

CLEAN HARBORS COLFAX, LLC v. LOUISIANA..., Not Reported in So....

2024-1196 (La.App. 1 Cir. 11/3/25)

2025 WL 3079330

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

NOT DESIGNATED FOR PUBLICATION

Court of Appeal of Louisiana, First Circuit.

CLEAN HARBORS COLFAX, LLC

v.

LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

NO. 2024 CA 1196

I

Judgment Rendered: NOVEMBER 03, 2025

On Appeal from the Nineteenth Judicial District Court In and
for the Parish of East Baton Rouge State of Louisiana Docket
No. C739114, Section 25 Honorable [Wilson E. Fields](#), Judge
Presiding

Attorneys and Law Firms

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BEFORE: [HESTER](#), [GREENE](#), AND [BALFOUR](#), JJ.

Opinion

[HESTER](#), J.

*1 Appellant, Central Louisiana Coalition for a Clean
& Healthy Environment (“Community Group”), appeals
a judgment sustaining the Louisiana Department of
Environmental Quality’s (“LDEQ”) dilatory exception
asserting the objection of improper cumulation of actions
and preemptory exceptions asserting the objections of no

right of action and no cause of action, denying Community
Group’s petition for intervention, and dismissing their petition
for intervention with prejudice. For the following reasons,
we affirm the denial and dismissal of Community Group’s
petition for intervention with prejudice and preterm review
of the trial court’s ruling on LDEQ’s exceptions as moot.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, Clean Harbors Colfax, LLC (“Clean Harbors”),
owns and operates a facility in Colfax, Louisiana, which
thermally treats a variety of reactive, ignitable, and explosive
hazardous waste streams and is regulated by **Resource
Conservation and Recovery Act** (“RCRA”) Subpart X.
Clean Harbors utilizes open burning and open detonation
 (“OB/OD”) to treat, destroy, or deactivate energetic wastes
and energetic contaminated wastes. On June 29, 2023, LDEQ
issued a RCRA **hazardous waste** operating permit (the
 “RCRA Permit”). On July 10, 2023 LDEQ issued a minor
source air permit modification to Clean Harbors pursuant to
the Clean Air Act Part 70 (the “Air Permit”). Both permits
authorized the construction and operation of a contained/
closed burn chamber system (“CBCS”), which would allow
Clean Harbors to manage up to 90% of its incoming waste
streams in an enclosed burn chamber and reduce its OB/OD
operations. However, the permits ordered cessation of OB/
OD operations, effective 180 days after notice of the final
permit is received.

On August 9, 2023, Clean Harbors timely filed a request
with LDEQ for an adjudicatory hearing on the portions of the
Air Permit prohibiting OB/OD operations at its facility. After
LDEQ denied Clean Harbors’ request for an adjudicatory
hearing, Clean Harbors timely filed the instant suit on October
6, 2023, in the Nineteenth Judicial District Court (“19th
JDC”) seeking *de novo* judicial review of the Air Permit
pursuant to [La. R.S. 30:2024\(C\)](#) (“*de novo* review action”).¹
Clean Harbors also filed a request for an adjudicatory
hearing on the RCRA Permit, and LDEQ denied that request.
Thereafter, Clean Harbors timely sought *de novo* review
of the RCRA Permit in a separate action pursuant to [La.
R.S. 30:2024\(C\)](#) in the 19th JDC, under docket number
C-73 8436. See [Clean Harbors Colfax, LLC v. Louisian
Department of Environmental Quality](#), 2024-1284 (La. App.

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1st Cir. 8/6/25), 2025 WL 2249452 (unpublished) (hereinafter "*Clean Harbors I*").

*2 On November 7, 2023, Community Group, a community organization composed of mainly residents who live, work, and recreate in and around Colfax, filed a petition for intervention in Clean Harbors' *de novo* 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. Community Group alleged that if Clean Harbors prevailed in its *de novo* review action, then it would negatively impact the ability of Community Group's members to enjoy and feel safe in their homes and environment. In particular, Community Group alleged two of its members, both of whom live within three miles of Clean Harbors' facility, are worried about their exposure to toxic pollution from open burning activities at the facility and spend less time outdoors than they used to because of the OB/OD operations. Community Group noted that it submitted comments during the public comment period for the Air Permit urging LDEQ to deny Clean Harbors' request to continue OB/OD operations and to ensure the CBCS is subject to requirements necessary to protect human health and the environment. The trial court did not immediately allow the intervention and, instead, set the matter for contradictory hearing.

