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HOOKER CHEMICALS: CLOSING THE COURTHOUSE DOOR TO INTERVENORS

CHARLES P. FOX*

Congress recently amended\(^1\) the Resource Conservation and Recovery Act (RCRA)\(^2\) to allow for "citizen suits," and intervention by private individuals or groups under the imminent hazard provision of the Act.\(^3\) Prior to these amendments, federal courts had been divided over the issue of whether citizen suits, and intervention were authorized under this provision of RCRA.\(^4\)

Intervention is a procedural device whereby an individual or group may become either a party plaintiff or a defendant to a suit. A person may move to intervene of right under Fed. R. Civ. P. 24(a) or with permission under Rule 24(b). Intervention of right, which is at issue in this

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* B.A., History, Washington University, 1983; Candidate for J.D., IIT Chicago-Kent, May, 1986. I dedicate this article to Anne Rapkin, a teacher and an environmentalist.


2. 42 U.S.C.A. §§ 6901-6991i (1983 & West Supp. 1985). 42 U.S.C.A. § 6973(a) (West Supp. 1985), as amended states in relevant part: Notwithstanding any other provision of this chapter, upon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or who is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from such handling, storage, treatment, transportation or disposal to order such person to take such other action as may be necessary . . .

3. 42 U.S.C.A. § 6972(b)(2) (West Supp. 1985), as amended states in relevant part: (E) In any action under subsection (a)(1)(B) [the imminent hazard section] of this section 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.

For the provision allowing citizen suits, see 42 U.S.C.A. § 6972(a)(1)-(2) (West Supp. 1985).

case, provides for a person to intervene "when a statute of the United States confers an unconditional right to intervene," or when a three-part test is satisfied. The test requires a showing that: (1) the applicant claims an interest relating to the property or transaction which is the subject of the action; (2) the applicant for intervention is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest; and, (3) the applicant's interest is not adequately represented by existing parties.\(^5\) Assuming that the first two criteria have been met, most courts will allow intervention on a minimal showing that the present parties to a suit "may be" inadequate representatives.\(^6\)

The amendment to RCRA authorizing intervention is almost identical to Fed. R. Civ. P. 24(a)(2). Thus, even though the legislative history of the amendment is silent on the proper standard for courts to apply in determining when to allow intervention,\(^7\) the standards governing the application of Rule 24(a)(2) should guide the courts as they rule on petitions for intervention under RCRA.

In spite of a well settled body of case law construing Rule 24(a)(2), the rule presents peculiar difficulties when the government represents the proposed intervenor's interests. The courts are divided as to the proper standard to apply when a party seeks to intervene pursuant to Rule 24(a)(2) in an action brought by the government in its capacity as parens patriae.\(^8\) Some courts have held that when the government brings an action as parens patriae, it "is presumed to represent the interests of all its citizens."\(^9\) These courts have required the applicant for intervention to demonstrate "a strong affirmative showing that the sovereign is not fairly representing the interests of the applicant."\(^10\) Other courts have

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5. *FED. R. CIV. P. 24(a).*
7. The legislative history contains detailed explanations of the new citizen suit provision but says nothing about the provision authorizing intervention. 1984 U.S. CODE CONG. & AD. NEWS 5576, 5688-89.
8. The Supreme Court in Georgia v. Tennessee Copper Co., 206 U.S. 230 (1907), applied the doctrine of parens patriae to afford a State standing to sue. The Court stated that "[t]his is a suit by a State for an injury to it in its capacity of quasi-sovereign. In that capacity the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain." *Id.* at 237; *see also* Louisiana v. Texas, 176 U.S. 1, 19 (1900). *See generally, Note, State Protection of Its Economy and Environment,* 6 COLUM. J.L. & SOC. PROBS. 411, 412-13 (1970).
looked beyond the label of parens patriae, and required the same minimal showing of inadequate representation usually required for intervention.\textsuperscript{11}

In \textit{United States v. Hooker Chemicals & Plastics Corp.},\textsuperscript{12} the Second Circuit Court of Appeals denied the motion of four local environmental groups to intervene, under Rule 24(a)(2), in a RCRA imminent hazard enforcement action brought by the United States as parens patriae.\textsuperscript{13} In denying the groups' motion for intervention, the court followed the line of cases requiring a strong showing of inadequate representation. The \textit{Hooker Chemicals} construction of Rule 24(a)(2) in the context of this RCRA enforcement action may be persuasive in subsequent decisions. That is, since the amendments to RCRA essentially incorporate the same language as Rule 24(a)(2), courts may apply a similar standard to motions to intervene under the amended Act.

