

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

STATE OF MARYLAND,

Plaintiff,

v.

W.L. GORE & ASSOCIATES, INC.,

Defendant.

Civil Action No. 1:24-cv-03656

Hon. Richard D. Bennett

MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT

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COMES NOW Plaintiffs-Proposed Intervenors, Stephen Martin and Cheryl Martin, (collectively, “Plaintiffs-Intervenors”), who, through undersigned counsel, move to intervene in the instant action brought by the State of Maryland against Defendant, W.L. Gore & Associates, Inc., (“Gore” or “Defendant”),¹ and attach a complaint in intervention which sets out the claims for which intervention is sought, pursuant to Rule 24, Fed. R. Civ. P., the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6945 and 6972, and Md. Code Ann., Env’t § 1-904.²

BACKGROUND

Plaintiffs-Intervenors reside in close proximity to several Gore facilities in Elkton, Maryland, including the Cherry Hill Facility (“Cherry Hill”), located at 2401 Singerly Road, the Fair Hill Facility (“Fair Hill”), located at 101 Lewisville Road, and the four Appleton facilities (collectively “Appleton”), all of which are located on Airport Road. Plaintiffs-Intervenors, who reside on Somerset Court in Elkton,³ have a drinking water supply well which has over four times the maximum contaminant level (“MCL”) of perfluorooctanoic acid (“PFOA”), a type of per- and polyfluoroalkyl substances (“PFAS”) used by Gore at its Elkton facilities in the manufacture of polytetrafluoroethylene (“PTFE”). PFAS are synthetic chemical compounds that are used in a variety of consumer products, including GORE-TEX®, Scotchgard®, and Teflon®. PFAS are toxic, mobile and persistent in the environment, and cause extensive and long-lasting environmental

¹ Counsel for Plaintiffs-Proposed Intervenors have conferred with counsel for the State of Maryland and with Gore’s counsel prior to filing this motion. The State of Maryland has conveyed through counsel that it takes no position as to Plaintiffs-Proposed Intervenors’ request to intervene. Counsel for Gore has indicated that the Defendant opposes Plaintiffs-Proposed Intervenors motion.

² Specifically, Plaintiffs-Intervenors seek to intervene as to the State of Maryland’s claims for (1) open dumping, in violation of Resource Conservation and Recovery Act (“RCRA”), set forth in Count IX of its First Amended Complaint (“FAC”), *see* ECF No. 43, ¶ 209; (2) unauthorized discharge of pollutants and wastes, in violation of Title 9, Subtitle 3 of the Maryland environmental Article, set forth in Count V of the FAC, *see* ECF No. 43, ¶¶ 178 through 188; and (3) imminent and substantial endangerment under RCRA, set forth in Count IX of the FAC, *see* ECF No. 43, ¶¶ 204 through 208 and 210 through 211. As per Rule 24(c), Fed. R. Civ. P., Plaintiffs-Intervenors Proposed Complaint in Intervention is attached hereto as **Exhibit A**.

³ *See Exhibit B*, Declaration of Stephen Martin, *passim*.

contamination. As part of its operation at its Elkton facilities, Gore has caused widespread PFAS contamination in and around Elkton by way of decades-long releases of PFAS into the environment.

On September 4, 2024, Plaintiffs-Intervenors notified Gore, pursuant to 42 U.S.C. § 6972(b)(2)(A), of their intention to file suit for violations of RCRA. The Notice outlined Plaintiffs-Intervenors' concerns, including the imminent and substantial endangerment posed by the conduct alleged herein. Plaintiffs-Intervenors sent that letter by mail to the registered agent for W.L. Gore & Associates, Inc. Plaintiffs-Intervenors also provided copies of the Notice Letter to the Maryland Department of the Environment ("MDE") and the federal Environmental Protection Agency ("EPA").⁴ On December 9, 2024, after the expiration of the statutory 90-day notice requirement, Plaintiffs-Intervenors commenced an action against Gore, asserting two causes of action: an imminent and substantial endangerment claim, pursuant to 42 U.S.C. § 6972(a)(1)(B),⁵ as well as claim for unlawful open dumping, as per 42 U.S.C. § 6945(a).⁶

Thereafter, on December 18, 2024, the State of Maryland initiated its own action against Gore by filing its initial Complaint.⁷ In its initial Complaint, the State of Maryland asserted the following claims: public nuisance; trespass; negligence; unauthorized discharge under Title 7, Subtitle 2, of the Environmental Article; unauthorized discharge under Title 9, Subtitle 9, of the Environmental Article; a claim for injunctive relief under Title 9, Subtitle 4, of the Environmental Article; a claim for costs incurred in response to Gore's past and future releases of PFOA and other PFAS substances under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(A); and claim for declaratory

⁴ A true and correct copy of Plaintiffs-Intervenors September 4, 2024 notice letter is attached hereto as **Exhibit C** with documentation of its receipt attached hereto as **Exhibit D**.

⁵ See *Martin v. W.L. Gore & Assocs., Inc.*, C.A. No.: 1:24-cv-03549-SAG (D.Md. 2024), ECF No. 1, ¶¶ 69-77.

⁶ *Id.*, ¶¶ 78-85.

⁷ See *State of Maryland v. W.L. Gore & Assocs., Inc.*, No. 1:24-cv-03656-RDB, ECF No. 1, *passim*.

relief under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

On December 19, 2024, the State of Maryland provided notice to Gore and to the United States Environmental Protection Agency (“EPA”) of its intent, upon expiration of the ninety (90) day notice period, to bring suit under RCRA’s provisions for (i) imminent and substantial endangerment, 42 U.S.C. § 6972(a)(1)(B), and (ii) open dumping of solid or hazardous waste, 42 U.S.C. § 6945, for PFAS-contamination stemming from Gore’s operations at its Cherry Hill, Fair Hill, and Appleton facilities in Elkton.

Subsequently, Gore moved to dismiss Plaintiffs-Intervenors’ initial Complaint on February 17, 2025 asserting, *inter alia*, that Plaintiffs-Intervenors’ notice letter was deficient for not providing Plaintiffs-Intervenors’ home address or telephone numbers such that the District Court lacked subject matter jurisdiction over Plaintiffs-Intervenors’ own asserted claims under RCRA for imminent and substantial endangerment, 42 U.S.C. § 6972(a)(1)(B), and for open dumping of solid or hazardous waste, 42 U.S.C. § 6945.⁸

On February 18, 2025, Plaintiffs-Intervenors’ issued a revised RCRA notice letter which clarified Plaintiffs’ address and contact information, and which once again notified Gore, pursuant to 42 U.S.C. § 6972(b)(2)(A), of Plaintiffs-Intervenors intention to file suit for violations of RCRA. The revised Notice again outlined Plaintiffs-Intervenors’ concerns, including the imminent and substantial endangerment posed by the conduct alleged herein. Plaintiffs-Intervenors sent their revised letter by mail to the registered agent for Gore, and to the Maryland Department of the Environment (“MDE”) and to the EPA.⁹

On May 5, 2025, Judge Gallagher dismissed Plaintiffs-Intervenor’s Complaint,

⁸ See *Martin v. W.L. Gore & Assocs., Inc.*, C.A. No.: 1:24-cv-03549-SAG D.Md. 2024), ECF Nos. 28 to 28-1.

⁹ A true and correct copy of Plaintiffs-Intervenors’ February 18, 2025 revised notice letter is attached hereto as **Exhibit E** with documentation of its receipt attached hereto as **Exhibit F**.

determining that it lacked subject matter jurisdiction due to the lack of an address or telephone number in Plaintiffs-Intervenor's initial RCRA notice, but specified that "Plaintiffs may file suit again after 90 days elapse from the date of that Notice."¹⁰ Prior to the expiration of 90 days on Plaintiffs' amended notice letter, the State filed suit, thereby triggering the RCRA bar on filing its own suit¹¹, but also triggering the RCRA-provided right to intervene under 42 U.S.C. § 6972(b)(1)(B) and (b)(2)(E).

The violations identified in Plaintiffs-Intervenors' notice letters are continuing at this time and are likely to continue in the future. Plaintiffs-Intervenors therefore seek intervention as of right as to both the RCRA open dumping and RCRA imminent and substantial endangerment, and Title 9, Subtitle 3 claims asserted by the State of Maryland. In the alternative, Plaintiffs-Intervenors also seek permissive intervention as to the State's claim for imminent and substantial endangerment under RCRA.

