

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
ASSUNTA and PETER PADJEN) **Docket No. TSCA-05-2003-0001**
)
Respondents.)

ORDER GRANTING MOTION FOR LEAVE TO INTERVENE

The United States Department of Housing and Urban Development (HUD) submitted a Motion for Leave to Intervene (Motion) in this proceeding on July 11, 2003, pursuant to 40 C.F.R. § 22.11. HUD seeks to intervene as Party-Complainant.

The Consolidated Rules of Practice provide at 40 C.F.R. § 22.11(a) as follows, in pertinent part:

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.

* * * *

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.

Complainant timely filed its Initial Prehearing Exchange, but Respondents requested and were granted extensions of time to file their prehearing exchanges, and so, to date, have not yet filed their exchanges. In that the prehearing exchange process has not yet been completed, it would appear that there is no need under the Rules for HUD to demonstrate "good cause" for failure to file the Motion prior to the exchange of information.

Regarding its interest in this action, HUD states in the Motion that its interest in the action is that it initially investigated this case jointly with the Environmental Protection Agency (EPA), and, like EPA, it "has authority" [to obtain civil monetary penalties] under 42 U.S.C. § 4852d and Section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. § 3545. It also asserts without citation to any authority in support thereof, that since both Federal Agencies (EPA and HUD) have the power to assess penalties, a final order in this matter (between only EPA and the Respondents) may "as a practical matter, impair HUD's

ability to protect its interest under 42 U.S.C. § 4852d.” HUD further asserts that no existing party adequately represent’s HUD’s interest in this proceeding.

Moreover, in its Motion, HUD represents that counsel for both Complainant and Respondents were informed of the Motion, and that Complainant consents to the granting of the Motion, and Respondents will not oppose the granting of the Motion. Finally, HUD asserts that Complainant, Respondents and HUD have agreed to the terms upon which this matter can be settled. In fact, Respondents stated in a recent request for an extension of time to file their prehearing exchange that ,“This process, including negotiating with HUD on the final terms of the CAFO [Consent Agreement and Final Order], required unexpected additional time to complete the final terms of this document.”

HUD’s Motion has several significant shortcomings. HUD does not explain why it delayed filing a motion to intervene until after the CAFO was finalized and awaiting signatures, how its interests may be impaired if the CAFO is executed and filed without HUD’s formal intervention in the litigation, nor why EPA does not adequately represent its interests in this proceeding. Nevertheless, since Complainant and Respondents do not oppose the Motion, the CAFO is likely to be executed and filed within the next few weeks, and no hearing has been scheduled in this matter, the Motion is hereby **GRANTED**.

Susan L. Biro
Chief Administrative Law Judge

Date: July 15, 2003
Washington, D.C.