

BEFORE THE BOARD OF ENVIRONMENTAL QUALITY
STATE OF IDAHO

IN THE MATTER OF SIMMONS SANITATION)	
)	Docket No. 0106-05-01
KEN JONES,)	
Petitioner,)	
)	ORDER
v.)	ON INTERVENTION
)	
IDAHO DEPARTMENT OF)	
ENVIRONMENTAL QUALITY,)	
Respondent,)	
)	
SIMMONS SANITATION,)	
Intervenor.)	
)	

PROCEDURAL BACKGROUND

In 2003, Simmons Sanitation (“Simmons”) submitted a Non-Municipal Solid Waste Site Approval Application (“Site Application”) to the Idaho Department of Environmental Quality (“IDEQ”) pursuant to the Solid Waste Management Rules, IDAPA 58.01.06 *et seq.*, to construct and operate a Tier II Non-Municipal Solid Waste Management Facility. On June 23, 2003, IDEQ notified Simmons that the Site Application was complete. On October 1, 2003, pursuant to IDAPA 58.01.06.032.03.b, notice of the proposed facility was published in the Idaho County Free Press. On November 4, 2003, IDEQ issued an approval of Simmons’ Site Application. Because IDEQ was advised that there was some confusion regarding the site address, IDEQ asked Simmons to republish the notice.

On November 10, 2004, a second notice of the proposed facility was published and on January 5, 2005, IDEQ approved Simmons’ Site Application.

On February 4, 2005, Ken Jones (“Jones”) filed a pleading titled “Appeal on Ruling of DEQ Approving Application for Proposed NMSWLF (Non-Municipal Solid Waste Landfill) by Simmons Sanitation in Seven Mile Creek Drainage Area, Idaho County” (“Petition”) with the Board of Environmental Quality (“Board”) contesting IDEQ’s approval of Simmons’ Site Application. On February 28, 2005, Simmons timely filed a Petition to Intervene in the contested case proceeding pursuant to IDAPA 58.01.23.353. On March 7, 2005, Jones filed an objection to Simmons’ Petition to Intervene.

On March 9, 2005, the Hearing Officer concluded that, as holder of an IDEQ approved application, IDAPA 58.01.23.353 allows Simmons’ intervention as a matter of right in the contested case initiated by Jones and issued an Order Granting Intervention. On March 21, 2005, Jones filed a petition seeking review of the Order Granting Intervention, arguing that Simmons could not intervene as a matter of right because the permit was issued in violation of applicable laws and regulations.¹ On April 4, 2005, Simmons filed a Response to the request for review, arguing that the Board should adopt the Hearing Officer’s Order Granting Intervention as a matter of right.

On May 17, 2005, the Board, after fully considering the record and arguments of the parties, by unanimous vote, affirmed the Hearing Officer’s Order to grant Simmons’ Petition to Intervene.

STANDARD FOR INTERVENTION

Simmons’ request for intervention is governed by the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23.350, -351, and -353 (“IDEQ

¹ Jones also contends that IDAPA 58.01.06.060.03 requires that civil penalties should be imposed upon IDEQ for issuing the alleged illegal permit. The Board is not authorized to impose civil penalties. Idaho Code § 39-1083(b) authorizes the Director to initiate civil enforcement actions in district court. Section (5)(a) provides that “[t]he method of recovery of [civil penalties] shall be by a civil enforcement action in the district court in and for the county where the violation occurred.” Idaho Code § 39-108(5)(a).

Rules”). Rule 353 provides that “a permit applicant or permit holder may intervene as a matter of right in any contested case in which the permit is contested.” IDAPA 58.01.23.353. Thus, under the IDEQ Rules, intervention of a permit applicant or permit holder is an express right.

Simmons is the holder of an IDEQ approved application and timely submitted a Petition to Intervene in this contested case proceeding. The contested case was initiated by Jones to challenge the legality of the approved application. The IDEQ rules specifically and expressly establish intervention as a matter of right in any “contested case in which the permit is contested.” Id. Contrary to the argument advanced by Jones, a challenge to the underlying legality of a permit does not limit a permit holder’s right to intervene. Rather, the legality of an approved application is determined in the contested case process. Simmons is therefore allowed to intervene in this contested case as a matter of right.

ORDER

In consideration of the foregoing, IT IS HEREBY ORDERED that the Petition for Intervention filed by Simmons Sanitation is GRANTED.

DATED this ____ day of June 2005.

BOARD OF ENVIRONMENTAL QUALITY

Dr. Randy MacMillan

Dr. Joan Cloonan

Craig D. Harlen

Donald J. Chisholm

Nick Purdy

Marguerite McLaughlin

Marti Calabretta