

Opinion vacated by order filed 3/19/98.

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

THOMAS L. HOPKINS, Director,  
Virginia Department of  
Environmental Quality,  
Petitioner,

v.

CAROL M. BROWNER, Administrator,  
Environmental Protection Agency;

No. 97-1678

THE UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY,  
Respondents,

THE DISTRICT OF COLUMBIA;  
WASHINGTON WATER AND SEWER  
AUTHORITY,  
Intervenors.

On Petition for Review of a Permit  
issued by the Environmental Protection Agency.  
(DC0021199)

Argued: January 27, 1998

Decided: March 5, 1998

Before RUSSELL,\* WIDENER, and WILKINS, Circuit Judges.

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Remanded by unpublished per curiam opinion.

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\* Judge Russell heard oral argument in this case but died prior to the time the decision was filed. The decision is filed by a quorum of the panel. 28 U.S.C. § 46(d).

## COUNSEL

**ARGUED:** Carl Josephson, Assistant Attorney General, Richmond, Virginia, for Petitioner. Patricia Ross McCubbin, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondents. Lutz Alexander Prager, Assistant Deputy Corporation Counsel, Washington, D.C., for Intervenors. **ON BRIEF:** Richard Cullen, Attorney General of Virginia, Roger L. Chaffe, Senior Assistant Attorney General, Deborah Love Feild, Assistant Attorney General, John R. Butcher, Assistant Attorney General, Richmond, Virginia, for Petitioner. Lois J. Schiffer, Assistant Attorney General, Environment & Natural Resources Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondents; Jo Anne Robinson, Interim Corporation Counsel, Charles L. Reischel, Deputy Corporation Counsel, Washington, D.C., for Intervenors.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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## OPINION

### PER CURIAM:

Thomas L. Hopkins, Director of the Virginia Department of Environmental Quality, petitions this court for review of a permit issued by the Environmental Protection Agency (EPA) to the District of Columbia Water & Sewer Authority (DCWSA). See 33 U.S.C.A. § 1369(b)(1)(F) (West Supp. 1997). Hopkins argues that the EPA issued the permit before Virginia could exercise its statutory right to request a public hearing and raise objections. See 33 U.S.C.A. § 1341(a)(2) (West 1986). We remand for a public hearing.

### I.

In 1991, the EPA issued a permit allowing DCWSA to discharge sewage into the Potomac River and its tributaries. Before this permit

expired in 1996, DCWSA applied for a new permit. Because Virginia's water quality could be affected by the discharge at issue, the EPA notified Virginia of the permit application pursuant to 33 U.S.C.A. § 1341(a)(2), which provided Virginia with 60 days in which to object to the issuance of the permit and to request a public hearing regarding the objection. The EPA, however, issued the permit only 15 days after notification to Virginia. Subsequently, but still within the 60-day period, Virginia requested a public hearing and demanded that the EPA vacate the permit pending the outcome of that hearing. In response, the EPA offered to hold a public hearing but refused to vacate the 1997 permit. This petition for review followed.

## II.

The EPA correctly concedes that it issued the permit prematurely, and both parties agree that Virginia is entitled to a public hearing pursuant to § 1341(a)(2). We therefore remand this case to the EPA so that such a hearing may be held as soon as is reasonably possible. Until resolution of the issues raised in the hearing, DCWSA shall continue to comply with the terms of the 1997 permit.

REMANDED