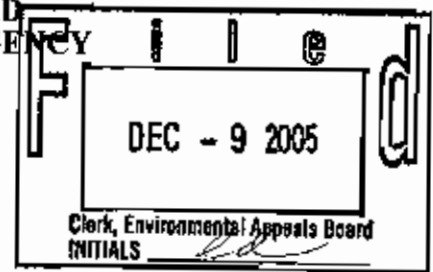


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:

Donald Cutler

Docket No. CWA-10-2000-0188

EAJA Appeal No. 05-01

ORDER ELECTING TO REVIEW SUA SPONTE

On October 26, 2005, Administrative Law Judge Spencer T. Nissen ("ALP") issued a "recommended decision" in this matter.¹ See Recommended Decision on Application for Award of Fees and Expenses Pursuant to the Equal Access to Justice Act ("Recommended Decision"), Dkt. No. CWA-10-2000-0188 (ALJ Oct. 26, 2005). The Recommended Decision denies the application for attorneys fees filed by Donald Cutler pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 40 C.F.R. Part 17.

Pursuant to 40 C.F.R. § 22.30(a), the parties had thirty days to appeal the ALJ's decision. The Board did not receive an appeal from either party. Accordingly, we must determine whether to exercise our discretion to initiate review of the case. See 40 C.F.R. § 22.30(b) (the Board may review an initial decision on its own initiative).

After conducting a preliminary examination of the Recommended Decision and related materials, we find that further review is appropriate. We therefore elect to review of this matter pursuant to 40 C.F.R. § 22.30(b). We will not set a briefing schedule at this time but will instead

¹ An ALJ who considers a fee petition brought under EAJA issues a "recommended decision," which is reviewable by this Board to the same extent and in the same manner as an initial decision. 40 C.F.R. §§ 17.27, 22.30; see *In re L&C Servs., Inc.*, 8 E.A.D. 110, 111 n.2 (EAB 1999).

continue to evaluate the issue and the record in an effort to determine whether any further briefing will be appropriate. Should the Board determine that further briefing is necessary, the Board will promptly notify the parties.

So ordered.

Dated: 12/9/05

ENVIRONMENTAL APPEALS BOARD

By: Kathie A. Stein
Kathie A. Stein
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Electing Review Sua Sponte in the matter of Donald Cutler, EAJA Appeal No. 05-01, were sent to the following persons in the manner indicated:

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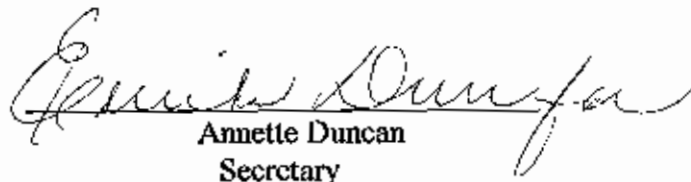
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Judge Spencer T. Nissen
OALJ (1900L)

Dated: 12/9/05


Annette Duncan
Secretary