IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MINGO LOGAN COAL COMPANY, INC.,	)	
Plaintiff,	)	
v.	)	No. 1:10-CV-00541
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,	)	
Defendant.	)	

UNITED STATES' OPPOSITION TO MOTIONS FOR LEAVE TO FILE AMICUS CURIAE BRIEFS

Pending before the Court are four motions, filed on behalf of thirty-four entities, seeking leave to file amicus curiae briefs in support of Plaintiff, Mingo Logan Coal Company, Inc. ("Mingo Logan"). The motions include: a motion filed on behalf of twelve trade associations representing various industries [DN 27], a motion filed on behalf of twenty additional trade associations representing the mining industry [DN 30], a motion filed on behalf of another trade association, the National Stone and Gravel Association [DN 29], and a motion filed by the United Company, whose wholly-owned subsidiary owns the coal Mingo Logan has sought to mine [DN 33] (collectively "the Movants").

Defendant, United States Environmental Protection Agency ("EPA"), opposes all of the motions and requests that this Court exercise its discretion to deny them. As explained more fully below, the Movants do not meet the basic criteria for participation as amicus curiae. None of the Movants has demonstrated that it will provide information or a perspective that is distinct from, and not already represented by, Mingo Logan. Nor do the Movants have any specialized

expertise in the legal issues implicated in this case such that the Movants' participation would assist the Court beyond the assistance that the parties are fully capable of providing. Accordingly, allowing Movants to file the proffered amicus briefs will not aid the Court, but instead will effectively allow Mingo Logan to double the length of its brief, creating further additional burdens for the Court and other parties.

ARGUMENT

District courts have inherent authority to deny the appearance of an amicus curiae. Jin v. Ministry of State Security, 557 F. Supp. 2d 131, 136 (D.D.C. 2008). The "'fact, extent, and manner'" of any amicus participation is solely within the discretion of the district court. Cobell v. Norton, 246 F. Supp. 2d 59, 62 (D.D.C. 2003) (citation omitted).

The Court should deny the motions because the Movants meet none of the criteria typically required for private party amicus participation. In ruling on amicus motions, this Court has often relied upon the criteria described in Ryan v. Commodity Futures Trading Comm'n, 125 F.3d 1062 (7th Cir. 1997) (Posner, J.):

> An amicus brief should normally be allowed when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case (though not enough affected to entitle the amicus to intervene and become a party in the present case), or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide. Otherwise, leave to file an amicus curiae brief should be denied.

125 F.3d at 1063; see Jin, 557 F. Supp. 2d at 137 (citing Ryan); Cobell, 246 F. Supp. 2d at 62 (same); Blackman v. Dist. of Columbia, 277 F. Supp. 2d 89, 90 n. 1 (D.D.C. 2003) (same); see also Liberty Lincoln Mercury, Inc. v. Ford Marketing Corp., 149 F.R.D. 65, 82 (D.N.J. 1993) ("When a court determines the parties are already adequately represented and participation of a

potential amicus curiae is unnecessary because it will not further aid in consideration of the relevant issues, leave to appear has been denied.").

None of these criteria is met here. The only criterion explicitly implicated by the Movants' filings is the suggestion that their briefs will provide information that will be useful to the Court. That suggestion is unfounded, however, because the "information or perspective[s]" advanced by the Movants is neither "unique" nor "beyond the help that the lawyers for the parties are able to provide." Ryan, 125 F.3d at 1063. Because this is a challenge under the Administrative Procedure Act ("APA"), the factual information available for judicial review is already present in the form of the administrative record. Thus, there is no unique factual information that the Movants can bring to bear in this case.

In addition, the Movants have failed to show that their perspectives differ in any relevant respect from the views of Mingo Logan. Indeed, the relationship of the Movants and Mingo Logan suggests the opposite. Mingo Logan's parent company (Arch Coal) is a member of one of the Movants -- the National Mining Association. Doc. 30 at 2. The subsidiary (United Coal Company, LLC) of another Movant, the United Company, also appears to be a member of the National Mining Association.[1] In addition, at least three of the other Movants (the National Sand and Gravel Association, the National Mining Association, and the National Association of Homebuilders), and presumably others, are members of another Movant, the U.S. Chamber of Commerce.[2] Suffice it to say that the interests of these parties are closely aligned with respect to

[1] See http://www.unitedco.net/ (visited June 15, 2011) and http://www.nma.org/about/membership_dir.asp (visited June 15, 2011).

[2] See http://www.uschamber.com/associations/c100/committee-100-members (visited June 16, 2011).

the issues in this case, and they do not offer a perspective that differs from, and is not already represented, by Mingo Logan and Arch Coal.

Furthermore, the Movants do not possess any unique qualifications or expertise that may assist the Court, as was the case justifying amicus participation in United States v. Microsoft Corp., No. 98-1232, 1999 WL 1419040 (D.D.C. Dec. 20, 1999) (appointing as amicus curiae a law professor "uniquely qualified to offer advice on a subject few other academics in the country are sufficiently knowledgeable to address at all"). The issues presented in this case are matters of statutory and regulatory construction and the application of APA principles to facts in the administrative record. None of the Movants can claim special expertise in these areas, nor have they demonstrated that their views on these issues will provide assistance to the Court beyond what counsel for Mingo Logan and the United States will provide.

Finally, the Court should also deny the motions because the proffered briefs are openly partisan and effectively lengthen Mingo Logan's summary judgment brief. Courts in this District will "consider the presence of partiality with regard to an amici's admittance." Jin, 557 F. Supp. 2d at 136 (quoting Smith v. Chrysler Fin. Co., No. 00-6003, 2003 WL 328719, at *8 (D.N.J. Jan.15, 2003)). Where a proffered amicus brief is filed by an ally of a litigant and essentially serves to extend the length of the litigant's brief, it should be disallowed. Ryan v. Commodity Futures Trading Comm'n, 125 F.3d at 1063. Here, the combined briefs proffered by these closely-aligned Movants "in support of" Mingo Logan total 55 pages. If allowed, they would effectively double the length of Mingo Logan's summary judgment brief, beyond the limitation imposed by the Court. See Minute Order (May 23, 2011) (denying Mingo Logan's request to file a 100-page brief and limiting the brief to 60 pages). Accordingly, the motions should be denied.

As this Court has recognized, "[i]n an era of heavy judicial caseloads and public impatience with the delays and expense of litigation, [ ] judges should be assiduous to bar the gates to amicus curiae briefs that fail to present convincing reasons why the parties' briefs do not give us all the help we need for deciding the [case]." United States v. Microsoft Corp., No. 98-1232, 2002 WL 319139, at *3 (D.D.C. Feb. 28 2002) (quoting Ryan, 125 F.3d at 1064). Because the Movants have failed to present any such "convincing reasons" why their participation and additional briefing is necessary, the Court should deny the motions for leave to file amicus curiae briefs.

CONCLUSION AND REQUEST FOR RELIEF

For the reasons stated above, the motions for leave of court to file amicus curiae briefs should be denied. However, in the event this Court accepts any of the amicus curiae briefs, the United States respectfully requests that it be permitted to respond to such briefs not later than fifteen days after the filing date for our brief in opposition to Mingo Logan's motion for summary judgment.

Respectfully submitted,

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

/s/ Kenneth C. Amaditz
CYNTHIA J. MORRIS
KENNETH C. AMADITZ
Environmental Defense Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 23986
Washington, DC 20026-3986
(202) 616-7554 (Morris)
(202) 514-3698 (Amaditz)
Fax: (202) 514-8865

c.j.morris@usdoj.gov
kenneth.amaditz@usdoj.gov

OF COUNSEL:

KARYN WENDELOWSKI
Office of General Counsel
U.S. EPA
1200 Pennsylvania Ave., N.W.
MC 2355A
Washington, D.C. 20460

STEFANIA SHAMET
Office of Regional Counsel
U.S. EPA Region III
1650 Arch St.
Philadelphia, PA 19103-2029

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of June, 2011, I filed the foregoing with the Clerk of Court using the CM/ECF system, which will cause a copy to be served upon registered counsel.

/s/ Kenneth C. Amaditz