

Donald J. Chisholm

Attorney at Law
223 East Main Street
P.O. Box 1118
Burley, Idaho 83318
Telephone (208) 678-9181
Fax: (208) 878-4998

August 11, 2003

Paul Agidius
FAX (208) 882-5346

Craig D. Harlen
FAX (208) 237-4209

Dr. Joan Cloonan
FAX (208) 384-5058

Dr. Randy MacMillan
FAX (208) 543-4146

Nick Purdy
FAX (208) 788-0214

Marguerite McLaughlin
FAX (208) 476-0273

Re: ICL Intervention in Simplot - Don Siding Case

Dear Paul, Craig, Joan, Randy, Nick and Marguerite

I reviewed the opinion Harriet Hensley prepared which would affirm the decision of the hearing officer denying intervention to the Idaho Conservation League. Harriet has followed the Board's instructions in writing an opinion which appears to justify the Board's decision. The opinion may be logical in the abstract, but it is not logical in the context of these proceedings.

ICL would have a direct and substantial interest by analogy to the concept of representational standing if Mr. Schmidt's affidavit established a direct and substantial interest. ICL's petition to intervene is being denied because Mr. Schmidt's affidavit does not connect the dots for us to establish that he has a direct and substantial interest in the outcome of the proceedings initiated by Simplot's petition for review. The opinion criticizes Mr.

DEQ

August 11, 2003

Page 2

Schmidt's affidavit for failing to include information the Board should be presumed to know without being told.

This agency is charged with protection of human health and the environment. We are presumed to possess basic knowledge in the agency's field of expertise. If necessary, we have the resources of the agency available to make scientific information available to us.

In the past three years, the board has received numerous presentations about air quality and the effect of particulate matter and other gases on persons with asthma, including presentations on the Treasure Valley air shed, hydrogen sulfide and grass burning. Mr. Schmidt should not be required to explain how he will be affected if Simplot is successful in its petition for review.

This is not a case in which someone is asserting an abstract aesthetic or recreational injury. Mr. Schmidt's affidavit states that he resides in the Pocatello area and has asthma. If he has asthma and resides in the area of the Don Siding plant, he will be affected by excessive emissions, regardless of whether the air pollution in Pocatello was the original cause of his asthma.

The Don Siding permit, which is in issue, is an air quality permit. It allows controlled emissions of certain pollutants, including particulate matter. If Simplot complies with those standards, it will not violate air quality standards.

Simplot's petition for review complains that DEQ has exceeded its authority by requiring Simplot to develop operating manuals and take other actions to assure that the permitted facility will be operated in compliance with the permit. Simplot may be right, or it may be wrong. Those issues remain to be decided.

If the Don Siding plant is not operated within the emission limitations of its permit, it will have a direct bearing on Pocatello area residents who have respiratory problems. ICL should have the opportunity to participate in the process to make sure that all of the lawful protections Mr. Schmidt is entitled to receive are retained in the permit. Mr. Schmidt will be injured if the permit is modified to eliminate reasonable and lawful

DEQ
August 11, 2003
Page 3

requirements.

Allowing Idaho Conservation League to intervene on the condition that it is held strictly to the issues raised by J.R. Simplot Company's petition for review will not be unduly burdensome or prolong the proceedings unnecessarily.

The Board's opinion in this case may not seem to be very important, but it represents a defining moment for the board. It reveals our expertise or lack thereof, and it defines our diligence in understanding and deciding issues which come before us.

If the opinion is to be issued, I would like to add the following statement:

"Board member Donald J. Chisholm participated in the hearing and deliberations, but declined to join in the opinion."

In the spirit of the open meeting law, I am sending a copy of this letter to Debra Cline and to Paula Gradwohl with a request that copies be made available to the participants in these proceedings.

Very truly yours,



Donald J. Chisholm

cc: Debra L. Cline
FAX (208) 373-0576

Paula Gradwohl
FAX (208) 373-0481

Harriet Hensley
FAX (208) 334-2690

