

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

_____	)	
In re:	)	
	)	
Palmdale Hybrid Power Plant	)	PSD Appeal No. 11-07
	)	
PSD Permit No. SE 09-01	)	
_____	)	

**JANE WILLIAMS’ MOTION FOR LEAVE TO INTERVENE**

Jane Williams (hereinafter “Movant”) hereby moves for leave to intervene in the above captioned matter pursuant to 40 CFR §22.11(a). Movant is a community member involved with air toxics issues in the region. Movant lives in Rosamond, less than fifty (50) miles from the facility. Movant participated in the California Energy Commission (CEC) proceedings for this project, attended hearings, and requested a comment period extension for the PSD permit. Movant also requested notice for actions on this permit but was not given notice of final issuance of the permit. Petitioner supports Movant’s intervention.

Exchange of information pursuant to 40 CFR §22.19(a) has not yet occurred. Movant raised several issues in the public comment process for the PSD Permit which were not responded to and are related to the issues at hand in this cause of action. Movant can therefore claim an interest in the cause of action. A final order from the Board without Movant’s participation may impair Movant’s ability to raise her issues in another forum. Though Movant and Petitioner raised several similar issues, Petitioner does not represent Movant because their claims are not identical and their circumstances differ.

**Leave to Intervene Shall be Granted if Three CROP Elements Are Satisfied.**

The Consolidated Rules of Practice (“CROP”) treatment of intervention mirrors the Federal Rules of Civil Procedure (“FRCP”) “Intervention of Right.” 40 CFR §

22.11(a); FRCP 24(a)(2). Both rules state that intervention shall be granted if the following three elements are met:

“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.”

If all three elements are satisfied, the Presiding Officer shall grant leave to intervene. Because Movant satisfies all three above elements, the Presiding Officer should grant leave to intervene.

**Movant Claims an Interest Relating to the Cause of Action.**

Movant is a community member who is concerned about the pollution from the Palmdale Hybrid Power Project. Movant participated in the CEC process for the project. On March 10, 2011 she requested notice regarding this permit from EPA Region 9, and on July 18, 2011 she received confirmation that she had been added to the Public Notice Distribution list. Though she was added to the Public Notice Distribution list, the last communication she received from EPA Region 9 regarding this permit was the August 8, 2011 Public Notice Request for Comments on the draft permit. Movant requested that the comment period be extended. EPA even refers to Movant as a “commenter” in footnote 9 of *Responses to Comments on the Proposed PSD Permit for the PHPP*:

“We also note that on September 13, 2011, a community member conveyed an oral request for a 30-day extension to the public comment period for EPA’s proposed PSD permit for the PHPP to Mr. Steven John, Director of EPA’s Southern California Field Office, who is not associated with this permitting action. The commenter indicated that she was preparing to provide comments to EPA in a public hearing in Chicago and needed more time to prepare comments on the PHPP permit.”

Movant never received notice of the final permit issuance. Because Movant has an interest in this PSD permit that is related to Petitioner's cause of action, the Board should grant leave to intervene.

**Movant's Ability to Protect Interests May Be Impaired by Final Order.**

Movant's ability to protect her interest in this cause of action may be impaired by a final order due to standing, collateral estoppel, or claim preclusion. If the Board issues a final order in this matter, theories of collateral estoppel or claim preclusion may prevent Movant from raising her issues in the future. Additionally, Movant may need to participate in this appeal in order to preserve standing for a future action in a different forum. Because a final order may impair Movant's ability to protect her interest in this matter, she should be granted leave to intervene.

**Movant's Interests Are Not Adequately Represented by Existing Parties.**

Movant has interests that are not represented by existing parties. Petitioner Robert Simpson is the only party that could possibly represent some of Movant's issues. Though Movant and Petitioner are likely to have some similar issues, Petitioner does not adequately represent Movant's interests because the parties' circumstances are different. Movant was not given notice of final permit issuance.

One primary difference between Movant and Petitioner in this action is that Movant was not given notice of final permit issuance. Though there are other issues for which Movant believes Petitioner may not adequately represent her for various reasons, that she was not given opportunity to challenge the final permit brings Movant properly in front of the Board to argue her case.

Because Movant has met all elements required for intervention, we respectfully request that the Board grant leave for her to intervene.

**Jane Williams**

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A handwritten signature in cursive script that reads "Jane Williams". The signature is written in a dark ink and is positioned below the printed contact information.