I. ARGUMENT

Plaintiffs-Intervenors seek to intervene under Rule 24(a), Fed. R. Civ. P., as to the RCRA open dumping and imminent and substantial endangerment claims and the Article 9, Subtitle 3 claim asserted by the State of Maryland. Open Dumping is a prohibition redressable under 42 U.S.C. §§ 6945 and 6972 (a)(1)(A). For violations subject to liability under (a)(1)(A), the statute provides an express right to intervene: "[i]n any action under [42 U.S.C. § 6972] (a)(1)(A) in a court of the United States, any person may intervene as a matter of right." 42 U.S.C. § 6972 (b)(1)(B) (emphasis added). For creating imminent and substantial endangerment, violators are subject to liability under section 42 U.S.C. § 6972 (a)(1)(B). RCRA again provides for

¹⁰ See *Martin v. W.L. Gore & Assocs., Inc.*, C.A. No.: 1:24-cv-03549-SAG D.Md. 2024), ECF No. 33 at 7.

¹¹ Per 42 U.S.C. § 6972(b)(1)(B) no action may be commenced under (a)(1)(A) if the State has commenced an action; 42 U.S.C. § 6972(b)(2)(C) no action may be commenced under (a)(1)(B) if the State has commenced an action.

intervention as of right “[i]n any action under subsection (a)(1)(B) in a court of the United States, any person may intervene as a matter of right when the applicant claims an interest relating to the subject of the action and he is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless the Administrator or the State shows that the applicant's interest is adequately represented by existing parties.” 42 U.S.C. § 6972 (b)(2)(E) (emphasis added). Likewise, Md. Code Ann., Env’t § 1-904 (West), “a person that meets the threshold standing requirements under federal law has the unconditional right and authority to intervene in a civil action brought by the Secretary under ...Title 9, Subtitle 3 of this article.” (emphasis added). As Plaintiffs-Intervenors have shown an unconditional right to intervene under the foregoing statutes, they should be granted intervention under Rule 24(a).

In the alternative, Plaintiffs-Intervenors seek to intervene as to the RCRA imminent and substantial endangerment claim asserted by the State of Maryland pursuant to Fed. R. Civ. P. 24(b). Rule 24(b)(1)(B) grants a district court discretion, upon a timely motion, to permit a movant’s intervention when:

- (1) an applicant’s claim or defense and the main action have a question of law or fact in common, . . .
- (2) . . . the intervention will not unduly delay or prejudice the adjudication of the rights of the original parties[,]
- (3) intervention will not destroy the jurisdiction of the federal court when based on diversity of citizenship, and
- (4) the jurisdictional amount in controversy [is] satisfied for the claims or defenses of the petitioner-intervenor.¹²

As described herein, Plaintiffs-Intervenors satisfy the criteria set forth in Rule 24(b), and permissive intervention should be granted to as to the RCRA imminent and substantial endangerment claim asserted by the State of Maryland.

¹² TPI Corp. v. Merchandise Mart of S.C., Inc., 61 F.R.D. 684, 688-89 (D.S.C. 1974).

A. The Motion to Intervene is Timely.

Under Rule 24(a), a timely application for intervention must be granted whenever a federal statute conveys an unconditional right to intervene. Fed. R. Civ. P. Rule 24(a)(1).¹³ Timeliness is determined by “1) how far the suit has progressed, 2) the prejudice which delay might cause other parties, and 3) the reason for tardiness [if any] in moving to intervene.” *Smith v. Hous. Auth. of Baltimore City*, No. CV GLR-15-2921, 2016 WL 10637127, at *1 (D. Md. Aug. 1, 2016) (citing *Gould v. Alleco, Inc.*, 883 F.2d 281, 286 (4th Cir. 1989)). Mere passage of time is but one factor in determining timeliness. *Hill v. W. Elec. Co., Inc.*, 672 F.2d 381, 386 (4th Cir. 1982) (citation omitted). The most important consideration is whether any delay has prejudiced other parties. *Id.* The present suit is in its earliest stages and the timing of this motion will in no way prejudice the parties. The State of Maryland only filed its First Amended Complaint, raising for the first time RCRA claims, approximately two months ago. No discovery or other significant legal action has occurred. Given the early stage of this litigation, and mindful of the fact that the Plaintiffs-Intervenors do not seek to inject any new substantive claims into this action, intervention will not cause any significant delay and will not prejudice the existing parties. Plaintiffs-Intervenors’ motion to intervene is therefore timely. *W. Energy Alliance v. Zinke*, 877 F.3d 1157, 1165 (10th Cir. 2017) (motion to intervene filed just over two months after complaint was timely).

This motion is timely, and Plaintiffs-Intervenors have acted diligently in light of the District Court’s prior dismissal of their own citizen suit. Courts in this District and Circuit consider motions to intervene timely where the motion is made at an early stage and does not

¹³ Timeliness is also a factor at issue for requests for intervention under Rule 24(b). *See* Rule 24(b)(1), Fed. R. Civ. P. Plaintiffs-Intervenors’ motion is timely under Rule 24(b) for the same reasons as it is under Rule 24(a).

prejudice existing parties. Here, allowing intervention now will not disrupt the case or burden the parties, and indeed will promote efficient resolution of common issues.

B. Plaintiffs Meet the Requirements for Intervention as of Right Under Rule 24(a) as to the State of Maryland’s RCRA Open Dumping Claim, its Claim Under Title 9, Subtitle 3 of the Maryland Environmental Article, and its RCRA Imminent and Substantial Endangerment Claim.

Rule 24(a)(1) specifies, upon a timely motion, that “the court must permit anyone to intervene who ... is given an unconditional right to intervene by a federal statute.” *See* Rule 24(a)(1), Fed. R. Civ. P. Likewise, Rule 24(a)(2) provides intervention as of right when the applicant:

claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.

See Rule 24(a), Fed. R. Civ. P.

Here, RCRA, §§ 6972(a)(1)(A) (open dumping) and 6972(b)(2)(E) (imminent and substantial endangerment), and Md. Envir. Code §1-904 are federal or state statutes conferring intervention as of right, so Rule 24(a) dictates that Plaintiffs-Intervenors be allowed to intervene. Plaintiffs-Intervenors meet the conditions of both Rule 24(a)(1) and (2) and are therefore entitled to intervene as to the RCRA open dumping and imminent and substantial endangerment claims and the Title 9, Subtitle 3 claim asserted by the State of Maryland against Gore.

1) Plaintiffs-Intervenors Meet the Requirements of Rule 24(a) for Intervention as of Right as to the State of Maryland’s RCRA Open Dumping Claim Under 42 U.S.C. §§ 6945, 6972

Under 42 U.S.C. § 6972(b)(1)(B), “[i]n any action under [42 U.S.C. § 6972](a)(1)(A) in a court of the United States, *any person may intervene as a matter of right.*” (emphasis added). As

such, Section 6972(b)(1)(B) provides Plaintiffs-Intervenors with an absolute right to intervene with respect to the RCRA open dumping claim asserted by the State of Maryland.¹⁴ 42 U.S.C. § 6945 states that open dumping of solid waste or hazardous waste is *prohibited*. (emphasis added). Section 6972(a)(1)(A) authorizes citizen suits for violations of any prohibition (such as illegal open dumping of solid or hazardous waste), and Paragraph 209 of the State of Maryland’s FAC alleges illegal dumping of PFAS waste by Gore – a classic §6972(a)(1)(A) violation – in federal court. Because the State of Maryland’s suit is an “action under §6972(a)(1)(A),” Plaintiffs-Intervenors have an unconditional statutory right to intervene.

Plaintiffs-Intervenors easily satisfy the criteria for intervention as to the RCRA open dumping claim: their motion is timely, they are “persons” within the meaning of the statute, and the action falls squarely within the statute’s scope. Rule 24(a)(1) does not require any further showing of interest or inadequacy beyond timeliness. As such, Plaintiffs-Intervenors respectfully submit that they must therefore be permitted to intervene by timely motion, without requiring any further showing beyond timeliness and compliance with procedural rules. Indeed where, as here, Plaintiffs-Intervenors have a statutory right to intervene, the district court need not reach the Rule 24(a)(2) factors.

