

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

MURRAY ENERGY CORPORATION, et al.,

Plaintiffs,

v.

**CIVIL ACTION NO. 5:14-CV-39
(BAILEY)**

**CATHERINE McCABE, Acting Administrator,
United States Environmental Protection Agency,
acting in her official capacity,**

Defendant.

**ORDER DENYING MOTION FOR FEES AND
MOTION TO ENTER BRIEFING SCHEDULE**

Presently pending before this Court are the plaintiffs' Rule 54 Motion Seeking Fees Under Clean Air Act Section 304(d) [Doc. 319], filed January 25, 2017, and the parties' Joint Motion to Enter a Briefing Schedule for Plaintiffs' Motion for Fees [Doc. 320], filed February 2, 2017. The plaintiffs' motion requests an award of the costs of this litigation, including reasonable attorney and expert witness fees, pursuant to Section 304(d) of the Clean Air Act, 42 U.S.C. § 7604(d), and Fed. R. Civ. P. 54(d). The parties' joint motion requests that this Court enter a briefing schedule that allows adequate time for the plaintiffs to substantiate their claim and for the EPA to evaluate the plaintiffs' claim and prepare a response. The motion notes that the parties do not anticipate that the EPA's appeal to the Fourth Circuit will interfere with their proposed briefing schedule but reserve the right to request modification or stay of the same.

Rule 54 states that "[a] claim for attorney's fees . . . must be made by motion." Fed. R. Civ. P. 54(d)(2)(A). The rule provides that "[u]nless a statute or court order provides

otherwise, the motion must . . . be filed no later than 14 days from judgment,” “specify the judgment and the statute . . . entitling the movant to the award,” and “state the amount sought or provide a fair estimate of it.” Fed. R. Civ. P. 54(d)(2)(B)(i)-(ii) (emphasis added). The Court, thus, has discretion to alter the time frame for filing such motions, defer its ruling, or deny a motion without prejudice pending an appeal on the merits. See Fed. R. Civ. P. 54, Advisory Committee Note, 1993 Amendment (“If an appeal on the merits of the case is taken, the court may rule on the claim for fees, may defer its ruling on the motion, or may deny the motion without prejudice, directing under subdivision (d)(2)(B) a new period for filing after the appeal has been resolved.”).

This Court notes that the plaintiffs’ motion was timely filed, specifies the judgment and statute entitling them to an award, and states the approximate amount they seek. However, in light of the EPA’s appeal of this Court’s October 17, 2016, Order, this Court finds it most appropriate to address the plaintiffs’ claim for fees following the Fourth Circuit’s resolution of the appeal. This also will enable the plaintiffs more than adequate time to compile substantiation for their claim and for the defendant to begin to contemplate its response. Thus, because Rule 54(d)(2)(B) gives this Court broad discretion in ruling on the motion for fees, and because the defendant has been put on notice of the plaintiffs’ intention to seek attorneys fees in the stated approximate amount, this Court finds that denial of the motions without prejudice to renew is apt at this point in the proceedings.

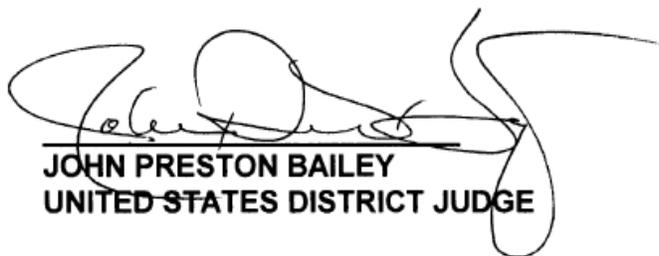
For the foregoing reasons, it is the opinion of this Court that the plaintiffs’ Rule 54 Motion Seeking Fees Under Clean Air Act Section 304(d) [**Doc. 319**] should be, and hereby is, **DENIED WITHOUT PREJUDICE**. As such, the parties’ Joint Motion to Enter a Briefing

Schedule for Plaintiffs' Motion for Fees **[Doc. 320]** is also **DENIED WITHOUT PREJUDICE**. Both motions may be renewed following entry of the Fourth Circuit's resolution of the defendant's appeal.

It is so **ORDERED**.

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

DATED: February 2, 2017.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE