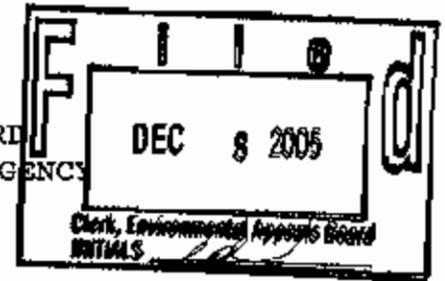


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
Consent Agreements and Proposed) Consent Agreement and
Final Orders for Animal Feeding) Final Order
Operations) CAA-HQ-2005-xx
) CERCLA-HQ-2005-xx
) EPCRA-HQ-2005-xx
)

ORDER DENYING MOTION FOR LEAVE TO INTERVENE

I. INTRODUCTION

On December 6, 2005, the Environmental Appeals Board ("Board") received a joint motion for leave to intervene from various community and environmental groups seeking to become a party to the proceedings held by the Board on the above-captioned matter. More specifically, the Association of Irrigated Residents, Clean Water Action Alliance of Minnesota, Community Association for Restoration of the Environment, Environmental Integrity Project, Iowa Citizens for Community Improvement, and Sierra Club (collectively "AIR") moved for intervention "in order to appear at the December 13 hearing,^[1] file a brief prior to the hearing, and participate in any additional proceedings as a party." Motion for Leave to Intervene at 2 (Dec. 5, 2005). AIR represents that it contacted Robert Kaplan from EPA's Office of

¹ See Order Scheduling Hearing and Requesting Supplemental Information (EAB, Nov. 18, 2005) (scheduling hearing on the above-captioned matter for Thursday, December 13, 2005).

Enforcement and Compliance Assurance ("OECA"), and that Mr. Kaplan informed AIR that OECA has not decided whether to oppose the motion, but that OECA does not oppose the Board granting AIR leave to file a non-party brief. The Board has not received anything directly from OECA on this point. However, counsel for six of the Respondents has filed an objection to participation by AIR.² See Respondent's Objections to Non-Party Participation (Dec. 6, 2005).

Also on December 6, the Board received a letter from the same community and environmental groups expressing their interest in participating at the hearing and requesting an opportunity to file a memorandum to respond to the supplemental brief OECA was to file in response to an order issued by the Board on November 18, 2005.

By this Order, the Board denies AIR's request to intervene, but allows AIR to file a *non-party brief* pursuant to 40 C.F.R. § 22.11(b). By a separate order, the Board has also allowed AIR to participate at the December 13, 2005 hearing. See Order

²On December 6, 2005, Crowell & Moring LLP, counsel for six of the Respondents (Center Fresh Egg Farm, LLP, E&S Swine, Inc., Fairway Farms, Greg B. Nelson, Roe Farm, Inc., and James A. Zoltenko) opposed the non-party participation in this proceeding of the community and environmental groups.

Granting Opportunity to Participate at Hearing and Allocating Time (EAB, Dec. 8, 2005).

II. DISCUSSION

The intervention standards are found in 40 C.F.R. § 22.11 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Proceedings and the Revocation/Termination or Suspension of Permits, 40 C.F.R. pt. 22. The standards for granting such intervention are set forth as follows:

(a) *Intervention.* Any person desiring to become a party to a proceeding may move for leave to intervene. A motion for leave to intervene that is filed after the exchange of information pursuant to § 22.19(a) shall not be granted unless the movant shows good cause for its failure to file before such exchange of information. All requirements of these Consolidated Rules of Practice shall apply to a motion for leave to intervene as if the movant were a party. The Presiding Officer shall grant leave to intervene in all or part of the proceeding if: the movant claims an interest relating to the cause of action; a final order may as a practical matter impair the movant's ability to protect

that interest; and the movant's interest is not adequately represented by existing parties.

40 C.F.R. § 22.11(a).

The burden is on the movant to show an interest relating to the cause of action, that a final order may as a practical matter impair the movant's ability to protect that interest, and that the movant's interest is not adequately represented by existing parties. In the instant case, AIR has failed to meet its burden. More specifically, AIR has failed to show a significant, direct and substantial interest in the proposed orders before us, and has failed to persuade us that its ability to protect its interest could be impaired by the results of this proceeding.

While we are denying AIR's request to intervene, we nonetheless, will allow AIR to file a non-party brief pursuant to 40 C.F.R. § 22.11(b).

III. CONCLUSION

AIR is hereby ordered to file a non-party brief by no later than Tuesday, December 20, 2005. In accordance with 40 C.F.R. § 22.11(b), any party may file a response to this brief within 15 days after service of this brief.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 12/8/05

By: Kathleen A. Stein for Edward E. Reich
Edward E. Reich
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Motion for Leave to Intervene in the matter of Consent Agreements and Proposed Final Orders for Animal Feeding Operations, were sent to the following persons in the manner indicated:

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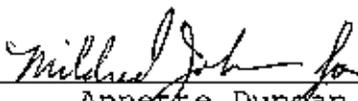
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Dated: DEC 8 2005


Annette Duncan
Secretary