2) Plaintiffs-Intervenors Meet the Requirements of Rule 24(a)(2) for Intervention as of Right as to the State of Maryland’s RCRA Imminent and Substantial Endangerment Claim filed by the State as a Citizen Suit Under 42 U.S.C. § 6972

RCRA, Section 6972(b)(2)(E) provides:

In any action under subsection (a)(1)(B) in a court of the United States, any person may intervene as a matter of right when the applicant claims an interest relating to the subject of the action and he is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless

¹⁴ The State of Maryland has asserted such a claim in Count IX of its First Amended Complaint. See ECF No. 43, ¶ 209.

the Administrator or the State shows that the applicant's interest is adequately represented by existing parties.

42 U.S.C. § 6972(b)(2)(E) (emphasis added).

Where, as here, a State brings a RCRA a claim for imminent and substantial endangerment under Section 6972(a)(1)(B), Section 6972(b)(2)(E) is “the relevant statutory provision that gives rise to a right to intervene....” *Dep't of Nat. Res. & Env't Control v. Mountaire Farms of Delaware, Inc.*, 375 F. Supp. 3d 522, 530 (D. Del. 2019) (emphasis added). Like a cause of action under 42 U.S.C. 6972(a)(1)(A), an action under (a)(1)(B) grants Plaintiffs-Intervenors a statutory right to intervene.

Plaintiffs-Intervenors satisfy each requirement for intervention as of right under Rule 24(a)(2). Under Rule 24(a)(2) of the Federal Rules of Civil Procedure:

A court must allow intervention as of right upon timely motion if a movant demonstrates “(1) an interest in the subject matter of the action; (2) that the protection of this interest would be impaired because of the action; and (3) that the applicant’s interest is not adequately represented by the parties to the litigation.”¹⁵

This test is applied liberally. Indeed, “[t]he Fourth Circuit has ‘noted that liberal intervention is desirable to dispose of as much of a controversy “involving as many apparently concerned persons as is compatible with efficiency and due process.”’¹⁶

First, Intervenors’ motion is timely, as shown above. Second, Intervenors must have a significant protectable interest in this litigation. In an analysis of the “interest” element of a Rule 24(a) request for intervention, the Fourth Circuit requires the would-be intervenor to show it has a

¹⁵ *Lee v. Va. Bd. of Elections*, 2015 WL 5178993, *1 (E.D. Va. Sept. 4, 2015) (quoting *Stuart v. Huff*, 706 F.3d 345, 349 (4th Cir. 2013)).

¹⁶ *N.C. State Conference of NAACP v. Cooper*, 332 F.R.D. 161, 165 (M.D.N.C. 2019) (quoting *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986)); *Ohio Valley Env’t Coal., Inc. v. McCarthy*, 313 F.R.D. 10, 16 (S.D.W.Va. 2015) (internal citations omitted)).

“significant protectable interest” in the litigation.¹⁷ A movant has a “significant protectable interest” if she stands “to gain or lose by the direct legal operation of the district court’s judgment....”¹⁸ Here, Intervenorors have a significant protectable interest in this litigation: their health and welfare and the use of their properties, and easily satisfy the criteria set forth in Rule 24(a)(2), Fed. R. Civ. P. In determining whether an applicant has met this first factor, the Fourth Circuit looks for a “significantly protectable interest.” *Teague v. Bakker*, 931 F.2d 259, 261 (4th Cir. 1991).

An applicant for intervention has a significantly protectable interest in the subject matter of the litigation when a movant “[stands] to gain or lose by the direct legal operation of the district court’s judgment on [the] complaint.” *Id.* A threat of environmental or economic injury satisfies this requirement. *See Animal Protection Institute v. Martin*, 241 F.R.D. 66 (D. Me. 2007) (finding intervention warranted in action challenging Maine trapping policies where intervenor-organizations and individuals, which supported the trapping policies, had economic and recreational interests at stake in the litigation); *see also Dep’t of Nat. Resources & Envtl. Control v. Mountaire Farms of Delaware*, 375 F. Supp. 3d 522, 531 (D. Del. 2019) (holding individuals who lived near and had been impacted by poultry processing and disposal facilities subject to RCRA enforcement action had sufficient interest to intervene).

Additionally, where the claims raised by an applicant for intervention and those at issue in the original action are similar, the possible *stare decisis* effect of an adverse ruling can be sufficient to establish a right of intervention. *Chiles v. Thornburgh*, 865 F.2d 1197, 1214 (11th Cir. 1989); *see also Hudson Riverkeeper Fund, Inc. v. Atl. Richfield Co.*, 138 F. Supp. 2d 482, 484 n.2

¹⁷ *Lee*, 2015 WL 5178993 at *2 (citing *Teague v. Bakker*, 931 F.2d 259, 261 (4th Cir. 1991)).

¹⁸ *Def. of Wildlife v. N.C. Dep’t of Transp.*, 281 F.R.D. 264, 268 (E.D.N.C. 2012) (quoting *Teague*, 931 F.2d at 261).

(S.D.N.Y. 2001) (noting that intervention was proper in RCRA suit where Village had interest in environmental actions impacting residents and negative outcome in the case could preclude intervenor from pursuing its own interests). Put simply, Plaintiffs-Intervenors have a direct, legally protectable interest in the subject of this case – namely, remediation of Gore’s PFAS contamination of their drinking water and property, and abatement of continuing discharges. That interest “relates to the transaction” of the action, which seeks to stop illegal dumping and discharges of PFAS that may present an imminent and substantial endangerment, and thus “may as a practical matter be impaired or impeded” by the outcome. Absent intervention, a judgment in favor of Maryland could resolve the open-dumping claims and enjoin future illegal discharges, but Plaintiffs-Intervenors would have no guaranteed role in shaping the scope of relief or asserting claims unique to their situation.

Furthermore, the State’s representation of the public interest does not ensure these private interests will be fully or adequately protected. In general, the adequacy of representation issue in Rule 24(a)(2) “is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.” *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972). Moreover, contrary to the general test in Federal Rule 24 (a)(2), RCRA specifically places that burden on the state. 42 U.S.C. § 6972 (b)(2)(E); *see also Mountaire Farms of Delaware, Inc.*, 375 F. Supp. 3d at 531 (D. Del. 2019). The Fourth Circuit has explicitly adopted the minimal showing standard expressed in *Trbovich*. *See Teague*, 931 F.2d at 262.

The State’s statutory claims and *parens patriae* role may diverge from the residents’ concerns as the State does not represent the individual. Indeed, courts recognize that when a government sues to enforce environmental law, private litigants may bring different objectives and

have more at stake in particular outcomes. The interests of Plaintiffs-Intervenors in cessation of PFAS contamination to protect their health and restore their properties are distinct from the State's interests in protecting the State's resources.

For example, Plaintiffs-Intervenors have alleged that a sampling of the water in their drinking wells shows a PFOA level in excess of four times the 4.0 ppt MCL and evidence of the depositing of non-gaseous airborne PFAS particulates mean Plaintiffs-Intervenors face an actual, concrete injury and a reasonable fear of harm. Likewise, as noted in the Declaration from Mr. Martin, attached hereto as Exhibit B, both Plaintiffs-Intervenors now refrain from engaging in recreational activities in the waterways near their home in Elkton as a result of contamination from Gore's facilities. Here, unlike garden-variety risk, Plaintiffs-Intervenors' well water has already reached dangerously high contamination levels, implicating both a particularized current injury and a concrete imminent threat.

Plaintiffs-Intervenors satisfy these criteria for intervention under Rule 24(a)(2) as to the RCRA imminent and substantial endangerment claim, as their motion is timely, they are "persons" within the meaning of the statute, they expressly claim an interest in the subject matter of the action, and disposition of the State's claims may, practically, impair or impede their interests. Plaintiffs-Intervenors have a significant protectable interest in this litigation: their health and welfare and the use of their property. Moreover, the potential *stare decisis* effects support Plaintiffs-Intervenors' request to intervene. *See Chiles*, 865 F.2d at 1214 (11th Cir. 1989); *see also Hudson Riverkeeper*, 138 F. Supp. 2d at 484 n.2 (S.D.N.Y. 2001). Moreover, while the burden would be on the State of Maryland to establish the adequacy of its representation, were it to contest Plaintiffs-Intervenors' right to intervene, merely having similar interests does not assure adequate representation under Rule 24. *See, e.g., Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 737 (D.C.