This case comment will examine in detail those cases which have required a strong showing of inadequate representation when the government sues as parens patriae. This comment will also examine the opposing line of cases that have required only a minimal showing of inadequacy for intervention in such suits. It will then present and analyze the \textit{Hooker Chemicals} decision and its likely impact on future litigants as they seek to intervene in RCRA imminent hazard suits brought by the government. It will conclude that requiring a strong showing of inadequate representation will prevent groups or individuals from intervening under RCRA.

\textbf{LEGAL BACKGROUND}

\textit{Pennsylvania v. Rizzo}\textsuperscript{14} originated the requirement that a proposed intervenor must demonstrate a strong showing of inadequate representation to intervene in an action brought by the government as parens patriae. At issue in \textit{Rizzo} were certain policies and practices governing hiring and promotion of Philadelphia firefighters. These policies and practices were alleged to be discriminatory towards black firefighters. Several white firemen, who would be affected by any changes in the promotion policies, moved to intervene under Rule 24(a)(2) as defendants.\textsuperscript{15} The court affirmed the dismissal of the motion to intervene as untimely,


\textsuperscript{12} 749 F.2d 968 (2d Cir. 1984).

\textsuperscript{13} Id. at 992.


\textsuperscript{15} Id. at 502-03.
and noted as a matter of dicta that "[w]here official policies and practices are challenged, it seems unlikely that anyone could be better situated to defend than the governmental department involved and its officers."\(^\text{16}\)

From this narrow statement of dicta, subsequent cases have erected the parens patriae presumption of adequate representation. The leading case following \textit{Rizzo} was \textit{Environmental Defense Fund v. Higginson}.\(^\text{17}\) In \textit{Higginson}, the Environmental Defense Fund and two other environmental groups sued the Department of Interior to force it to prepare a comprehensive environmental impact statement (CEIS). This CEIS would force the government to analyze the impacts of and alternatives to federal water resource projects and operations in the Colorado River Basin. The court found that four states in the Basin had the right to intervene, but four local water districts in Colorado and one in Nevada did not have such a right. The district court held that the local water districts could not intervene in the suit because they had not overcome the presumption that Nevada and Colorado, acting as parens patriae, were adequate representatives.\(^\text{18}\)

The District of Columbia Circuit Court of Appeals affirmed the district court's holding. The court recognized that normally only a minimal burden of inadequacy must be shown to allow intervention. However, "[u]nder the parens patriae concept . . . a state that is a party to a suit involving a matter of sovereign interest is presumed to represent the interests of all its citizens."\(^\text{19}\) In order to intervene, an applicant for intervention must overcome this presumption of adequate representation. The court concluded that the water districts had not overcome this presumption, stating that "there appears to be no possible divergence between their position and the state's position on the primary issue. All oppose the claim that a comprehensive environmental impact statement is required by law. The arguments of the water district would be merely cumulative."\(^\text{20}\)

The dissent in \textit{Higginson} rejected this parens patriae presumption of adequate representation. Instead, it focused on the scope of the interests at issue. The dissent reasoned that if one party has only a general interest in the subject matter, it should not be considered an adequate representative for a party with a narrower or more focused interest. Applying this standard to the facts in \textit{Higginson}, the dissent concluded that the

\(^{16}\text{Id. at 505.}\)
\(^{17}\text{631 F.2d 738 (D.C. Cir. 1979) (per curiam).}\)
\(^{18}\text{Id. at 739.}\)
\(^{19}\text{Id. at 740.}\)
\(^{20}\text{Id.}\)
states were not adequate representatives for the water district.\textsuperscript{21}

This line of reasoning is illustrated by \textit{National Resources Defense Council v. Costle},\textsuperscript{22} which reached the outcome called for in the \textit{Higginson} dissent. In \textit{Costle}, the court found that several rubber and chemical companies had the right to intervene in a suit which would determine the amount of water pollution that these companies could discharge.\textsuperscript{23}

\textit{Costle} reversed the district court's denial of the industry's motion to intervene, rejecting the argument that the EPA would adequately represent their interests. The court reasoned that:

\begin{quote}
[A]s to [the] EPA, a shared general agreement with appellants that the regulations should be lawful does not necessarily ensure agreement in all particular respects about what the law requires. . . . [Moreover], [t]here may be factual disagreement . . . on how best to modify the timetable so as to ensure an adequate factual predicate for regulation. Good faith disagreement, such as this, may understandably arise out of the differing scope of EPA and appellants' interest: EPA is broadly concerned with implementation and enforcement of the settlement agreement, appellants are more narrowly focussed [sic] on the proceedings that may affect their industries. Particular interests, then, always 'may not coincide' [citation omitted] thus justifying separate representation.\textsuperscript{24}
\end{quote}

