

Intervention/Air Permit: Louisiana Appellate Court Addresses Community Organization's Request



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The Court of Appeals of Louisiana in a November 3rd Opinion addressed issues arising out of a community organization's petition to intervene in an action involving an air permit appeal. *See Clean Harbors Colfax, LLC v. Louisiana Department of Environmental Quality*, 2025 WL 3079330 (La. App. 1 Cir., 2025).

The question considered was whether the district court properly denied intervention based on improper cumulation of actions and preemptory exceptions.

Clean Harbors Colfax, LLC ("Clean Harbors") operates a facility in Colfax, Louisiana. Hazardous wastes are thermally treated. The facility is regulated by Resource Conservation and Recovery Act ("RCRA") Subpart X. The facility utilizes Open Boring Open Detonation ("OB/OD") to "treat, destroy, or deactivate energetic wastes and energetic contaminated wastes."

The Louisiana Department of Environmental Quality ("LDEQ") issued both a RCRA hazardous waste operating permit ("RCRA Permit") and a Clean Air Act Part 70 ("Air Permit") air permit modification to the facility. The permits issued ordered Clean Harbors to cease OB/OD operations within 180 days.

Clean Harbors timely filed a request for an adjudicatory hearing with LDEQ. LDEQ denied the request on October 6, 2023. The company subsequently filed suit in the Nineteenth Judicial District Court seeking *de novo* judicial review of the Air Permit.

On November 7, 2023, Community Group, an organization composed of residents living around the Colfax community, filed a petition for intervention in Clean Harbor's *de novo* judicial review action. Community Group alleged it has "a justiciable interest in preserving the requirements in the air permit designed to protect its members and the environment." Further, the group alleged that "if Clean Harbors prevailed in its *de novo* review action, then it would negatively impact the ability of the Group's members to enjoy and feel safe in their homes and environment."

The district court did not immediately grant Community Group's intervention and set the matter for a contradictory hearing.

On February 23, 2024, LDEQ filed a response to the Community Group's petition for intervention. It argued that the actions were improperly cumulated and asserted peremptory exceptions of no right to bring an action and no cause of action. The Louisiana agency further argued that pursuant to LA. R.S. 30:2024(C), the district court has only limited jurisdiction to review a non-final permit action solely for the benefit of a permit applicant.

LDEQ also contended that an aggrieved party, such as Community Group, may devolutively appeal the final permit action pursuant to La. R.S. 30: 2050.21. Community Group was argued to have no cause of right to intervene in Clean Harbor’s action “because there is no indication from the text of La. R.S. 30:2024 that the legislature intended for third parties to benefit from special *de novo* review procedures provided by that statute.

Clean Harbors also filed opposition to Community Group’s petition for intervention. It argued that Community Group lacked a justifiable right in the *de novo* review action.

The district court sustained LDEQ’s exceptions. It found that Community Group’s intervention was deemed an improper cumulation of action. Therefore, the group was found to have had no right of action, and no cause of action.

Community Group appealed the district court’s decision.

The Court of Appeals of Louisiana affirmed the trial court’s ruling denying Community Group’s petition for intervention.

While this appeal concerning the Air Permit was pending, the same appellate court heard an almost identical action concerning Community Group’s right to intervene in a review procedure involving the RCRA Permit. *See Clean Harbors Colfax, LLC v. Department of Environmental Quality*, 2025 WL 2249452 (La. App. 1 Cir., 2025) (hereinafter “*Clean Harbors I*”). Applying the same reasoning from *Clean Harbors I*, the Appellate Court explained that “the requirement for intervention is twofold: the intervenor must have a justiciable interest in, and a connexity to, the principal action.” When elaborating on this twofold test, the court stated:

“A ‘justiciable interest’ is defined as the right of a party to seek redress or a remedy against either the plaintiff or defendant in the original action or both, and where those parties have a real interest in opposing it. The right, if it exists, must be so related or connected to the facts or object of the principal action that a judgment on the principal action will have a direct impact on the intervenor’s rights. An intervenor takes the proceedings as he finds them and cannot change the issues between the parties or raise new ones.” *Clean Harbors I*, 2025 WL 2240452 at *3 (citing *Stevens Construction & Design, L.L.C. v. St. Tammany Fire Protection District*, No. 7, 308 So.3d 724, 729 (La.App. 1 Cir., 2020).

The Appellate Court again observed that La. R.S. 30:2024 “pertains exclusively to permit applications and has no bearing on the appellate review provisions afforded to other aggrieved persons under La. R.S. 30:2050.21.” It determined that Community Group lacked a justiciable interest in a *de novo* judicial review of a non-final permit decision. Adopting the explanation in *Clean Harbors I*, the fact that the air permit in question was not final barred Community Group from intervening in the action. The Appellate Court further stated that an “aggrieved person” under the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq., and the Louisiana Administrative Code, “is not equivalent to an intervenor pursuant to La. Code Civ. P. art. 1091.” The court declared that “one can be an ‘aggrieved person’ but lack a justifiable interest under La. Code Civ. P. art. 1091.”

A dissenting opinion argued that the trial court’s decision should have been reversed. It concluded that Community Group was not introducing new claims or issues but merely aligning itself with the defendant. Regardless of the permit’s outcome, the health and safety of the Group’s members would be directly impacted. On this basis, the dissent found that Community Group satisfied the two-part test for intervention.

A copy of the Opinion can be downloaded [here](#).