

waterways in Alabama.¹ In accordance with this shared goal, the Clean Water Groups work to make sure that the Clean Water Act and the Alabama Water Pollution Control Act are properly interpreted, implemented, and enforced. The Clean Water Groups also have an interest in ensuring that the waterways of Alabama remain free of stormwater pollution to the maximum extent practicable. Furthermore, the Clean Water Groups have members who regularly use and enjoy the waterways of Alabama and have an interest in maintaining such waterways for water supply as well as for recreational, aesthetic, ecological, and other uses.

3. The Clean Water Groups may be aggrieved by a final order in this proceeding. Ala Admin. Code R. 335-2-1-.02(b) defines “aggrieved” as “having suffered a threatened or actual injury in fact.” In this case, Petitioner is seeking relief that will result in a weakening of the General Permit and an increase in polluted stormwater runoff from Phase II MS4s into Alabama’s waterways. Furthermore, this proceeding could establish a precedent that will result in weaker general permits issued for other sources, such as construction sites and larger municipal separate storm sewer systems. These outcomes will cause harm to Alabama’s waterways and will thereby render the Clean Water Groups aggrieved.
4. The Clean Water Groups’ interests will not necessarily be adequately represented by ADEM, as ADEM is a governmental agency. As a general matter, the requirement of inadequate representation “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 Am.*, 404 U.S. 528, 538 n.10 (1972).

¹ Specifically, Black Warrior Riverkeeper, Inc. works to protect and restore the Black Warrior River watershed. Cahaba River Society, Inc. works to protect and restore the Cahaba River watershed. Alabama Rivers Alliance, Inc. works to protect and restore rivers throughout the State of Alabama.

Consistent with the minimal nature of this showing, the Eleventh Circuit has ruled that “[a]ny doubt concerning the propriety of allowing intervention should be resolved in favor of the proposed intervenors because it allows the court to resolve all related disputes in a single action.” *Federal Savs. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 216 (11th Cir. 1993). The Eleventh Circuit has also recognized that the interests of a governmental agency and private intervenors are rarely identical. Interests are likely to diverge in the course of a lawsuit regarding issues such as money expended to defend the existing system and vulnerability to political forces in deciding litigation strategy. *Clark v. Putnam County*, 168 F.3d 458, 461-462 (11th Cir. 1999). Government agencies also have a potentially greater willingness to compromise due to these and other factors. *Id.* These differences constitute a sufficient showing that representation of an intervenor’s interest by a governmental agency may be inadequate. *Id.*

5. The Clean Water Groups submit that the permit challenged by Petitioner was properly issued by ADEM. The arguments raised by Petitioner are baseless and have no foundation in fact or law. The Alabama Environmental Management Commission should uphold the permit and deny Petitioner’s request that the permit be disapproved.
6. The Clean Water Groups further submit that their participation in this matter will expedite the full and fair hearing of all pertinent issues, and their participation in these proceedings will not delay the timely adjudication of the rights of the original parties.

7. The applicants' names, mailing addresses, and telephone numbers are as follows:

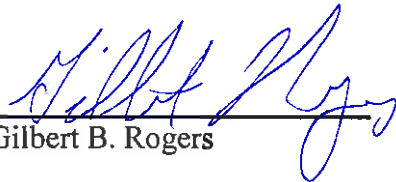
Charles Scribner Black Warrior Riverkeeper 712 37th Street South Birmingham, AL 35222 (205) 458-0095	Beth Stewart Cahaba River Society 2717 7th Avenue S # 205 Birmingham, AL 35233 (205) 322-5326	Cindy Lowry Alabama Rivers Alliance 2027 2nd Ave N # A Birmingham, AL 35203 (205) 322-6395
--	---	--

8. The name, mailing address, and telephone number of the applicants' attorney is

Gilbert Rogers
The Southern Environmental Law Center
The Candler Building
127 Peachtree Street, Suite 605
Atlanta, GA 30303-1800
(404) 521-9900

WHEREFORE, the Clean Water Groups request that this motion to intervene be granted and that they be made full parties to the proceeding.

Respectfully submitted,



Gilbert B. Rogers

Of Counsel
SOUTHERN ENVIRONMENTAL LAW CENTER
The Candler Building
127 Peachtree Street, Suite 605
Atlanta, GA 30303-1800
Telephone: (404) 521-9900
Facsimile: (404) 521 – 9909

CERTIFICATE OF SERVICE

I hereby certify that this Motion to Intervene was served via overnight delivery to the parties listed below.

Petitioner's Counsel

Rob P. Fowler, Esq.
Joel I. Gilbert, Esq.
Thomas G. DeLawrence, Esq.
Balch & Bingham LLP
1901 Sixth Avenue North
Birmingham, AL 35203

Respondent's Counsel

James Wright, Esq.
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, AL 36130

Hearing Officer

Hon. James F. Hampton
4265 Lomac Street
Montgomery, Alabama 36106

This 21st day of March, 2011.



COUNSEL FOR INTERVENOR APPLICANTS