related matters (EPA v. Rocky Well Service, Inc., et al, 05-2001-002, SDWA Appeals 08-03 and 08-04; Estate et al. v. EPA 10cv325 (SD Ill.); ad Estate et al., v. EPA 12-2235 (7th Cir.)).

18. Respondent RWS and Respondent Estate (jointly referred to as "Respondents") and EPA each waive its right to an administrative or judicial hearing, or appeal, on any issue of law or fact set forth in the Amended Complaint or in this Consent Agreement and waives its right to appeal the Final Order accompanying this Consent Agreement, the District Court orders, and 7th Circuit Orders related to this matter.

19. The Parties each waive its right to bring claims against each other, including against the EPA and/or the United States Department of Justice, under the Equal Access to Justice Act, 28 U.S.C. § 2412 (EAJA) for attorneys fees incurred with regard to the federal governments' allegations in the Amended Administrative Complaint in this case, regardless of whether the attorneys' fees relate to the initial enforcement case or any appeal of the same and regardless of whether the attorneys' fees were incurred in connection with the case in an administrative or judicial forum.

20. Respondents each certify that it is in compliance with SDWA and the Illinois UIC Program and it no longer owns and/or operates wells regulated under SDWA and the Illinois UIC Program.

21. The Parties consent to the terms of this CAFO.

22. The Parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

23. In consideration of the seriousness of the violations, the economic benefit resulting from Respondents' violations, Respondents' history of such violations, Respondents' representations as set forth in Paragraph 20, above, the economic impact of the penalty on Respondents, the afore-mentioned mutual releases and terms, and other matters as justice may require, EPA agrees to mitigate the \$107,817 penalty proposed in the Amended Complaint to \$20,000, and Respondents agree to pay the reduced penalty, as set forth below.

24. Within 30 days after the effective date of this CAFO, Respondents must pay the \$20,000 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondents use Express Mail, they shall send a cashier's or certified check, payable to

"Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

25. Within 30 days after the effective date of this CAFO, Respondents must send a notice of payment that states each Respondent's name, the docket number of this CAFO and the billing document number to EPA at the following addresses when it pays the penalty:

Attn: Regional Hearing Clerk, (R-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Lisa Perenchio, Chief
Safe Drinking Water Branch (WD-15J)
Water Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Cynthia Kawakami, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

26. This civil penalty is not deductible for federal tax purposes.

27. Upon receipt of Respondents' payment, EPA agrees that the Respondents' receipt for payment of the mitigated penalty to EPA will be indicia of proof of satisfaction of the Estate Claim filed by the United States in the matter of In Re the Estate of Edward J. Klockenkemper, Calhoun County Circuit Court (8th Jud. Cir.), Docket No. 2010-P-9.

28. If Respondents do not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 142(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

29. Respondents must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury Pursuant to 26 U.S.C. § 6621(a)(2). Respondents must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondents must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This non-payment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

30. If Respondents do not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

31. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2). Respondents must pay a \$15 handling charge

each month that any portion of the penalty is more than 30 days past due. In addition, EPA will assess a six percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO is signed by the Regional Administrator.

General Provisions

32. This CAFO settles EPA's claims for civil penalties for the violations alleged in the Amended Complaint, and for any attorneys' fees or other costs related thereto or to the judicial matters noted above.

33. Nothing in this CAFO restricts EPA's authority to seek Respondents' compliance with SDWA and other applicable laws and regulations, for matters not addressed by this CAFO.

34. This CAFO does not affect Respondents' responsibility to comply with SDWA and other applicable federal, state and local laws, and regulations.

35. The Parties agree that the terms of this CAFO contractually bind each of the Parties and their successors and assigns.

36. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the Party whom he or she represents and to bind that Party to its terms.

37. Each Party agrees to bear its own costs and fees, including attorneys' fees, in this action with regard to the federal governments' allegations in the Amended Administrative Complaint in this case, including, but not limited to, attorneys' fees related to the initial enforcement case or any appeal of the same, incurred in connection with the case in an administrative and judicial forum (including U.S.D.C. S.D. Illinois Case No. 10cv325 and 7th Circuit Appeal No. 12-2235). In particular, Respondents agree to waive their right to seek attorneys' fees under EAJA from

EPA and/or the United States Department of Justice for such fees incurred in connection with this matter and the United States waves any such rights against Respondents.

38. This CAFO constitutes the entire agreement between the parties.

CONSENT AGREEMENT AND FINAL ORDER
Rocky Well Service, Inc. and
the Estate of Edward J. Klockenkemper,
Docket Nos.: SDWA-05-2001-002 and
SDWA Appeal Nos. 08-03 & 08-04

Rocky Well Service, Inc., Respondent

Date: 5-31-17

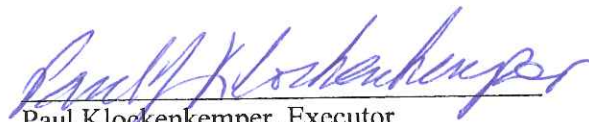
By:


Paul Klockenkemper, Authorized Agent for
Rocky Well Service, Inc.

CONSENT AGREEMENT AND FINAL ORDER
Rocky Well Service, Inc. and
the Estate of Edward J. Klockenkemper,
Docket Nos.: SDWA-05-2001-002 and
SDWA Appeal Nos. 08-03 & 08-04

Estate of Edward J. Klockenkemper, Respondent

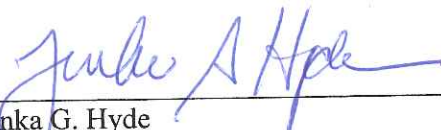
Date: 5-31-12 By:


Paul Klockenkemper, Executor
Estate of Edward J. Klockenkemper

CONSENT AGREEMENT AND FINAL ORDER
Rocky Well Service, Inc. and
the Estate of Edward J. Klockenkemper,
Docket Nos.: SDWA-05-2001-002 and
SDWA Appeal Nos. 08-03 & 08-04

U.S. Environmental Protection Agency, Complainant

Date: 6/11/12


By: 
Tinka G. Hyde
Director
Water Division

CONSENT AGREEMENT AND FINAL ORDER
Rocky Well Service, Inc. and
the Estate of Edward J. Klockenkemper,
Docket Nos.: SDWA-05-2001-002 and
SDWA Appeal Nos. 08-03 & 08-04

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

6-1-12
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

**In the Matter of: Rocky Well Service Incorporated and
(the Estate of) Edward J. Klockenkemper; Consent Agreement
And Final Order; Docket No. SDWA-05-2001-002**

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CERTIFICATE OF SERVICE


I certify that on the date below, I hand-delivered and filed an original fully-executed *Consent Agreement and Final Order* and a copy of the same in the above-described matter, along with this Certificate of Service, with the Office of the Regional Hearing Clerk, Region 5, within the Office of Enforcement and Compliance Assurance, U.S. EPA, Region 5, 19th Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604.

In addition, I certify that I caused to be mailed by certified first-class U.S. Mail, return receipt requested and postage prepaid,¹ an original of the fully-executed, filed *CAFO* in this matter to each person as follows:

Felipe N. Gomez, Esq.
116 S. Western Avenue
P.O. Box 12319
Chicago, IL 60612

Richard J. Day, Esq.
413 N. Main Street
St. Elmo, IL 62458

Dated: June 4, 2012


Yesenia Ortiz-Santiago
Legal Assistant
Office of the Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, Illinois 60604-3590

¹ An electronic copy of the fully-executed CAFO in this case was also sent to each of Respondents' attorneys at the following addresses: daylaw@hofnetinc.com and gomzfnl@netscape.net