

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

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In re:)
)
Rocky Well Service Inc., and) E.A.B. Docket Nos. 08-03 and 08-04
Edward J. Klockenkemper,) (SDWA-05-2001-002 (40 CFR Part 22))
)
Respondents)
_____)

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

**Respondent Rocky Well Service, Inc.'s, Motion for Oral Argument
Via Video TeleConferencing Facilities at Region 5 EPA**

Respondent, Rocky Well Service, Inc., ("RWS") by and through undersigned counsel, requests that oral argument be allowed to RWS and be scheduled prior to a final decision by the Board in the above-captioned matter, for the reasons set forth below. In addition, in order to reduce costs to the parties in light of the current economic circumstances and in the spirit of resource conservation, Respondent requests that oral argument, if granted, be presented to the Board remotely by the Parties' counsel at and via Region 5 EPA's teleconferencing facilities in Chicago, IL. In support hereof, Respondent also states that:

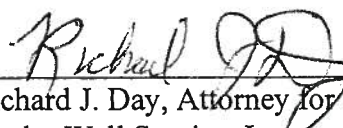
1. After thorough review of EPA's two Response Briefs in this matter, and in light of the lengthy and complex arguments of the Parties both below and to the Board, it is believed by movant that oral argument would assist the Board in its deliberations on the most important issues presented by the case.
2. As pointed out in Respondent Klockenkemper's separate Motion for Oral Argument, this matter presents constitutional and federal question issues of first impression for the Board and the U.S. EPA, which, being for the most part issues of interpretation of a federal statute (*SDWA Sec 1421, 42 USC 300h*) that is codified in Illinois by a State law adopted by EPA as the federally-approved SDWA UIC program for Illinois (*Oil and Gas Act - 225 ILCS 725, see 40 CFR 147.701*).
3. With regard to RWS, the Region presents an issue of first impression in its requested application of 28 USC 2462 to RWS's one-time failure to test each of the six wells,

interpreting the Sept. 1, 1995 and Dec. 19, 1996 violations as “continuing” for 28 USC 2462 accrual purposes such that the accrual of EPA’s right to sue was tolled until the test was performed (after the July 9, 2001, complaint was filed), despite the fact that 225 ILCS 725 requires such test only once each 5 years, and does not impose a continuous monitoring or daily testing requirement. (See *EJK Revised Brief at pp18-29*).

4. The matter presents a constitutional issue and federal question of first impression by way of the Region’s attempted imposition of joint and several liability and penalty upon RWS, despite the fact that 225 ILCS 725 does not contain a joint and several liability scheme. (See *EJK Revised Brief at p55*).
5. This matter also involves a matter of first impression with regard to the imposition of a penalty upon a Respondent despite the Region having found on the record and at hearing that the permittee (RWS) had established its inability to pay a penalty. (See *RWS Revised Brief at pp.3-4*).
6. Oral argument is also appropriate given the Respondents’ position that they have not been given full opportunity to present their arguments, including and especially RWS’s penalty-related fact-based arguments pertaining to the specific circumstances of each injection well, and lack of EPA evidence as to same, at the time of the MIT violations, to the Board.
7. Region 5 was notified in advance of this Motion, and while it did not specifically object to same, the Region did state it did not believe oral argument was necessary and declined to join Respondents in their requests.

For the foregoing reasons Respondent RWS respectfully requests the Board to grant and schedule oral argument for Respondent, granting RWS time separate and apart from any time for argument to be sought by or granted to Mr. Klockenkemper and his counsel. Respondent also requests that the Board allow and order any argument to be presented to the Board by the Parties to occur by way of and utilizing the Region 5 teleconferencing facilities in Chicago, IL., whereby air travel and other costs and impacts attendant to travel to and lodging in Washington D.C. for up to 4 counsel can be avoided.

Respectfully Submitted By:


Richard J. Day, Attorney for Respondent
Rocky Well Service, Inc.


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In re:)	
Rocky Well Service Inc., and)	SDWA Appeal No. 08-04
Edward J. Klockenkemper,)	
)	
Docket No. SDWA-05-2001-002)	

CERTIFICATE OF FILING AND SERVICE

The undersigned does certify that the original of this Motion for Oral Argument of Rocky Well Service, Inc. was delivered for filing, by facsimile and via FedEx carrier to the United States Environmental Protection Agency, Clerk of the Environmental Appeals Board, 1341 G Street, N.W., Suite 600, Washington D.C., 20005, and that a copy was served by facsimile and U.S. First Class Mail on 1) Regional Hearing Clerk, USEPA, 77 W. Jackson, (C-13J) Chicago, IL. 60604-3590; 2) USEPA Presiding Officer Marcy Toney, Office of Regional Counsel, USEPA, 77 W. Jackson (C-14J), Chicago, IL. 60604-3590; 3) Counsels Ms. Cynthia Kawakami and 4) Ms. Mary McAuliffe, at Office of Regional Counsel (C-14J), 77 W. Jackson, Chicago, IL. 60604-3590, and 5) Mr. Felipe N. Gomez, Esq. P.O. Box 220550, Chicago, IL. 60622, on this 22nd of April, 2009.


Richard J. Day, Attorney for Respondent
Rocky Well Service, Inc.

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