Thus, in contrast to the majority in \textit{Higginson}, \textit{Costle} looked beyond the label of parens patriae and focused on the scope of the interests involved to conclude that EPA's representation was inadequate.\textsuperscript{25} It appears that these two conflicting lines of analysis exist simultaneously in the D.C. Circuit.\textsuperscript{26} Subsequent decisions in that circuit\textsuperscript{27} and others\textsuperscript{28} have followed both lines of analysis creating great uncertainty in this area of the law.

\begin{itemize}
\item \textsuperscript{21} \textit{Id.} at 741 (MacKinnon, J., dissenting).
\item \textsuperscript{22} 561 F.2d 904 (D.C. Cir. 1977).
\item \textsuperscript{23} \textit{Id.} at 905-06.
\item \textsuperscript{24} \textit{Id.} at 912 (emphasis added).
\item \textsuperscript{25} See United States v. Reserve Mining Co., 56 F.R.D. 408, 418 (D. Minn. 1972), where the court stated that "[w]hile there may be a similarity of interests asserted between the environmental groups and the United States, the similarity does not necessarily mean that there will be adequate representation of those interests by the United States." \textit{See also} National Resources Defense Council v. EPA, 99 F.R.D. 607, 610 (D.D.C. 1983) (the court noted that "[t]he intervenors' interests are more narrowly focused . . . Thus, there may come a time in this action when the interests of EPA and the intervenors diverge, and EPA's representation of the intervenors' interests becomes inadequate."); Shapiro, \textit{Some Thoughts on Intervention Before Courts, Agencies, and Arbitrators}, 81 \textit{Harv. L. Rev.} 721 (1968).
\item \textsuperscript{26} \textit{Compare} Environmental Defense Fund v. Higginson, 631 F.2d 738 (D.C. Cir. 1979) (per curiam) \textit{with} National Resources Defense Council v. Costle, 561 F.2d 904 (D.C. Cir. 1977). Higginson cites \textit{Costle} in a footnote, 631 F.2d at 740 n.6, but makes no attempt to distinguish it.
\item \textsuperscript{27} National Resources Defense Council v. EPA, 99 F.R.D. 607 (D.D.C. 1983), followed the analysis articulated in \textit{Costle}.
\item \textsuperscript{28} \textit{See} cases cited \textit{supra} at note 9 which all followed the \textit{Higginson} line of analysis.
\end{itemize}
Facts of the Case

On December 20, 1979, the United States filed suit against Hooker Chemicals & Plastics Corporation, its parent corporation, an affiliated conglomerate, and the City of Niagara Falls. Hooker joined the State of New York as a defendant upon a motion pursuant to Fed. R. Civ. P. 19(a). Upon receiving permission to be realigned as a plaintiff, New York State filed its own complaint against Hooker and the City of Niagara Falls.29

The suit arose as a result of one of the worst hazardous waste disposal sites yet discovered.30 From 1947 to 1975, Hooker disposed of more than 70,000 tons of hazardous chemical wastes in a four acre landfill, the “S-area.” The suit alleged that hazardous wastes had migrated from the S-area contaminating the Niagara River and the public drinking water supplied by the local water treatment plant. These activities allegedly constituted “an imminent and substantial endangerment” to the environment and the “health of persons” under § 1431 of the Safe Drinking Water Act (SDWA),31 § 7003 of the Resource Conservation and Recovery Act (RCRA),32 and § 504 of the Clean Water Act (CWA).33

In October of 1980, Hooker commenced settlement negotiations with representatives of the United States, New York State, and the City of Niagara Falls. These negotiations proceeded continuously for more than two years.

