

State of Vermont
Water Resources Board

In re: Vermont Marble Company (OMYA)
401 Certification
Docket No. WQ-92-12

Authority:
10 **V.S.A. §** 1024(a)

PRELIMINARY ORDER:
Amicus Curiae Requests

BACKGROUND

On December 10, 1992, the Vermont Marble Power Division of OMYA, Inc. (OMYA) filed an appeal with the Water Resources Board (Board), challenging the findings and conditions contained in the Section 401 Water Quality Certificate issued by the Agency of Natural Resources (ANR) in connection with OMYA's application to the Federal Energy Regulatory Commission for relicensure of the company's Center Rutland Hydroelectric Project in the Town of Rutland, Vermont.

A prehearing conference was held on February 2, 1993, in Montpelier, Vermont, with Board member, Stephen Reynes, presiding. Among those appearing at the prehearing conference were Green Mountain Power Company (GMP) represented by attorney Michael A. Murphy, Central Vermont Public Service Corporation (CVPS) represented by attorney Kenneth C. Picton, and Simpson Paper (Vermont) Company (Simpson) represented by attorney John R. Ponsetto. GMP, CVPS and Simpson each asked for permission to participate as amicus curiae in this proceeding in support of OMYA's appeal.

On February 9, 1993, GMP and CVPS each filed written motions to intervene as amicus curiae. On February 10, 1993, Simpson filed a written petition for amicus curiae status. These requests were timely filed. Simpson requested the opportunity to file a legal brief; GMP and CVPS requested the opportunity to file briefs and argue legal issues raised during the course of the proceeding. None of the petitioners proposed to file testimony, make discovery requests, or examine or cross-examine the witnesses of any party. However, GMP and CVPS offered to provide factual or other information requested by the Board to assist it in reaching its decision.

On June 10, 1993, prospective parties and interested persons were informed that the deadline for filing written objections to any of the written amicus curiae requests was the close of business day, June 18, 1993. No objections were filed.

The Board deliberated on the amicus curiae requests on June 25, 1993. GMP, CVPS, and Simpson operate hydroelectric facilities

subject to Vermont's water quality certification process. The Board's rulings concerning conditions imposed in OMYA's certification may serve as precedent in subsequent certification proceedings connected with hydroelectric facility relicensure. GMP, CVPS, and Simpson may be able to provide information, analysis, and argument that the nominal parties might not adequately present and that may materially assist the Board in deciding the legal issues before it.

ORDER

For the foregoing reasons, the Board grants GMP, CVPS, and Simpson leave to intervene as amicus curiae, subject to the following:

(1) The participation of amicus curiae shall be limited to the filing of briefs and the presentation of oral argument on issues that may arise during the course of this proceeding. The Board, in its discretion, may also request amicus curiae to provide information, analysis or argument in response to specific legal issues raised in the parties' filings or at hearing.

(2) Amicus curiae shall be bound by the procedural requirements and filing deadlines specified by the Board's Rules of-Procedure or in orders issued by the Board or its Acting Chair.

Dated at Montpelier, Vermont, this 15th day of July, 1993.

Water Resources Board,
by its Acting Chair



Stephen Reynes

Concurring: Ruth Einstein
Jane Potvin
William Boyd Davies
W. Byrd LaPrade