

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION

IN RE: Stuart A. Tucker AAD No. 92-014/ISA
 ISDS Application No. 8823-128

ORDER

This matter came before the Hearing Officer on the Petition to Intervene ("Petition") filed by Quonset Point Seafood, Inc., d/b/a Dockside Seafood ("Petitioner") in the above-entitled matter. The Division of Groundwater and ISDS ("Division") filed its Objection to the Petition, together with a memorandum in support of said objection. The Applicant, Stuart A. Tucker, represented that he has no objection to the granting of said Petition. No request for oral argument was presented and the Hearing Officer has determined that none was warranted since the presentation of testimony or oral argument would not advance the Hearing Officer's understanding of the issues involved.

The Petitioner's attorney, John B. Webster, Esq., appeared at the prehearing conference held on October 29, 1992 and sought to be permitted to intervene on behalf of Petitioner. He presented a copy of a Petition to Intervene to the Hearing Officer, the original of which he represented had been mailed to the Administrative Adjudication Division ("AAD") on October 23, 1992 (the same date that copies were mailed to various parties listed in the certification attached to said Petition). A search of the records at AAD revealed that no such document had been filed at AAD up to the time of the prehearing

Stuart A. Tucker
AAD No. 92-014/ISA
ISDS Application No. 8823-128
Page 2

conference. Mr. Webster insisted that the Petition had, indeed, been mailed to AAD (although not received by AAD), and vigorously sought intervention status based on the copy of the petition presented at the prehearing conference (after having three of the parties present at the prehearing conference verify that they all received their copies of the Petition shortly after the date of mailing). Division requested that it be allowed seven days to file its written objection to said Petition (pursuant to AAD Rules) and objected to further consideration of said Petition. The Hearing Officer offered to have Mr. Webster participate in the prehearing conference; however, after conferring briefly with Applicant's attorney, Mr. Webster represented the Applicant (as co-counsel) for the remainder of the prehearing conference. Mr. Webster also refused the Hearing Officer's offer to have the copy of the Petition date stamped by the AAD Clerk in order to avoid any possible delays of the hearing which had already been scheduled to begin on November 16, 1992. The Hearing Officer deferred ruling on said Petition and the prehearing conference was conducted as previously ordered.

The original of the Petition was subsequently received by mail and date stamped by the Clerk of AAD on October 30, 1992. It is interesting to note that the U.S. postage meter stamp affixed to the envelope containing said Petition is clearly

Stuart A. Tucker
AAD No. 92-014/ISA
ISDS Application No. 8823-128
Page 3

dated October 29, 1992. During a conference call with all of the parties shortly after receipt of the original Petition, all agreed that the Division's Objection to Petition filed on October 29, 1992 (prior to receipt of the original petition by AAD) be considered duly filed.

The Petitioner did not file a Memorandum in support of its Petition, but stated the following grounds in its Petition:

1. It is the Lessee of the property in which the proposed ISDS is to be situated.
2. The Applicant has a contractual obligation to Intervenor to obtain the ISDS so that the leased premises can be fully operational.

Division filed a memorandum with its objection in which it argued that the Petition should be denied because it was not timely filed as required by AAD Rule 13.00(c), and also that Petitioner failed to specifically describe and allege those elements prescribed in Rule 13.00(b) of the AAD Rules.

Petitioner filed a Reply Memorandum to the Division's Objection on November 2, 1992 in which Petitioner argued that its Petition should not be considered untimely since it had no notice of the hearing until October 22, 1992, and therefore could not comply with the Rules. Petitioner further argued that the Petition should not be denied because of his failure to

Stuart A. Tucker
AAD No. 92-014/ISA
ISDS Application No. 8823-128
Page 4

identify the areas in dispute since Petitioner did not have sufficient time to identify all issues and also lacked access to all files and documents until it obtained intervenor status.

AAD Rule 13.00 governs requests to intervene in Adjudicatory Proceedings. Rule 13.00 (c) requires that Petitions be filed not later than seven (7) days prior to the date set for the prehearing conference unless an applicable statute requires otherwise. Rule 13.00 (b) provides that the Petition shall specifically describe the injury in fact alleged by the petitioner and set forth how the petitioner(s) interests differ from, and are not adequately represented by, existing parties. The petition must identify the areas in dispute, specifically citing each regulation where applicable.

AAD Rule 5.00(a) addresses timely filing and 5.00 (a)2 specifically provides that papers deposited in the U.S. mail shall be deemed filed on the date stamped by the Clerk of AAD. The date stamped on the Petition by the Clerk is October 30, 1992, which is obviously after the prehearing conference that was scheduled for and conducted on October 29, 1992. However, even the filing of the copy on October 29, 1992 was untimely since 13(c) of the AAD Rules mandated that the Petition be filed on or before October 22, 1992; and the notice requirements of the Statute and Regulations were met by the AAD.

Stuart A. Tucker
AAD No. 92-014/ISA
ISDS Application No. 8823-128
Page 5

Assuming arguendo that the Petition was timely filed, the Petitioner failed to comply with other provisions of the AAD Rules concerning the Form and Content required in such Petitions under Rule 13.00(b).

The Petition states that the Applicant has a contractual obligation with the Petitioner (as Lessee) to obtain the ISDS so that the leased premises can be fully operational. The Petitioner's attempt to justify its failure to comply with AAD Rule 13.00 (as argued in its Reply Memorandum to Division's Objection) does not address other pertinent provisions of said Rule. The Petitioner did not set forth, nor is any explanation offered, as to how Petitioner's interests differ from, and are not adequately represented by, existing parties.

After a review of the pleadings in the instant Motion to Intervene, I find that the Petitioner, lessee of the premises owned by Applicant, has failed to establish a basis for deviating from the requirements of Rule 13(c).

I also find that in view of the relationship of the parties, that Petitioner has made an insufficient showing that its interests differ from, and may not be adequately represented by, the existing parties to the proceeding.

I, therefore, conclude that the Petitioner has not demonstrated that it is entitled to intervene in the proceedings.

Stuart A. Tucker
AAD No. 92-014/ISA
ISDS Application No. 8823-128
Page 6

Wherefore, it is hereby

ORDERED

1. That the Petition of Quonset Point Seafood, Inc., d/b/a Dockside Seafood, for leave to intervene in the above-entitled proceedings is hereby denied.

Entered as an Administrative Order this 27TH day of
November, 1992.



Joseph F. Baffoni
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, Third Floor
Providence, RI 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded via regular mail, postage prepaid to John B. Webster, Esq., Adler, Pollock & Sheehan, Inc., 2300 Hospital Trust Tower, Providence, RI 02903; Edward H. Torgen, Esq., Torgen & Callaghan, 7395 Post Road, North Kingstown, RI 02852 and via interoffice mail to Sandra J. Calvert, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this 27th day of November, 1992.

