

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

SAULIUS SIMOLIUNAS; JOHN RIEHL

Petitioners

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respondent

FILED

OCT 31 2003

LEONARD GREEN, Clerk

Upon consideration of the joint motion to voluntarily dismiss the appeal herein pursuant to Rule 42(b), Federal Rules of Appellate Procedure,

It is **ORDERED** that the motion is **GRANTED** and the appeal is dismissed.

ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT.
Leonard Green, Clerk

Leonard Green

RECEIVED IN THE UNITED STATES COURT OF APPEALS
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OCT 31 2003

LEONARD GREEN, CLERK)
SAULIUS SIMOLIUNAS; JOHN RIEHL,)

Petitioners,)

v.)

UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

FILED

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LEONARD GREEN, Clerk

No. 02-3501
(consolidated with
No. 03-3647)

JOINT MOTION FOR VOLUNTARY DISMISSAL

Pursuant to Rule 42 of the Federal Rules of Appellate Procedure, Petitioners Saulius Simoliunas and John Riehl (proceeding pro se), together with Respondent United States Environmental Protection Agency (“EPA”), jointly move for voluntary dismissal of the petitions for review (Nos. 02-3501 & 03-3647).

Dismissal is warranted because the Clean Air Act permit at issue in this case recently became void, and therefore the controversy between the parties is now moot.

The parties offer the following in support of this motion:

1. This case concerns a “prevention of significant deterioration” permit

that was issued by the State of Michigan Department of Environmental Quality (“MDEQ”), pursuant to section 165 of the federal Clean Air Act, 42 U.S.C. § 7475, to Minergy Detroit, L.L.C. (“Minergy”). The permit allowed Minergy to construct a facility in Wayne County, Michigan, that would incinerate municipal wastewater solids and produce a glass aggregate material for use in asphalt paving and like commercial products.

2. The MDEQ originally issued the permit to Minergy on September 20, 2001. (JA 0014). Petitioners thereafter petitioned EPA’s Environmental Appeals Board (“EAB”) for review of the MDEQ’s decision. The EAB denied Petitioners’ administrative petitions on March 1, 2002, and the permit became effective on March 25, 2002. See “Notice of a Final Determination of a Construction Permit for Minergy Detroit, Detroit, Wayne County, MI: Notice of final action,” 68 Fed. Reg. 13,701 (Mar. 20, 2003). Pursuant to section 307(b) of the Clean Air Act, 42 U.S.C. § 7607(b), Petitioners then petitioned this Court for review of the EAB’s decision.

3. The permit expressly provided that, unless Minergy began construction of its facility within 18 months from the permit’s effective date, the permit would “become void unless otherwise authorized by [MDEQ].” (JA 0014).

4. Undersigned counsel for EPA recently learned that the permit

expired because Minergy failed to commence construction within 18 months from the date the permit became effective. Specifically, Mr. Randal Telesz, an official with MDEQ's Air Quality Division, recently confirmed via telephone that the permit expired in September of 2003 because of Minergy's failure to timely begin construction of its proposed facility. Mr. Telesz also confirmed that Minergy could not simply renew the lapsed permit, i.e., if Minergy still wishes to construct its proposed facility, it must seek and obtain an entirely new Clean Air Act permit from the State. In addition, undersigned counsel for EPA recently spoke with Ms. Sharon Newlon, an attorney representing Minergy, who confirmed that the permit has expired and that Minergy has dropped its plans to construct the facility.

5. As the permit at issue in this case is null and void, there is no longer an actual, live controversy between the parties. As such, granting this joint motion for voluntary dismissal will avoid an unnecessary, advisory decision by the Court, as well as save the Court's limited resources for other cases requiring decision.

6. The parties agree and hereby stipulate that this dismissal should be without prejudice to Petitioners' right to file any challenge to any permit that may be issued in the future. The parties also agree and stipulate that each party shall bear its own costs and fees incurred in connection with this litigation.

Wherefore, Petitioners and Respondent respectfully request that the Court grant this motion for voluntary dismissal.

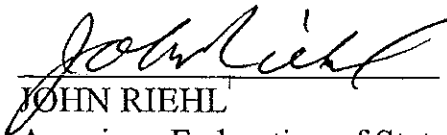
Respectfully submitted,

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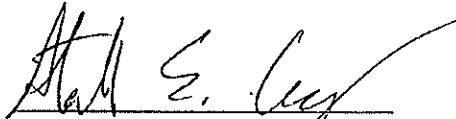


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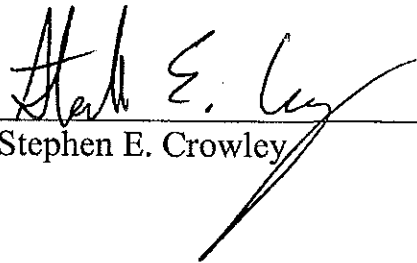
CERTIFICATE OF SERVICE

I hereby certify that copies of the parties' JOINT MOTION TO VOLUNTARILY DISMISS were served, this 30th day of October, 2003, via first class mail, on the following:

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