

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

HUNTINGTON DIVISION

OHIO VALLEY ENVIRONMENTAL  
COALITION, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 3:02-0059

CHRISTIE WHITMAN, Administrator, United  
States Environmental Protection Agency,

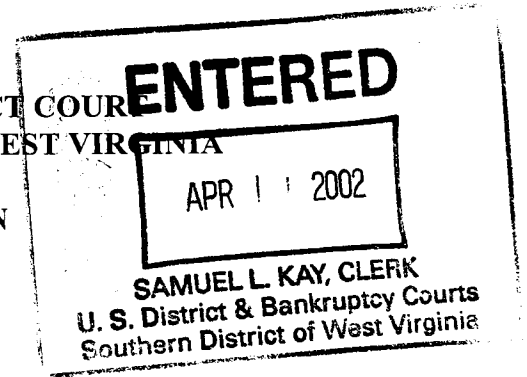
Defendant.

**ORDER**

Now pending are motions to intervene by the West Virginia Municipal Water Quality Association, the West Virginia Municipal League, and the Association of Metropolitan Sewerage Agencies (the Municipal Associations) [docket #3] and by The Contractors Association of West Virginia, The Independent Oil and Gas Association of West Virginia, West Virginia Chamber of Commerce, West Virginia Coal Association, West Virginia Farm Bureau, West Virginia Forestry Association, the West Virginia Hospitality and Travel Association, the West Virginia Manufacturers Association, the West Virginia Oil and Natural Gas Association, and the Federal Water Quality Coalition (the Associations) [docket #9]. For reasons discussed below, the motions are **GRANTED**.

**I. Background**

This action arises from the Environmental Protection Agency's (EPA) November 26, 2001 decision to approve West Virginia's antidegradation implementation procedures as consistent with requirements of the Clean Water Act and its implementing regulations. Plaintiffs are a group of 14



citizen organizations and 10 individuals. They allege that the EPA's decision violates the Clean Water Act and its regulations, and seek 1) a declaratory judgment that the EPA has violated its statutory and regulatory duties; and 2) an order setting aside the November 26 decision and remanding the case to the EPA.

The Municipal Associations' members are publicly-owned treatment works that discharge treated wastewater to surface waters. The Associations are non-profit organizations which represent trade organizations, businesses, and manufacturers in a variety of industries. Members of both groups are subject to regulation by the antidegradation program at issue in this case. They both seek leave to intervene as of right pursuant to *Fed. R. Civ. P.* 24(a). Plaintiffs have not responded to the motions, and the EPA takes no position.

## **II. Discussion**

Applicants to intervene as of right must meet all four of the following requirements: 1) the application to intervene must be timely; 2) the applicant must have an interest in the subject matter of the underlying action; 3) the denial of the motion to intervene would impair or impede the applicant's ability to protect its interest; and 4) the applicant's interest is not adequately represented by the existing parties to the lawsuit. *Fed. R. Civ. P.* 24(a); *Houston Gen. Ins. Co. v. Moore*, 193 F.3d 838, 839 (4th Cir. 1999).

Both applicants here have filed timely motions to intervene. In determining timeliness, the court examines how far the suit has progressed, the prejudice which any delay might cause other parties, and the reason for any tardiness in moving to intervene. *Scardelletti v. Debarr*, 265 F.3d 195, 203 (4th Cir. 2001). Plaintiffs filed their complaint on January 23, 2002. The Municipal Associations filed their application to intervene on March 22, 2002, and the Associations filed on

April 5, 2002. The answer was filed on March 25, 2002, but no further activity has occurred. There has been no noticeable delay, and therefore prejudice is not an issue.

Both applicants have demonstrated an interest in the subject matter of the underlying action that may be impeded or impaired by a denial of their motions. To satisfy the requirements of Rule 24(a), a party must demonstrate that it has a significant protectable interest. *Teague v. Bakker*, 931 F.2d 259, 261 (4th Cir. 1991) (quoting *Donaldson v. United States*, 400 U.S. 517, 531 (1971)). Members of both groups are subject to regulations governing discharge into waterways which affect the way they do business. These regulations in turn depend on the validity of the antidegradation program at issue. The outcome of this litigation will directly impact the parties seeking to intervene, and the court finds that denial of the right to intervene could impede or impair that interest.

Next, the applicants' interests are different enough from those of the EPA that the EPA may not adequately represent them. The EPA and the intervenors share the same goal of upholding the EPA's decision under the Clean Water Act. The interests underlying that goal, however, are divergent enough to justify intervention because the EPA is the regulator, while the intervenors are the regulated. *See Kentuckians for the Commonwealth, Inc. v. Rivenburgh*, 204 F.R.D. 301, 306 (S.D. W. Va. 2001) (allowing regulated parties to intervene where only the regulator was a named defendant). The EPA is less-equipped to protect the straightforward business interests at stake here than are the intervenors. *See Kleissler v. United States Forest Serv.*, 157 F.3d 964, 973-74 (3d Cir. 1998) (recognizing that government agencies sometimes have difficulty representing business interests). While the EPA is charged with protecting the public welfare, including the welfare of the intervenors, regulated groups may see their own interests differently, and disagree with conclusions reached by the EPA. *See Conserv. Law Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39,

44 (1st Cir. 1992) (finding that the interests of the regulated were not adequately represented by the regulator). For those reasons, the court finds that the applicants have demonstrated inadequacy of representation.

The Fourth Circuit interprets Rule 24(a) broadly in favor of intervention of right and favors liberal intervention. *See Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986). The court finds that the groups seeking to intervene have satisfied the requirements of Rule 24(a), and **GRANTS** both applicants' motions.

Finally, the parties are reminded that *L. R. Civ. P.* 4.01(a) requires supporting memoranda to be double-spaced. The Associations did not comply with that rule here. In the future, the court will reject any briefs or memoranda that are not double-spaced or otherwise fail to comply with the rule.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: April 10, 2002



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE