

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

MISSOURI COALITION FOR THE ENVIRONMENT,)	
)	
)	
Plaintiff,)	
)	
v.)	Case No. 03-4217-CV-C-NKL
)	
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <i>et al.</i> ,)	
)	
)	
Defendants.)	

ORDER

Pending before the Court is the Association of Metropolitan Sewerage Agencies (“AMSA”) and the Urban Areas Coalition’s (“UAC”) (collectively “Intervenors”) Motion to Intervene [Doc. # 29]. Defendants Michael O. Leavitt, Administrator, and the United States Environmental Protection Agency (collectively “EPA”) takes no position on the motion to intervene [Doc. # 35]. Plaintiff Missouri Coalition for the Environment (“MCE”) opposes the motion [Doc. # 38]. For the reasons stated below, the motion will be granted.

I. Background

On October 7, 2003, MCE, a non-profit organization, filed this lawsuit against the EPA. MCE asserts that the water quality standards promulgated by the Missouri Clean Water Commission do not comply with the Clean Water Act (“CWA”), the implementing

regulations of the CWA, and EPA guidance, and further asserts that the EPA has failed to enforce those standards in Missouri. As relief, MCE requests the Court to compel the EPA to take certain actions that would result in changes to the state's water quality standards set by the Missouri Clean Water Commission. As a result, the rules governing discharges from publicly owned treatment works ("POTWs") into certain waters in Missouri may be changed.

The Intervenors are AMSA and UAC. AMSA is a national, non-profit trade association, acting on behalf of its members, which own and operate POTWs throughout the United States, including Missouri. UAC is a group of wastewater and storm water utilities in the State of Missouri, acting on behalf of its members, which own and operate POTWs in Missouri.

The Intervenors argue that they are entitled to intervene as a matter of right under Federal Rule of Civil Procedure 24(a)(2) or, alternatively, the Court should grant permissive intervention, under Federal Rule of Civil Procedure 24(b).

II. Discussion

The standards for intervention as a matter of right are set forth in Rule 24(a).

Rule 24(a) states:

Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the

applicant's interest is adequately represented by existing parties.

If an application is timely, Rule 24(a) then sets forth three prerequisites for intervention as of right: 1) the applicant must have a recognized interest in the litigation subject matter; 2) the interest might be impaired by the disposition of the litigation; and 3) the interest is not adequately protected by the existing parties. *Mille Lacs Band of Chippewa Indians v. Minnesota*, 989 F.2d 994, 997 (8th Cir. 1993) (internal citation omitted). The rule is construed broadly in favor of applicants for intervention. *South Dakota ex rel Barnett v. United States Dep't of Interior*, 317 F.3d 783, 785 (8th Cir. 2003).

MCE argues that the Intervenors waited too long to file their motion to intervene and that the Intervenors did not provide sufficient information to support the allegation that they have recognized interests that stand to be impaired by the outcome of the litigation.

A. Timeliness of Application

“In determining whether intervention should be allowed, either as a matter of right or permission, the threshold question is whether a timely application has been filed. The decision as to timeliness is committed to the district court's discretion.” *Arkansas Elec. Energy Consumers v. Middle South Energy, Inc.*, 772 F.2d 401, 403 (8th Cir. 1985) (internal citation omitted).

MCE filed this lawsuit six months prior to Intervenors filing the motion to

intervene. The Intervenors were aware of the litigation shortly after the lawsuit was initiated, and the Intervenors offer no reason for their delay in seeking to intervene in the lawsuit. Further, discovery in the case is now closed.

However, this case is not fact intensive--the issues involved turn largely on the interpretation of statutes and regulations. Even MCE states that the case will likely be resolved through cross motions for summary judgment. Moreover, the Intervenors do not wish to reopen discovery. They want to participate in the filing and briefing of dispositive motions and settlement negotiations, if any. The Intervenors state that the trial date will not need to be changed if they intervene in the case. Further, the Intervenors have not represented that they would need to extend the dispositive motion deadline of June 18, 2004. As such, the resolution of this case will not be delayed if Intervenors were to join the case at this point and neither party currently in the lawsuit will be prejudiced. The Court concludes that the application is timely filed. This conclusion assumes that no further discovery will be permitted and there will be no extensions granted to Intervenors on any deadline concerning dispositive motions. Any request for an extension by Intervenors will necessitate reconsideration of this interlocutory order granting intervention.

B. Recognized Interest at Stake in the Litigation

MCE argues that the Intervenors failed to meet their burden to produce specific information setting forth their interests at stake in this litigation. The non-parties seeking

to intervene bear the burden of establishing each of the required elements for intervention. *Keith v. Daley*, 764, F.2d 1265, 1268 (7th Cir. 1985). In reply, the Intervenor more specifically set forth their interests.

One type of relief MCE is requesting in its complaint is for the Court to compel the EPA to order the Missouri Department of Natural Resources (“Department”) to designate all Missouri surface water bodies as “whole body contact recreation.” This classification requires the most stringent effluent limits on POTWS, which includes POTWS owned and operated by Intervenor’s members. The only way for the Department to determine that a water should not be designated as whole body contact recreation is if a use attainability analysis is conducted for the water and the use attainability analysis demonstrates that such classification could not be met. The Department has stated that it may not have the personnel or financial resources to perform the tests.¹ Thus, the costs of the analyses may be borne by Intervenor in many cases. This will have an immediate impact on the Intervenor’s members’ annual budget, budget forecasting, and long term planning and prioritizing of improvements.

The Intervenor’s members also have an interest in the litigation because of its

¹This belief is based on a stakeholder meeting held on October 24, 2003. At the meeting, the Missouri Department of Natural Resources proposed that major dischargers be responsible for conducting the use attainability analyses necessary to redesignate a receiving water classified for whole body contact as a result of this lawsuit. Based on statements by the Department’s representatives at this meeting, there is substantial likelihood that the Department will require dischargers to conduct use attainability analyses, at significant expense and expenditure of resources or face potentially unattainable compliance requirements.

potential impact on their NPDES permits. If the receiving waters are reclassified as whole body contact recreation, the reclassification will require more stringent effluent limits for many of the pollutants currently regulated in the NPDES permits. The new limits will require additional capital expenditures for the installation of disinfection facilities at several large wastewater treatment plants. This affects budget and planning, and could lead to the Intervenor's members increasing the water and sewer rates charged to the Missouri citizens they serve.

The Intervenor's also suggest that their members have an interest in the lawsuit because the development of effluent limits will require resources of its members, not only the Department's resources. For example, the Department will rely significantly on input from POTWS in the assessment and promulgation of new water quality standards and effluent limits. Therefore, the POTWS must allocate the necessary budget and personnel resources to participate in such efforts.

The Intervenor's have specifically set forth recognized interests at stake in the current litigation subject matter. Because the other requirements of Rule 24(a)(2) are met, the Court grants the Intervenor's motion with the continuing caveat that any complication that arises because of the Intervenor's presence, or any delay caused by the Intervenor's presence, will necessitate the Court's re-examination of its conclusion that the parties to this suit will not be prejudiced by the belated request by the Intervenor's to join in this litigation.

III. Conclusion

Accordingly, it is hereby

ORDERED that Intervenors' Motion [Doc. # 29] is GRANTED. It is further

ORDERED that the Intervenors must file their answer as a separate document on CM/ECF within **four (4) days** from the date of this Order and any dispositive motion by June 18, 2004.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Court

Dated: June 4, 2004
Jefferson City, Missouri