On February 23, 2024, in response to Community Group's petition for intervention, LDEQ filed an opposition to the petition for intervention, a dilatory exception asserting the objection of improper cumulation of actions (sometimes referred to as "exception of improper cumulation"), and peremptory exceptions asserting the objections of no right and no cause of action (sometimes referred to as "exception of no right of action" and "exception of no cause of action"). LDEQ argued Clean Harbors' *de novo* review action arises under La. R.S. 30:2024(C), which grants limited jurisdiction to the 19th JDC to review a non-final permit action solely for the benefit of a permit applicant. LDEQ argued that after a permit is final, an aggrieved person, such as Community Group, may devolutively appeal LDEQ's final permit action to the 19th JDC pursuant to La. R.S. 30:2050.21. LDEQ argued that allowing Community Group to intervene in Clean Harbors' *de novo* review action would improperly cumulate the procedures of two separate actions. LDEQ also argued that Community Group had no cause or right of action to intervene

in Clean Harbors' 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 the special *de novo* review procedure provided by that statute.

Clean Harbors also filed an opposition to Community Group's petition for intervention, arguing Community Group lacked a justiciable right in Clean Harbors' *de novo* review action.

On April 29, 2024, a hearing was held on Community Group's petition for intervention and LDEQ's exceptions. Following argument, the district court sustained LDEQ's exceptions. On May 13, 2024, the district court signed a written judgment sustaining LDEQ's exceptions of improper cumulation of actions, no right of action, and no cause of action, and denying and dismissing Community Group's petition for intervention. Community Group now appeals.

DISCUSSION

While the instant appeal was pending, another panel of this court issued its decision in *Clean Harbors I*, 2025 WL 2249452, which is a nearly identical appeal involving the exact same parties and the same factual and legal considerations. *Clean Harbors I* involved Clean Harbors' related but separate *de novo* review action concerning the RCRA Permit. As in the present case, Community Group filed a petition for intervention in *Clean Harbors I* pursuant to La. C.C.P. art. 1091. However, the trial court in *Clean Harbors I* initially granted Community Group's petition to intervene. In response, LDEQ answered and filed peremptory exceptions asserting the objections of no right of action and no cause of action. Clean Harbors filed its own peremptory exception asserting the objection of no right of action in response to Community Group's petition for intervention. *Clean Harbors I*, 2025 WL 2249452 at *2. At the conclusion of the hearing, the trial court sustained the exceptions raised by LDEQ and Clean Harbors and ultimately signed a judgment sustaining LDEQ and Clean Harbors' exceptions, overturning its previous order granting Community Group's petition for intervention, and denying and dismissing Community Group's petition for intervention. Community Group appealed that judgment. *Id.*

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*3 On appeal, the court in *Clean Harbors I* found that Community Group was not authorized by [La. R.S. 30:2024](#) or [La. R.S. 30:2050.21](#) to intervene in Clean Harbors' *de novo* review action concerning the RCRA Permit.² Because [La. R.S. 30:2024](#) and [La. R.S. 30:2050.21](#) did not apply at that stage of the proceedings, Community Group lacked a justiciable interest, without which, Community Group could not intervene in the *de novo* review action concerning the RCRA Permit pursuant to [La. C.C.P. art. 1091](#). *Clean Harbors I*, 2025 WL 2249452, *5. While no error was found in the trial court's ruling sustaining LDEQ and Clean Harbors' peremptory exceptions asserting the objection of no right of action, this court reversed the trial court's ruling sustaining LDEQ's peremptory exception asserting the objection of no cause of action. The court pointed out that a cause of action does generally exist for applicants seeking to intervene in non-final permit proceedings; however, as a non-applicant, Community Group did not have a right to intervene in the *de novo* review action. *Id.* at *6.