Cir. 2003); *accord Sierra Club v. Robertson*, 960 F.2d 83, 86 (8th Cir. 1992). Even sharing the same ultimate legal objective does not render parties' interests “aligned” for purposes of “adequate representation.” *Woolen v. Surtran Taxicabs, Inc.*, 684 F.2d 324, 333 (5th Cir. 1982); *see also Planned Parenthood of Minnesota, Inc. v. Citizens for Cmty. Action*, 558 F.2d 861, 870 (8th Cir. 1977). Instead, courts must compare the interests of the existing party with would-be intervenors to determine whether the latter's interests, while not “wholly adverse,” nonetheless diverge in some way from the former's interests. *Jansen v. City of Cincinnati*, 904 F.2d 336, 343 (6th Cir. 1990). Plaintiffs-Intervenors, while sharing, at high level of abstraction, the interests of the State, nevertheless have specific interests that diverge from those of the State sufficient to recognize their express statutory right to intervene, as set forth in Section 6792(b)(2)(E).

3) Plaintiffs-Intervenors Meet the Requirements of for Intervention as of Right Under Rule 24(a) as to the State of Maryland's Claim Under Title 9, Subtitle 3 of the Maryland Environmental Article.

Likewise, the recently enacted §1-904 of the Maryland Code grants individuals, like Plaintiffs-Intervenors, who “meet the threshold standing requirements under federal law” with “the unconditional right and authority to intervene in a civil action brought by the Secretary under ...Title 9, Subtitle 3 of this article.” *See* Md. Code Ann., Env't § 1-904. The State of Maryland has asserted such a claim in Count V of its First Amended Complaint. *See* ECF No. 43, ¶¶ 178 through 188.

Title 9, Subtitle 3 is Maryland's Water Pollution Control subtitle, one of the statutes under which the State is suing Gore. Plaintiffs-Intervenors plainly “meet the threshold standing requirements under federal law” as they have alleged concrete injuries from environmental contamination directly and proximately caused by Gore, and, as such, Section §1-904 confers on

them an *independent* statutory right to intervene in the State’s water pollution claim brought under state law.

Although here the authority to intervene is not granted by a federal statute, Plaintiffs-Intervenors have an absolute right to intervene with respect to the Title 9, Subtitle 3 claims raised by the State, and should be allowed to do so pursuant to Rule 24(a)(2), Fed. R. Civ. P. The requirements of Rule 24(a)(2) are satisfied, as previously argued within, because Plaintiffs-Intervenors claim an interest in the subject of the action; the outcome of the litigation may impair or impede their ability to protect that interest; and they are not adequately represented by the existing parties. As such, here Rule 24(a)(2) mandates intervention as of right in favor of Plaintiffs-Intervenors as to the State of Maryland’s Title, 9 Subtitle 3 claim.

C. Alternatively, Plaintiffs-Intervenors Meet the Requires of Rule 24(b) for Permissive Intervention as to the State of Maryland’s RCRA Imminent and Substantial Endangerment Claim.

Rule 24(b)(1) Fed. R. Civ. P., specifies that upon a timely motion, a court “may permit anyone to intervene who ... (A) is given a conditional right to intervene federal statute or (B) has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(A)-(B). With respect to Rule 24(b)(1)(A), the plain terms of 42 U.S.C. 6972(b)(2)(E) specify that with respect to imminent and substantial endangerment claims under RCRA, “any person may intervene as a matter of right when the applicant claims an interest relating to the subject of the action and he is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless the Administrator or the State shows that the applicant’s interest is adequately represented by existing parties.” See 42 U.S.C. 6972(b)(2)(E). Hence, 42 U.S.C. 6972(b)(2)(E) creates a right in favor of Plaintiffs-Intervenors to intervene with respect to the imminent and substantial endangerment claim. Should

the court find that Plaintiffs-Intervenors nevertheless cannot intervene as of right on the imminent and substantial endangerment claim, permissive intervention should be allowed under Rule 24(b).

