

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
Wheeling**

**MURRAY ENERGY CORPORATION,  
MURRAY AMERICAN ENERGY, INC.,  
THE AMERICAN COAL COMPANY,  
AMERICAN ENERGY CORPORATION,  
THE HARRISON COUNTY COAL COMPANY,  
KENAMERICAN RESOURCES, INC., THE  
MARION COUNTY COAL COMPANY, THE  
MARSHALL COUNTY COAL COMPANY,  
THE MONONGALIA COUNTY COAL  
COMPANY, OHIOAMERICAN ENERGY  
INC., THE OHIO COUNTY COAL COMPANY,  
and UTAHAMERICAN ENERGY, INC.,**

Plaintiffs,

v.

**Civil Action No. 5:14-CV-39**  
Judge Bailey

**GINA McCARTHY**, Administrator,  
United States Environmental Protection  
Agency, in her official capacity,

Defendant.

**ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL DISCOVERY, EXTEND  
THE DEADLINE FOR FACT DISCOVERY, AND HOLD DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT IN ABEYANCE PENDING COMPLETION OF DISCOVERY  
AND DENYING DEFENDANT'S MOTION FOR ENTRY OF PROTECTIVE ORDER**

Pending before this Court are Plaintiffs' Motion to Compel Discovery, Extend the Deadline for Fact Discovery, and Hold Defendant's Motion for Summary Judgment in Abeyance Pending Completion of Discovery [Doc. 81] and the United States' Motion for Entry of Protective Order [Doc. 87]. For the reasons stated below, this Court will grant the plaintiffs' motion and deny the motion filed by the EPA.

This Clean Air Act citizen suit was filed on March 24, 2014, by and on behalf of twelve coal companies seeking to compel the Administrator of the Environmental Protection Agency (“EPA”) to comply with her duty to “conduct continuing evaluations of potential loss or shifts of employment which may result from administration or enforcement of the [Clean Air Act] and applicable implementation plans.” 42 U.S.C. § 7621(a) [Doc. 1].

On May 23, 2014, the plaintiffs filed an amended complaint [Doc. 23]. After the grant of an extension of time to the defendant, the defendant filed a motion to dismiss and memorandum in support on June 30, 2014 [Docs. 33, 34 & 35]. The plaintiffs responded to the motion to dismiss on July 25, 2014 [Doc. 38] and the EPA replied on August 11, 2014 [Doc. 39]. On September 16, 2014, this Court denied the motion to dismiss [Doc. 40].

After an extension, the EPA filed its answer to the amended complaint on October 6, 2014 [Doc. 49]. On October 9, 2014, the EPA filed a motion to clarify the court’s September 16, 2014 Order [Doc. 50], which motion was denied on October 24, 2014 [Doc. 53].

On November 5, 2014, this Court entered its scheduling order [Doc. 55]. On December 12, 2014, the plaintiff filed discovery requests upon the EPA [Doc. 58]. On December 23, the EPA filed a second motion to dismiss [Doc. 59], together with a motion to stay discovery pending resolution of its second motion to dismiss. The plaintiffs filed their response to the motion to dismiss on January 23, 2015, and the EPA filed its reply on February 17, 2015 [Docs. 65 & 70]. On March 27, 2015, this Court denied the second motion to dismiss [Doc. 71].

On April 10, 2015, the EPA filed a motion for summary judgment, together with a memorandum and numerous exhibits [Docs. 75, 76, 77, 78, 79 & 80]. It appears that

thereafter, having filed its motion for summary judgment, the defendant has refused to meaningfully engage in discovery. Under this Court's scheduling order, discovery was to close on May 1, 2015, with dispositive motions to be filed on September 21, 2015. The plaintiffs have filed the Rule 56(D) Declaration of John D. Lazzaretti, detailing the areas of discovery which plaintiffs contend are appropriate prior to a ruling on the motion for summary judgment [Doc. 82-7].

This Court finds that the plaintiffs have adequately demonstrated that further discovery is appropriate and necessary. In fact, little meaningful discovery has occurred, yet a motion for summary judgment has been filed.

For the above reasons, Plaintiffs' Motion to Compel Discovery, Extend the Deadline for Fact Discovery, and Hold Defendant's Motion for Summary Judgment in Abeyance Pending Completion of Discovery [Doc. 81] is **GRANTED**. It is hereby **ORDERED** that:

1. Defendant shall comply with all of the plaintiffs' pending discovery requests, including providing full responses to Interrogatories 7, 8, 9, 10, 11, 12, 14, 15, and 16 and Requests for Production 1, 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 27, 30, 31, 32, 33, 34, 35, 36, and 37 of Plaintiffs' First Set of Discovery Requests, filed December 2, 2014 [Doc. 58].

2. Defendant shall produce requested witnesses for deposition and cooperate in the scheduling of depositions so that all requested depositions may be completed by the discovery completion date.

3. The discovery completion deadline is extended to July 31, 2015.

4. Defendant's motion for summary judgment [Doc. 75] will be held in abeyance until the filing of plaintiffs' opposition thereto, which under the existing scheduling order is

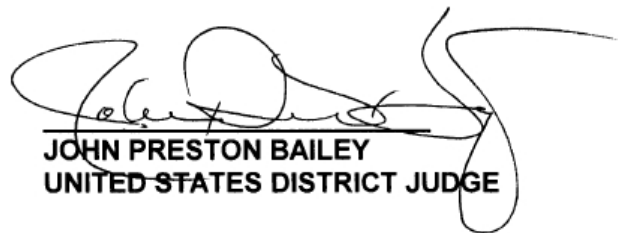
due on or before October 21, 2015.

For the above reasons, the United States' Motion for Entry of Protective Order [Doc. 87] is **DENIED**.

It is so **ORDERED**

The Clerk is directed to transmit copies of this Order to counsel of record herein.

**DATED:** May 29, 2015.



**JOHN PRESTON BAILEY**  
**UNITED STATES DISTRICT JUDGE**