Nearly identical to the assignments of error raised in *Clean Harbors I*, Community Group's assignments of error in the present case can be summarized as follows: (1) the trial court erred in holding that Community Group may not intervene in Clean Harbors' pending action to join LDEQ in resisting Clean Harbors' demands in accordance with the express terms of [La. C.C.P. art. 1091\(2\)](#); and (2) the trial court erred in sustaining LDEQ's exceptions of improper cumulation, no cause of action and no right of action where Community Group does not assert its own claims and is not required to have a claim under [La. R.S. 30:2024\(C\)](#) in order to intervene solely to join LDEQ as a defendant in resisting Clean Harbors' permit challenge.

Community Group's Intervention – Assignment of Error No. 1

Identical to the arguments advanced in *Clean Harbors I*, Community Group argues that its intervention is permitted pursuant to [La. C.C.P. art. 1091\(2\)](#), which allows a third party to unite with a defendant to resist the plaintiff's demand. Specifically, [La. C.C.P. art. 1091](#) states:

A third person having an interest therein may intervene in a pending action to enforce a right related to or connected

with the object of the pending action against one or more of the parties thereto by:

- (1) Joining with plaintiff in demanding the same or similar relief against the defendant;
- (2) Uniting with defendant in resisting the plaintiff's demand; or
- (3) Opposing both plaintiff and defendant.

This court in *Clean Harbors I* observed that [La. C.C.P. art. 1091](#) and the jurisprudence construing it establish that the requirement for intervention is twofold: the intervenor must have a justiciable interest in, and a connexity to, the principal action. *Clean Harbors I*, 2025 WL 2249452 at *3 (citing *Stevens Construction & Design, L.L.C. v. St. Tammany Fire Protection District*, No. 7, 2019-0955 (La. App. 1st Cir. 7/8/20), 308 So.3d 724, 729, writ denied, 2020-00990 (La. 11/4/20), 303 So.3d 652). 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. *Clean Harbors I*, 2025 WL 2249452 at *3 (citing *Stevens Construction & Design, L.L.C.*, 308 So.3d at 729, citing *Mike M. Marcello, Inc. v. Louisiana Gaming Control Board*, 2004-0488 (La. App. 1st Cir. 5/6/05), 903 So.2d 545, 548). 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. *Id.*

*4 The court in *Clean Harbors I* observed that [La. R.S. 30:2024](#) pertains exclusively to permit applicants and has no bearing on the appellate review provisions afforded to other aggrieved persons under [La. R.S. 30:2050.21](#), which statute allows an aggrieved person to appeal a final permit action by filing a petition for review in the 19th JDC. *Clean Harbors I*, 2025 WL 2249452 at *4. This court ultimately determined that Community Group lacked a justiciable interest at the present stage of the proceedings – on *de novo* judicial review of a non-final permit decision. *Id.* at *5.

For the reasons discussed by the majority in *Clean Harbors I*, we find that in this case, Community Group lacks a

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justiciable interest in Clean Harbors' *de novo* review action. Moreover, we find that an "aggrieved person" who may intervene in an adjudicatory hearing 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](#). One can be an "aggrieved person" but lack a justiciable interest under [La. Code Civ. P. art. 1091](#). Therefore, we also adopt the reasoning set forth in the concurring opinion in *Clean Harbors I*. We find no merit in Community Group's first assignment of error.³

CONCLUSION

For the aforementioned reasons, we affirm the trial court's May 13, 2024 judgment insofar as it denied Central Louisiana Coalition for a Clean & Healthy Environment's petition for intervention and dismissed the petition for intervention with prejudice. We pretermitt review of the trial court's ruling on the Louisiana Department of Environmental Quality's exceptions as moot. Costs of this appeal in the amount of \$1,311-00 are assessed to appellant, Central Louisiana Coalition for a Clean & Healthy Environment.

AFFIRMED.

[Balfour](#), J. dissents with reasons.

[Balfour](#), J., dissenting.

I respectfully dissent from the majority opinion because I believe the appellant, Central Louisiana Coalition for a Clean & Healthy Environment ("Community Group") has established a judiciable interest in, and a connexity to, Clean Harbors Colfax, LLC's ("Clean Harbors") action for *de novo* judicial review.

[Louisiana Code of Civil Procedure article 1091\(2\)](#) permits a third person having an interest in a pending action to intervene to unite with the defendant in resisting the plaintiff's demand, if the third person has a justiciable interest in, and a connexity to, the principle action. [Livingston Downs Racing Ass'n, Inc. v. State, Through Edwards](#), 96-1988 (La. App. 1 Cir. 9/23/97), 700 So.2d 1021, 1023. An intervenor cannot change the issues

between the parties, and cannot raise a new one, because they have their own remedy by a separate action to inject new issues. [Mike M. Marcello, Inc. v. Louisiana Gaming Control Bd.](#), 2004-0488 (La. App. 1 Cir. 5/6/05), 903 So. 2d 545, 548.

*5 As noted by the majority, Community Group is a community group of residents who live and work in and around Colfax, Louisiana, that are concerned about their health and environment, and want to preserve the requirements in the air permit issued by Louisiana Department of Environmental Quality ("LDEQ") on July 10, 2023. Clean Harbors filed the instant action for *de novo* judicial review seeking to vacate portions of the air permit, including the requirement that it cease open detonation and open burning operations at its Colfax facility.

Community Group does not seek to intervene to inject new claims or issues, but seeks to align itself with the defendant in this matter, LDEQ, and preserve the air permit. If Clean Harbors succeeds in its action for *de novo* judicial review, and certain portions of the air permit are vacated by the district court, then there would be a direct impact on Community Group's interest in protecting the health and safety of its members. Therefore, I believe Community Group has satisfied the two-part test for intervention into the action for *de novo* judicial review. *See, e.g., Livingston Downs*, 700 So. 2d at 1024 (where a horse racing association satisfied two-part test for intervention under [La. C.C.P. art. 1091\(2\)](#) based on its interest in uniting with the defendant to preserve the statutory scheme regulating video poker).

Additionally, I note that while the express language of [La. R.S. 30:2024\(C\)](#) only allows a permit applicant to **file** an application for *de novo* judicial review, there is no statutory prohibition on interventions in actions for *de novo* judicial review. In fact, had DEQ granted Clean Harbors' request for an adjudicatory hearing, thereby precluding Clean Harbors from seeking *de novo* judicial review, Community Group would have had a right to intervene in the adjudicatory hearing. *See La. R.S. 30:2050.11(B)*; *LAC 33:1.323A&D*. The right of access to the courts is basic to our system of government and is protected by our Constitution. *See La. Const. art. 1, § 22*. Accordingly, I would reverse the district court's judgment sustaining LDEQ's dilatory exception of improper cumulation of actions and peremptory exceptions of no right of action and no cause of action, denying Community Group's petition for intervention, and dismissing the petition

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for intervention with prejudice, and would remand for further proceedings.

All Citations

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Footnotes

1 [Louisiana Revised Statutes 30:2024](#) provides in relevant part:

A. Any permit action shall be effective upon issuance unless a later date is specified therein. Such action shall be final and shall not be subject to further review unless, no later than thirty days after the notice of the action is served by certified mail or by hand upon the applicant, he files with the secretary a request for hearing.

B. Upon timely filing of the request, the secretary shall either grant or deny the request within thirty days. [...]

C. If the secretary does not grant the hearing within the time provided for in Subsection B, the applicant shall, within thirty days thereafter, be entitled to file an application for de novo review of the secretary's action in the [19th JDC] for the parish of East Baton Rouge.

2 [Louisiana Revised Statutes 30:2050.21](#) provides in relevant part:

A. An aggrieved person may appeal devolutively a final permit action, a final enforcement action, or a declaratory ruling only to the [19th JDC]. A petition for review must be filed in the district court within thirty days after notice of the action or ruling being appealed has been given. The district court shall grant the petition for review.

3 In light of the fact that Community Group was never permitted to intervene in the trial court coupled with this court's finding that Community Group is precluded from intervening because it lacks a justiciable interest in the instant action, we find Community Group's second assignment of error regarding LDEQ's exceptions is moot and pretermitted review of the trial court's ruling on LDEQ's exceptions. We note the contrast between the procedural posture of this case and *Clean Harbors I*, wherein the trial court initially granted the intervention and the parties thereafter lodged exceptions to Community Group's petition for intervention. After hearing the exceptions, the trial court in *Clean Harbors I* sustained the exceptions, overturned its order granting the intervention, and then dismissed the petition for intervention. [Clean Harbors I, 2025 WL 2249452 at *1-2](#).

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