Rule 24(b)(1)(B) grants a district court discretion, upon a timely motion, to permit a movant's intervention where he or she "has a claim or defense that shares with the main action a common question of law or fact." *See* Fed. R. Civ. P. 24(b)(1)(B). In construing this provision, courts may consider whether:

- (1) an applicant's claim or defense and the main action have a question of law or fact in common, . . .
- (2) . . . the intervention will not unduly delay or prejudice the adjudication of the rights of the original parties[,]
- (3) intervention will not destroy the jurisdiction of the federal court when based on diversity of citizenship, and
- (4) the jurisdictional amount in controversy [is] satisfied for the claims or defenses of the petitioner-intervenor.¹⁹

A "trial court may deny intervention where it would cause 'undue delay, complexity or confusion to the litigation' or would not contribute to the 'just and equitable adjudication of the legal question presented.'"²⁰ Only when the would-be intervenor's participation in a case "'will hinder, rather than enhance, judicial economy,' and will 'unnecessarily complicate and delay' the various stages of [a] case, to include discovery, dispositive motions, and trial[,]" is denial of a request for intervention appropriate.²¹ "As a general matter, 'liberal intervention is desirable to dispose of as much of a controversy involving as many apparently concerned persons as is compatible with efficiency and due process.'"²²

¹⁹ *TPI Corp. v. Merchandise Mart of S.C., Inc.*, 61 F.R.D. 684, 688-89 (D.S.C. 1974).

²⁰ *League of Women Voters of S.C. v. Andino*, 2020 WL 6573386, *1 (D.S.C. Oct. 14, 2020) (citations omitted).

²¹ *Cooper*, 332 F.R.D. at 172 (quoting *One Wis. Inst., Inc. v. Nichol*, 310 F.R.D. 394, 399-400 (W.D. Wis. 2015)).

²² *Norfolk S. Ry. Co. v. City of Roanoke*, 2016 WL 6126397, at *1 (W.D.Va., 2016) (quoting *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986)).

The Court should also grant Plaintiffs-Intervenors permissive intervention as to the State of Maryland's RCRA imminent and substantial endangerment claim under Rule 24(b)(1)(B). Since this is a federal question case, the last two prongs of the permissive intervention test—amount in controversy and diversity of citizenship—are inapplicable. And, as noted above, this motion is timely as intervention will not result in any prejudicial delay because no proceedings have occurred before the Court and discovery has not commenced. The only open issue relating to granting intervention under Rule 24(b)(1)(B) is whether there is a common question of law or fact among Intervenors' claims against Gore and those brought by the State of Maryland. The answer is clearly in the affirmative. Plaintiffs-Intervenors' proposed Complaint sets forth their claims under RCRA and Title 9, Subtitle 3, and the requested relief. Plaintiffs-Intervenors' Complaint asserts numerous common questions of law and fact shared by the State of Maryland's Complaint, all of which relate to whether Gore's conduct has caused PFAS pollution to the waters and properties in the vicinity of Gore's Elkton facilities. As such, the Court should grant Intervenors permissive intervention under Rule 24(b)(1)(B).

The imminent and substantial endangerment claim Plaintiffs-Intervenors would assert arises from the exact same facts and operations as Maryland's claims: Gore's handling of PFAS wastes and emissions. The impact of PFAS on drinking water, property, and health is the central factual issue of the litigation. Their claims overlap heavily with Maryland's alleged environmental violations and damages to the local community. Permitting them to intervene will promote judicial economy by consolidating discovery and avoiding separate litigation of identical facts. It will not unduly delay or prejudice the original parties – on the contrary, their factual evidence will aid a comprehensive adjudication of Gore's liability.

CONCLUSION

Plaintiffs-Intervenors are entitled to intervene as a matter of right under Rule 24(a)(1) and (2) with respect to the claims for open dumping and imminent and substantial endangerment under RCRA, and under Title 9, Subtitle 3, brought by the State of Maryland against Gore. Because their application is timely and RCRA 42 U.S.C. § 6972(a)(1)(A) creates a statutory right for citizens to intervene in such actions, Plaintiffs-Intervenors satisfy the requirements of Rule 24(a)(1). For the RCRA imminent and substantial endangerment claim and the Title 9, Subtitle 3 claim, Plaintiffs-Intervenors also satisfy the requirements of Rule 24(a)(2) because they claim an interest in the subject of the action; the outcome of the litigation may impair or impede their ability to protect that interest; and they are not adequately represented by the existing parties. Alternatively, Plaintiffs-Intervenors should be granted a permissive intervention with respect to the RCRA imminent and substantial endangerment claim asserted by the State against Gore, as per Rule 24(b) and 42 U.S.C. 6972(b)(2)(E).

(signature block to follow)

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