On July 16, 1982, Niagara Environmental Action (NEA) an environmental group representing residents affected by the pollution, moved to intervene pursuant to Fed. R. Civ. P. 24(a)34 and 24(b).35 NEA sought to vindicate its members’ interest in the quality of the drinking water obtained from the local water treatment facility. It claimed that the government’s suit against Hooker would impair that interest because “[f]or all practical extents and purposes, this litigation [would] determine

32. 42 U.S.C.A. § 6973 (West Supp. 1985) for the text of this provision see supra note 2. This case comment will limit its analysis to intervention under this provision only.
34. For a discussion of the text of Rule 24(a) see supra text accompanying note 5.
35. The relevant portions of this rule provide that:
   (b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action:
   (1) when a statute of the United States confers a conditional right to intervene; or
   (2) when an applicant’s claim or defense and the main action have a question of law or fact in common.
The court did not consider claims under this provision on appeal.
the final nature of any necessary remedial program at the S-area dump site and surrounding areas including the City of Niagara Falls Drinking Water Treatment Plant."36 Furthermore, the motion to intervene alleged that the present parties did not and would not adequately represent NEA's health and safety interests. In support of this allegation, NEA filed an affidavit averring a "lack of assiduity by the United States, [New York] State and [the] City [of Niagara Falls] in monitoring the water entering the Plant and in effecting closure of an allegedly contaminated intake line."37 In addition, the affidavit averred that the plaintiffs had refused to seriously consider the possibility of relocating the plant. Later that year, oral argument was heard on NEA's motion but no decision was rendered.

On March 21, 1983, Ecumenical Task Force (ETF), Pollution Probe Foundation (PPF) and Operation Clean Niagara (OCN), all locally based environmental groups, the latter two being from Ontario, also moved to intervene pursuant to Fed. R. Civ. P. 24(a)(2) and 24(b).38 Each of the groups alleged an interest in the suit because its members were threatened by contaminated drinking water and tainted fish from Lake Ontario. The groups claimed that the suit might impair their interests because it would effectively preclude later judicial action, and the possibility that "improper remediation could 'exacerbate existing migration by opening new and additional pathways for chemical movement from the landfill.' "39 In addition, the groups claimed that the present plaintiffs did not represent their interests because they had failed to properly monitor migration of the contaminants in the Niagara River.

Several months later, the Province of Ontario and its Minister of the Environment moved to intervene pursuant to Fed. R. Civ. P. 24(a)(2) or in the alternative pursuant to Rule 24(b).40 They asserted similar interests to those alleged by PPF and OCN (e.g. contamination of water and fish). The Province and its Minister alleged that these interests were not adequately represented because the "predominant concern of the existing plaintiffs [was] with the water supplied to American citizens,"41 and not with the contaminated water affecting Canadian citizens.

ETF, PPF, OCN and the Provincial officials presented oral argument on their motions to intervene on October 12, 1983. Several months

36. *Hooker Chems.*, 749 F.2d at 973 (quoting the NEA's motion to intervene).
37. *Id.*
38. *Id.* at 974.
39. *Id.*
40. *Id.* at 975.
41. *Id.*
later, the district court granted the Provincial officials motion to intervene pursuant to Rule 24(a)(2) stating that "it is not possible to be certain that the present parties will attach equal significance to what Ontario views as its paramount interests—the prevention of the migration of chemicals into Lake Ontario and into the regional aquifer on the Canadian side of the Niagara River." However, the following month, the district court denied the intervention motions of the environmental groups. It held that the groups had not shown the United States, the State of New York, and the Province of Ontario to be inadequate representatives of their respective interests. Therefore, these groups could not intervene under Rule 24(a)(2).

THE REASONING OF THE COURT

The central issue on appeal was the adequacy of the governmental plaintiffs' representation. Before turning to this issue, the court developed the history of the federal rules governing intervention. From this discussion it concluded that

[t]he various components of the Rule are not bright lines, but ranges. . . . A showing that a very strong interest exists may warrant intervention upon a lesser showing of impairment or inadequacy of representation. Similarly, where representation is clearly inadequate, a lesser interest may suffice as a basis for granting intervention. Moreover, the court found that in addition to these stated requirements for intervention, "common sense demands that consideration also be given to matters that shape a particular action or particular type of action."

A suit brought by the government is one example of a "particular type of action" which should be considered along with the stated factors for intervention in Rule 24(a)(2). In this context, the Second Circuit examined the district court's denial of the environmental groups' motion to intervene. It agreed "with the district court that it is significant to the
analysis required by Rule 24(a)(2) that the plaintiffs are governmental entities suing on behalf of their citizens." The court recognized that when the State sues on behalf of its citizens, it acts as parens patriae.

Following decisions in other circuits, the court noted "that a government asserting its status as parens patriae deserves special consideration when the issue is adequacy of representation." The Second Circuit agreed, finding that a party seeking to intervene in a parens patriae suit must demonstrate a greater showing of inadequacy. In particular, the court stated that the party seeking intervention must demonstrate "a strong affirmative showing that the sovereign is not fairly representing the interests of the applicant."

