
**BEFORE THE EXECUTIVE DIRECTOR
OF THE UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of:

**PETROLEUM PROCESSING PLANT
EMERY REFINING L.L.C Approval
Order Dated June 21, 2013, Project No.
N14627-0001
DAQE-AN146270001-13**

**NOTIFICATION OF FURTHER
PROCEEDINGS AND PREHEARING
ORDER**

Carol Clawson, Administrative Law Judge

August 22, 2013

Petitioners, Grand Canyon Trust, Living Rivers, Southern Utah Wilderness Alliance, and the Center for Biological Diversity (collectively “the Trust”), filed a Request for Agency Action and Petition to Intervene dated July 22, 2013, challenging the June 21, 2013 decision by the Director of the Division of Air Quality to issue an Approval Order (“AO”) for Emery Refining LLCs (“Emery”) petroleum processing plant (“plant” or “refinery”) near Green River, Utah. Review of this action is governed by Utah Code Ann. § 19-1-301.5.

Appointment of Administrative Law Judge

Pursuant to Utah Code Annotated Section 19-1-301, the Executive Director appointed the undersigned as Administrative Law Judge to conduct the adjudicative proceeding and to submit to the Executive Director a proposed dispositive action pursuant to Utah Code Annotated Section 19-1-301.5(11) and (12).

Intervention

Petitioner's filed a Petition to Intervene on July 22, 2013. No objections have been received to that petition. Pursuant to R305-7-212, Utah Administrative Code, Respondents have the right to challenge the Petition to Intervene by motion or in the parties' briefs on the merits. All findings reached in this order are thus provisional in nature and are subject to reconsideration at a later stage in these proceedings.

Intervention in this permit review adjudicative proceeding is governed by Section 19-1-301.5(7). Based on the Petition and limited information currently before me, I find that the Petition to Intervene satisfies the requirements of the statute.

Pro Hac Vice Admission

Charles R. Dubuc, serving as local counsel for Petitioners, moved for the admission of Anne Mariah Tapp as *pro hac vice* counsel for the Trust. No objection has been filed. Based upon my review of the Motion and attached Application for Admission Pro Hac Vice before the Executive Director of the Department of Environmental Quality, the MOTION IS GRANTED.

Further Proceedings

Having granted intervention to the Trust and having considered the Request for Agency Action, I issue the following Notice of Further Proceedings and First Prehearing Order pursuant to Section 63G-4-201(3)(d) and (e), Utah Code Ann., and R305-7-206, Utah Administrative Code.

1. Further proceedings are required to determine the agency's response to the Request for Agency Action.

2. These permit review adjudicative proceedings are governed by Utah Code Ann. § 19-1-301.5 and R305-7, Utah Admin. Code.
3. Grand Canyon Trust, Living Rivers, Southern Utah Wilderness Alliance, and the Center for Biological Diversity are designated as the Petitioners and shall be collectively referred to as “the Trust.” The Executive Secretary of the Air Quality Board and Emery Refining LLC are designated as Respondents.
4. The agency’s reference number and name as specified in the above caption will identify this proceeding.
5. A response to the Request for Agency Action shall be filed and served on or before September 23, 2013, in accordance with Sections 19-1-301.5(9)(b) and 63G-4-204, Utah Code Ann.
6. Pursuant to R305-7-208(4), within 10 days of service of the Response to the Request for Agency Action, the parties are encouraged to consult and propose a joint Proposed Scheduling Order to address the following:
 - a. Schedules for motions (if applicable);
 - b. Any proposed changes to the briefing schedule that would otherwise apply (see Paragraph 7);
 - c. A schedule for oral argument;
 - d. Any proposed change to page limits for submissions (page limit extensions are not favored and the request must indicate good reason);
 - e. Any other scheduling matter or request to modify the requirements of the rules that the parties anticipate; any motion to propose a modification of the rules shall include a “good cause” justification for the proposed modification (see R305-7-108);

- f. The need for and, if applicable, proposed date for a conference pursuant to R305-7-208.
 - g. If the parties are unable to agree on a joint Proposed Schedule under this paragraph (6), and if the schedule set forth in paragraph 8 is not acceptable to any party, that party may file a Motion for a Proposed Schedule, indicating good cause for any modifications to paragraph 7.
7. In the absence of a joint Proposed Scheduling Order as set forth in paragraph (6), the following schedule shall apply: (R305-7-209 & 213)
- a. October 1, 2013: Service of Administrative Record:
 - b. October 31: Opening Brief (Petitioners)
 - c. December 2, 2013: Response brief (Agency, Permittee)
 - d. December 17: Reply brief (Petitioner)
 - e. December 23, 2013: Surreply brief (Agency, Permittee)
 - f. All other deadlines that may apply under R305-7-209 and 213
 - g. A hearing on the merits is **tentatively** scheduled for January 16, 2014. This date is subject to change upon receipt of a Joint Proposed Scheduling Order by the parties or further pretrial conference.
8. All filings and service shall be by electronic mail in searchable pdf format, as described in R305-7-104. The parties are directed to provide the ALJ with pdf copies of case law, statutes, or other sources of law on which they rely at the time any brief or other pleading is submitted. Upon receipt of any brief and supporting material, the ALJ may request any party to submit the material in hard copy. The date of service shall be the date of the email and a hard copy would be for the ALJ's convenience.

9. Except as provided in paragraph 9, filings with the Administrative Law Judge shall be addressed to clawsonlaw@centurylink.net
10. All documents that are filed or served shall also be filed with the Administrative Proceeding Records Officer at DEQAPRO@utah.gov
11. Every filing shall contain the filing date in the upper right hand corner or in the right hand box of the caption

SO ORDERED, Dated this 22nd day of August, 2013.



Carol Clawson
Administrative Law Judge
clawsonlaw@centurylink.net

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 2013, a true and correct copy of the foregoing **NOTICE OF FURTHER PROCEEDINGS AND FIRST PRETRIAL ORDER** was served by e-mail upon the following:

Anne Mariah Tapp for Grand Canyon Trust, *et. al.*, atapp@grandcanyontrust.org

Charles R. Dubuc, Jr., rob.dubuc@westernresources.org

Christian Stephens, Assistant Attorney General, cstephens@utahgov.com

Ron Chamness, Emery Refining LLC, rhamness@woodrock.com

Administrative Proceedings Record Officer, DEQAPRO@utah.gov

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Carol Clawson
Administrative Law Judge
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