

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

PENNSYLVANIA MUNICIPAL AUTHORITIES ASSOCIATION, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	Civil Action No. 1-02-01361 (HHK)
CHRISTINE TODD WHITMAN, Administrator, U.S. Environmental Protection Agency, <i>et al.</i>)	
)	
)	
Defendants.)	
)	

JOINT RULE 26(f) REPORT

Pursuant to Fed. R. Civ. P. 26(f) and LCvR 16.3(c), a conference via telephone was held on October 16, 2002, between:

John Hall and Gary Cohen, counsel for Plaintiffs Pennsylvania Municipal Authorities Association (“PMAA”), Tennessee Municipal League (“TML”) and the City of Little Rock Sanitary Sewer Committee (“Little Rock”);

Alexandra Dapolito Dunn and David W. Burchmore, counsel for Intervenor-Plaintiff Association of Metropolitan Sewerage Agencies (“AMSA”); and

Eric Hostetler and Carrie Wehling, counsel for Defendants United States Environmental Protection Agency *et. al.* (“EPA”).

This is submitted as the required Joint Rule 26(f) Report.

1. Whether case is likely to be disposed of by dispositive motion

The parties agree that the case is likely to be disposed of by dispositive motion.

2. Dates for joining other parties or amending pleading, and whether some or all of the factual and legal issues can be agreed upon or narrowed

The parties agree that no dates need be established at this time for joining other parties or amending pleadings. Plaintiffs and AMSA are evaluating whether to join additional EPA Region(s) as Defendants. In addition, Plaintiffs and AMSA are aware of other(s) evaluating whether to seek intervention as plaintiffs in this matter.

Plaintiffs and AMSA believe that there are a significant number of factual and legal issues that can be agreed upon or narrowed.

EPA believes that this Court does not have subject matter jurisdiction, and does not believe that the factual and legal issues can be agreed upon or narrowed.

3. Whether case should be assigned to a magistrate

The parties agree that the case should not be assigned to a magistrate.

4. Whether there is a realistic possibility of settling the case

Plaintiffs (PMAA, TML and Little Rock) and EPA met on September 9, 2002 to explore whether settlement of the matters was realistic. At this point the parties agree that settlement of the case prior to the Court's ruling on EPA's motion to dismiss is not a realistic possibility.

Plaintiffs further believe that settlement of the case prior to the Court's ruling on Plaintiffs' anticipated motion for summary judgment is not a realistic possibility.

5. ADR Procedures

The parties agree that the case will not benefit from ADR procedures.

6. Summary Judgment/Motion to Dismiss

The parties agree that the case is likely to be resolved by dispositive motions. EPA filed a motion to dismiss on October 25, 2002. The parties propose the following dates for

further dispositive motion briefing:

A. Motion to Dismiss

- EPA's motion - October 25, 2002.
- Plaintiffs' and AMSA's oppositions – November 27, 2002*
- Defendants Reply – December 11, 2002 (if EPA's motion to stay summary judgment briefing pending resolution of EPA's motion to dismiss is granted) or December 24, 2002 (if EPA's motion is not granted).*
- Court Decision: At Court's earliest convenience.

(*Plaintiffs and AMSA believe the above dates may need to be modified should (1) the court deny EPA's Motion for a Stay of Proceedings, Including a Stay of Discovery and Summary Judgment Briefings, Pending Resolution of its Motion to Dismiss and (2) EPA fails to provide to provide Plaintiffs the documents set forth in Plaintiffs First Request for Product of Documents, due on November 18, 2002, in time to include in Plaintiffs and AMSA's November 27, 2002 Reply.)

B. Summary Judgment

On October 29, 2002, EPA filed a motion to stay proceedings, including summary judgment briefing, pending disposition of EPA's motion to dismiss for lack of subject matter jurisdiction. EPA opposes establishment of a schedule for summary judgment briefing at this time for the reasons stated in that motion.

Plaintiffs seek that the court concurrently rule on EPA's motion to dismiss and a forthcoming motion for summary judgment. As such, Plaintiffs suggest the following schedule to coincide with the schedule for EPA's motion to dismiss:

- Motion For Summary Judgment – November 27, 2002
- Opposition – December 24, 2002
- Reply – January 17, 2003
- Court Decision – At the Court’s earliest convenience.