The environmental groups argued that only a minimal showing of inadequacy is necessary to intervene. In making this argument, the groups relied on the Supreme Court's decision in *Trbovich v. United Mine Workers*. In that case, a union member, Trbovich, petitioned the Secretary of Labor to institute a suit to set aside a union election. Subsequently, Trbovich moved to intervene in this suit, but the District of Columbia Court of Appeals denied his motion. The Supreme Court reversed, stating that "[t]he requirement of the 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." The court allowed Trbovich to intervene because it had doubts about the adequacy of the Secretary's representation since he was charged with a duty to serve "two distinct interests" which will "not always dictate precisely the same approach to the conduct of the litigation."

*Hooker Chemicals* distinguished *Trbovich* on the ground that the Secretary of Labor was not suing as a parens patriae, but rather as the "lawyer" for the union members. Moreover, the court rejected the appli-

47. *Id.* at 984.
48. See cases cited supra at note 9.
49. *Hooker Chems.*, 749 F.2d at 984.
50. *Id.* at 986.
51. 404 U.S. 528 (1972).
52. *Id.* at 538 n.10.
53. *Id.* at 539; see also Shapiro, supra note 25, at 745 where the author commented that "[i]t has been suggested that the tendency of an agency to sympathize with the interests of the industry it regulates and to yield to improper pressures should be counteracted by the participation of representatives of other interests, and of the public at large." Thus, it is possible to be caught between conflicting obligations even in the absence of a statutory scheme imposing such a conflict. Cf. United States v. Reserve Mining Co., 56 F.R.D. 408, 419 (D. Minn. 1972) where the court noted that the United States as a "broad public" representative was charged with the obligation of representing varying interests. In such a role the United States would also be subject to conflicting obligations.
cability of *Trbovich* because the environmental groups “have not pointed to anything like the conflicting statutory obligations imposed on the Secretary in *Trbovich* to challenge this claim and thus to justify requiring only a ‘minimal’ burden to show possible inadequate representation.”

Alternatively, the court found that intervention should be limited because “[t]he emergency powers provisions confer ‘broad authority’ on the Administrator to provide him with substantial flexibility needed to prevent imminent hazards.” The court found that to liberally allow intervention in such suits would delay remediation of an “imminent” pollution hazard. Thus, in order to allow effective enforcement of this provision, the government’s discretion should be left “relatively untrammeled.”

**ANALYSIS**

The Second Circuit’s decision to limit intervention in RCRA imminent hazard enforcement actions stands on three primary grounds. First, the applicants for intervention in a parens patriae suit had not overcome the presumption of adequate representation. Second, the applicants had not demonstrated a “conflicting statutory obligation” on the part of the governmental plaintiffs to justify the “minimal burden” standard of inadequacy applied in *Trbovich*. Third, liberal intervention in an imminent hazard suit under RCRA would delay enforcement and frustrate the purposes of the Act.

*Hooker Chemicals* raises some primary questions as to the relationship between the government and the individual in a civil enforcement action. This case requires a careful examination of the role of citizens in complex suits to remedy the most serious hazardous waste sites threatening our health and property. This role is not easily defined; simply labeling a relationship should not be dispositive. Carefully balancing competing policy concerns would have resulted in a fairer formula for subsequent courts to follow as they rule on motions to intervene under the amended imminent hazard provision of RCRA.

**Parens Patriae Presumption of Adequacy**

*Hooker Chemicals* devoted much of its opinion to the notion that when the government brings a suit as parens patriae, it is presumed to represent the interests of all its citizens. Logically, this notion is defec-

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55. *Id.* at 988.
56. *Id.* at 988-89.
tive. While the government acting as parens patriae does, in an abstract sense, represent all of its citizens' interest in a clean and safe environment, it does not necessarily represent the interests of the affected individuals or communities. A person living near the S-area site or the contaminated segments of the Niagara River has a direct personal stake in the Hooker Chemicals dispute and in its resolution. This interest cannot be equated with that of the government plaintiffs.

This issue of representation turns on the nature of the interest. For those interests that affect all of its citizens equally, it makes sense to presume the adequacy of the government's representation. Moreover, the same holds true where the government and the individual have a clear identity of interests. For example, when the government defends governmental policies and practices, it is uniquely situated to represent those who seek to intervene. In this type of situation, it can be said that the government and the individual have the same ultimate objective.

