

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION
CASE NO: 7:10-cv-00125-ART

KENTUCKY COAL ASSOCIATION

Plaintiff

V.

LISA JACKSON, in her official capacity,
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code:1101A
Washington, D.C. 20460

and

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
1200 Pennsylvania Avenue, N.W.
Mail Code:1101A
Washington, D.C. 20460

Defendants

**MOTION of COMMONWEALTH of KENTUCKY
TO INTERVENE AS PARTY PLAINTIFF**

Comes the Commonwealth of Kentucky (hereinafter, "Commonwealth") and pursuant to Federal Rule of Civil Procedure 24, respectfully moves for leave to intervene as of right, or in the alternative, to be granted permissive intervention as a Plaintiff in this action in order to assert the claims and interests set forth in the proposed complaint in intervention filed with this motion.

As is more fully set forth in its accompanying Memorandum of Law, the Commonwealth seeks intervention for the following reasons:

1. As more specifically set forth in the complaint in intervention, the Commonwealth may or will be adversely affected by the disposition of this action, and therefore is entitled to intervene as a matter of right pursuant to Fed. R. Civ. P. 24(a)(2).

2. The claims set forth in the Commonwealth's complaint in intervention relate to the transaction(s) that is (are) the subject of the underlying action, and the Commonwealth is so situated that disposing of the action may, as a practical matter, impair or impede the Commonwealth's ability to protect its interests. Furthermore, although it agrees with much of the claims in the underlying complaint, because of the Commonwealth's position as the primary regulatory authority for the Clean Water Act in Kentucky, its interests are not adequately represented by the existing parties.

3. In the alternative, grounds exist to grant the Commonwealth permissive intervention pursuant to Fed. R. Civ. P. 24(b). As stated above, the Commonwealth's claims in its proffered complaint in intervention share common questions of law or fact with the main action.

4. Additionally, pursuant to Fed .R. Civ .P. 24(b)(2), the Commonwealth's claims are based on statutes administered by the Commonwealth through its executive branch agency, the Kentucky Division of Water (hereinafter, "KDOW"). Furthermore, at issue in both the underlying suit and the complaint in intervention are regulations and requirements that are issued or made under the statutes administered by KDOW.

In conclusion, for the reasons stated herein and in the accompanying memorandum filed in support of its motion, the Commonwealth respectfully asks this honorable Court for an order granting this motion to intervene.

Respectfully Submitted,

COMMONWEALTH OF KENTUCKY
ENERGY AND
ENVIRONMENT CABINET

/s/ Mary A. Stephens

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NOTICE OF MOTION

Please take notice that this Motion will be held for hearing at the discretion of the Judge

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was sent to the following via U.S. mail, first class, postage pre-paid and also the parties listed to receive electronic service on the CM/ECF system on the 18th day of October, 2010.

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/s/ Mary A. Stephens

COUNSEL FOR INTERVENING
PLAINTIFF, COMMONWEALTH OF
KENTUCKY