

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION
CIVIL ACTION NO. 3:23-cv-00008-GFVT

KENTUCKY CHAMBER OF COMMERCE;)
CHAMBER OF COMMERCE OF THE)
UNITED STATES OF AMERICA;)
ASSOCIATED GENERAL CONTRACTORS OF)
KENTUCKY, INC.;)
HOME BUILDERS ASSOCIATION OF KENTUCKY;)
PORTLAND CEMENT ASSOCIATION; and)
GEORGIA CHAMBER OF COMMERCE,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES ENVIRONMENTAL PROTECTION)
AGENCY, ET AL.,)
)
Defendants.)
)

PLAINTIFFS’ MOTION TO CONSOLIDATE RELATED CASES
AND BRIEF IN SUPPORT

Plaintiffs hereby move to consolidate this case with *Kentucky v. U.S. EPA*, No. 3:23-cv-00007-GFVT (E.D. Ky. filed Feb. 22, 2023). Under Federal Rule of Civil Procedure 42(a), actions may be consolidated when they involve “a common question of law or fact.” Fed. R. Civ. P. 42(a). The cases involve the same legal issues—whether the Final Rule entitled Revised Definition of “Waters of the United States,” 88 Fed. Reg. 3,004 (Jan. 18, 2023) is unlawful under the Clean Water Act, the Administrative Procedure Act, and the U.S. Constitution. Also, neither case involves factual questions as the cases will be decided on the administrative record at summary judgment.

“Whether cases involving the same factual and legal questions should be consolidated is a matter within the discretion of the trial court.” *Cantrell v. GAF Corp.*, 999 F.2d 1007, 1011 (6th Cir. 1993). In deciding whether to consolidate, courts consider the risk of prejudice and possible confusion; the risk of inconsistent adjudication of common factual and legal issues; the burden on parties, witnesses, and judicial resources; the length of time required to conclude multiple suits; and the relative expense to all concerned. *Id.*

These factors support consolidation here. There is no risk of prejudice or confusion because the cases were filed on the same day, involve the same defendants, involve the same legal issues, and will be decided on the administrative record at summary judgment. Moreover, the burden on the parties and judicial resources, the time required to resolve the dispute, and the expense associated with doing so would all be decreased by consolidation. This Court has often consolidated cases that similarly involve “nearly identical questions of law and fact” and no or minimal risk of prejudice from consolidation. *See, e.g., Sierra Club v. ICG Hazard, LLC*, No. CV 11-148-GFVT, 2012 WL 12925351, at *2 (E.D. Ky. Apr. 25, 2012); *Cooley v. Ford Motor Co.*, No. CV 09-165-GFVT, 2009 WL 10689450, at *1 (E.D. Ky. Nov. 2, 2009). Further supporting consolidation, the U.S. District Court for the Southern District of Texas recently consolidated two cases involving the same Final Rule at issue here. ECF No. 27, *State of Texas, et al. v. United States Environmental Protection Agency, et al.*, No. 3:23-cv-00017 (S.D. Tex. Feb. 13, 2023); ECF No. 21, *American Farm Bureau Federation, et al. v. U.S. Environmental Protection Agency, et al.*, No. 3:23-cv-00020 (S.D. Tex. Feb. 13, 2023).

Dated: February 22, 2023

/s/ Charles E. English, Jr.

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CERTIFICATE OF SERVICE

This is to certify that on February 22, 2023, the foregoing was filed with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

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