Neither principle applies to individuals affected by hazardous waste contamination. In a dispute involving hazardous waste contamination, the extent of a person's legal interest will depend upon his geographical proximity. All the citizens of the State of New York do not have an equal interest in the migration of hazardous pollutants from the S-area site. Obviously, those near the site will have a more vital interest than those distant. Because the citizens of New York near the S-area site contamination have a greater interest, it does not make sense to presume that the governmental plaintiffs will adequately represent those interests simply because they are acting in their capacity as parens patriae.

Alternatively, the government and the individual do not have an identity of interests. While the governmental plaintiffs may generally seek the same outcome as the environmental groups, there are a wide range of means to reach similar ends. Hooker Chemicals disdainfully described this divergence of views as "[t]he mere existence of disagreement over some aspects of the remediation necessary to abate the hazard."

57. See Reserve Mining, 56 F.R.D. at 420. The court allowed intervention and noted that the Court does not consider this to be a usurpation of the duties of the State of Michigan in its capacity as parens patrie, but rather a supplementation of those duties by narrow representation of specific interests. Conceptually, there should be no problem in allowing the assertion of these narrow interests in the context of this particular litigation.

58. A prime example of that type of situation is when a State sues another State for a violation of the Commerce Clause. See, e.g., Louisiana v. Texas, 176 U.S. 1, 19 (1900); New Jersey v. New York, 345 U.S. 369, 372-73 (1953) (per curiam).


60. Hooker Chems., 749 F.2d at 987.
This description obscures the potential for significant differences between the governmental plaintiffs and the environmental groups.

Each of the environmental groups have a specific and narrowly defined interest in the suit. For example, NEA seeks to insure the integrity of the water treatment facility and protect the quality of the drinking water. While this interest is also sought by the governmental plaintiffs, it is one of many. In reaching a settlement with Hooker, this interest may get compromised. To presume the adequacy of the governmental plaintiff's representation again misidentifies the particular interest of an individual environmental group with the general interest of the governmental plaintiffs.

*Delay In Enforcement As An Intervention Consideration*

Another of the reasons for denying intervention in this imminent hazard suit was to expedite enforcement. This rationale overlooks several important considerations. At the time that the first environmental group moved to intervene, the negotiations between Hooker and the governmental plaintiffs had dragged on for close to three years. Subsequent negotiations lasted another two years before the parties even reached a tentative settlement. Though it is not possible to say that participation by the environmental groups would have expedited the negotiations, it is doubtful that such participation would have further delayed settlement.

Moreover, since the environmental groups are directly affected by the "imminent hazard" migrating from the S-area site, they should seek a quicker resolution; it is in the best interests of the different groups to remedy the hazard quickly. In contrast, it is clearly in the interest of the pollutor to stall negotiations in the hopes of wearing out the opposition.

Lastly, the court's claim that participation by the environmental groups would delay enforcement overlooks the fact that parties with special interests may be able to offer useful information otherwise unavailable to the court. This information may not only clarify the complex issues in the case, but also aid the court when it rules on the settlement agreement.

*Conclusion*

*Hooker Chemicals* wrongfully applied the parens patriae presum-
tion of adequate representation to this imminent hazard enforcement action. The interests in this suit are too varied to lend themselves to this type of analysis. Intervention in hazardous waste litigation requires a careful examination of the interests asserted, and the ability of the existing parties to represent those interests. Presuming the adequacy of a party's representation, even if it is the government, may result in intolerable remediation of serious long term health hazards.

Instead, the court should have welcomed the perspective and direct participation of those most affected by the S-area contaminants. Any concern about delays caused by the proposed intervenors was probably misplaced. Even if the environmental groups truly planned on disrupting and delaying enforcement, the court could have limited their rights as parties to the suit. This would have limited the possibility of any undue delay.

*Hooker Chemicals* may present a formidable obstacle to future parties as they attempt to intervene under the new RCRA amendment. Most parties will not be able to meet the required showing of inadequacy. Without the prod of citizen participation, "imminent hazard" suits may drag on for many years in settlement negotiations. Those parties who are directly affected by a hazardous waste problem should be allowed to represent their own interests so as to push settlement forward, or bring a case to trial.

Finally, applying such a restrictive standard to motions for intervention under RCRA will essentially frustrate Congress' new enforcement scheme. By allowing citizens, either individually or in groups, the right to intervene in imminent hazard suits, Congress intended that they should play a role. The extent of that role has been left to the courts. Presuming the adequacy of government representation precludes any role at all in most cases.