Plaintiffs and AMSA believe the above schedule may, however, need to be modified should (1) the court deny EPA’s Motion for a Stay of Proceedings, Including a Stay of Discovery and Summary Judgment Briefings, Pending Resolution of its Motion to Dismiss and (2) EPA fails to provide Plaintiffs the requested documents in time to include in Plaintiffs’ filings.

7. Rule 26(a) Disclosures

Plaintiffs and AMSA propose that no changes should be made to the initial disclosures required by Rule 26(a), Fed. R. Civ. P.

EPA proposes that initial disclosures be dispensed with in this case.

8. Discovery

A. EPA’s Position

EPA contends that as a matter of law, this Court does not have subject matter jurisdiction over Plaintiffs’ claims. EPA has filed a motion to stay all proceedings, including discovery, pending resolution of its motion to dismiss. EPA further does not believe any discovery is necessary in this case, irrespective of whether its motion to dismiss is granted, because review of claims under the Administrative Procedure Act is based on an administrative record.

B. Plaintiffs’ and AMSA’s Position

Plaintiffs assert that there are federal government documents relevant to factual issues (e.g., issue of finality and jurisdiction) associated with Defendants’ motion to dismiss.

Plaintiffs have provided Defendants a partial listing of such documents. In addition, Plaintiffs and AMSA assert that there are federal government documents relevant to EPA's historical interpretation and implementation of federal regulations that will be relevant to Plaintiffs' motion for summary judgment. As such, Plaintiffs and AMSA do not believe an order staying discovery is appropriate.

On October 18, 2002, Plaintiffs PMAA, TML and Little Rock served Defendants with a Request for Production of Documents. Such Plaintiffs believe that there are additional documents unknown to Plaintiffs or being withheld from Plaintiffs that, among other things, address the following subjects:

- EPA Regional actions and communications to States, municipalities and other(s) associated with Regional binding positions on the matters at issue;
- Inappropriate actions of Defendant EPA's enforcement office to bolster agency enforcement action and prevent or delay EPA Headquarters clarification regarding the Regional office activities and rules in question.
- Failure of Defendant EPA Administrator Whitman to rectify the inconsistent positions taken by Regional offices.
- The harm to Plaintiffs, including but not limited to, the multi-billion costs associated with Regional positions and the initiation of prosecution based upon Regional positions.

Plaintiffs suggest the following limitations on discovery.

C. **Extent of Discovery**: All discovery as allowed by applicable rules except as proposed below in paragraph E.

D. **How Long Discovery Should Take**: Plaintiffs propose that all discovery be completed by January 17, 2003 (*i.e.*, to coincide with Plaintiffs' proposed date for filing a reply brief in support of a motion for summary judgment).

E. **Limits on Discovery**: Plaintiffs and AMSA propose the following limits on discovery:

- Depositions: 10 depositions for each party group as identified below.
- Interrogatories: 75 interrogatories for each party group as identified below.
- Requests for Admissions: No limit.

Party groups are identified as follows:

- i) Plaintiffs PMAA, TML and Little Rock
- ii) Plaintiff Intervenor AMSA
- iii) Defendants

9. Exchange of Expert Witness Reports

The parties agree that there is no need for an exchange of expert reports at this time.

10. Class Actions

Not applicable.

11. Bifurcation of Trial and/or Discovery

The parties agree that there should be no bifurcation of trial.

Plaintiffs assert that it may be appropriate to bifurcate discovery to provide for initial disclosures, production of documents and depositions prior to Plaintiffs' filing of a reply

brief in support of its motion for summary judgment.

EPA believes that no discovery is needed in this case.

12. Date for Pretrial Conference

The parties agree that there is no need to establish a pretrial conference date at this time as the case may be resolved by dispositive motions.

13. Trial Date

The parties agree that no trial date need be set at this time as the case may be resolved by dispositive motions.

14. Other Matters

Not applicable.

Respectfully submitted,

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