

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

SYNAGRO-WWT, INC., a Maryland corporation,)	CIVIL ACTION NO. 3:01CV00060
)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
LOUISA COUNTY, VIRGINIA, et al.,)	
)	
Defendants.)	JUDGE JAMES H. MICHAEL, JR.

For the reasons stated in the accompanying Memorandum Opinion, it is hereby

ADJUDGED ORDERED AND DECREED

that the defendant's motion to dismiss shall be, and hereby is, DENIED.

The Clerk of the Court hereby is directed to send a certified copy of this order and the accompanying memorandum opinion to all counsel of record.

ENTERED: _____

Senior United States District Judge

Date

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SYNAGRO-WWT, INC., a Maryland corporation,)	CIVIL ACTION NO. 3:01CV00060
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Plaintiff,)	
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v.)	<u>MEMORANDUM OPINION</u>
)	
LOUISA COUNTY, VIRGINIA, et al.,)	
)	
Defendants.)	
)	JUDGE JAMES H. MICHAEL, JR.

On June 19, 2001, the defendant, Louisa County, Virginia, made a motion to dismiss for lack of subject-matter jurisdiction arguing that the requisite amount in controversy under 28 U.S.C. §1332 had not been established. For the reasons stated below, the motion is denied.

I.

The plaintiff's business includes the application of biosolids as fertilizer and soil amendment on farm and forest land in Virginia. Syngaro has applied, and anticipates continuing to apply, biosolids to farmland in Louisa County pursuant to a Virginia Department of Health ("VDH") permit sanctioning such activity. However, on April 2, 2001, the Board of Supervisors of Louisa County adopted an ordinance ("Ordinance"), effective June 1, 2001, regulating the application of biosolids within its boundaries.

The Ordinance provides, in part, that, before the application of biosolids may take place in Louisa County, the applicator must deliver to the “County Coordinator” a nutrient management plan developed by an “independent vendor.” In addition, the Ordinance gives the County Coordinator authority “to establish setback lines and site buffers in accordance with state regulations and the County zoning ordinances.” (Ordinance §38-63). The Ordinance also provides for the avoidance or delay of biosolid application in the County when doing so would conflict with planned community events, and any anticipated application must be preceded by the posting of a thirty day (30) notice/sign. Finally, the Ordinance requires that, prior to applying biosolids on any site in Louisa County, applicators shall provide the County Coordinator with a performance bond or other legal arrangement to allow the county, at the expense of the applicator, to clean up any biosolid material, “spilled or dropped off of the site of application or on a public or private street providing access to the site of application, that the applicator fails to clean up, after being notified of the spill and the need for clean up.” (Ordinance §38-65).

In response to the Ordinance, Synagro filed complaint on May 30, 2001 seeking injunctive relief against enforcement of the Ordinance and judgment declaring the Ordinance unlawful. The defendant subsequently filed the motion presently before the court, seeking dismissal of the action for failure to assert the requisite amount in controversy.

II.

This action is in federal court based on diversity jurisdiction. In order for the Court to have subject matter jurisdiction over this case, 28 U.S.C. §1332(a) requires that the amount in controversy exceed \$75,000. While the plaintiff’s complaint states that, “the amount in controversy exceeds \$75,000, exclusive of interests and costs,” the defendant suggests that

merely stating that this requirement has been met, absent specific reference to the derivation of these costs, is insufficient. In fact, the defendant asserts that only \$12,375, the amount alleged to be at risk if the plaintiff is forced to deliver its product to Dinwiddie County rather than to Louisa County, is supported by acceptable reference to its origin.

While the mere allegation in the complaint that the plaintiff is subject to damages in excess of \$75,000 is not necessarily sufficient to establish diversity jurisdiction in federal court, it is generally acknowledged that the amount claimed in good faith by the plaintiff controls jurisdiction. *See Saint Paul Mercury Indemnity Co. v. Red Cab co.*, 303 U.S. 283, 288-89 (1938); *See also Heavner v. State Auto Ins. Co. of Columbus*, Ohio, 340 F.Supp. 391, 393 (W.D. Va. 1972). However, if the defendant questions the existence of the requisite amount in controversy, the plaintiff must answer this challenge with “competent proof.” *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936). In this case, the plaintiff has more than adequately carried this burden. The plaintiff alleges in its complaint that, as a result of the adoption and implementation of the Ordinance, it is, and will be, subject to, “the impairment of business operations, loss or curtailment of privileges conferred by permits issued under State law, inability to perform contracts in accordance with expectations, inability to plan and coordinate business activities, and significant increase in operating costs.” More specifically, affidavits submitted by the plaintiff suggest that, if required to comply with the Ordinance, it will incur costs far exceeding the amount required under 28 U.S.C. § 1332(a). (McMahon Aff. Ex. A ¶ 4.) In view of the extent to which the plaintiff claims to have been injured, the court could not validly determine that it appears to be a ‘legal certainty’ that the requisite amount in controversy has not been satisfied. The prospective nature of some of these alleged damages does not alter this

conclusion. *See Buck v. Gallagher*, 307 U.S. 95 (1939). *See also Opelika Nursing Home, Inc. v. Richardson*, 448 F.2d 658 (5th Cir. 1971) (accepting allegations of injuries that “may” occur as sufficient to establish requisite amount in controversy).

Furthermore, the fact that the plaintiff does not seek monetary damages in this action is not determinative. It has long been recognized that “the ‘matter in dispute’ within the meaning of the statute is not the principle involved, but the pecuniary consequence to the individual party, dependant upon the litigation.” *Wheless v. City of St. Louis*, 180 U.S. 379 (1901). Thus, in actions seeking an injunction, “the measure of jurisdiction...is the value to the plaintiff of the right he seeks to protect.” *Purcell v. Summers*, 126 F.2d 390, 394 (4th Cir. 1942). In this case, the amount in controversy is the loss the plaintiff would suffer if the Ordinance is enforced. *Kroger Grocery & Baking Co. v. Lutz*, 299 U.S. 300 (1936) (per curiam) (stating that the amount in controversy is “the value of the right to be free from the regulation, and this may be measured by the loss, if any, that would follow the enforcement of the rule prescribed.”) In its memorandum in opposition to the current motion, the plaintiff has provided detailed support for its contention that this amount is in excess of \$75,000.

In addition, it is immaterial that the defendant is unlikely to gain more than the equivalent of \$75,000 by successfully enforcing the Ordinance. It is often the case in suits for injunctive relief that the benefit of the action to the plaintiff is different than the burden imposed on the defendant should the plaintiff prevail. In an effort to address such inconsistency, some circuits follow exclusively the “plaintiff viewpoint” rule, which asserts that courts should look only to the benefit of the action to the plaintiff in determining whether the amount in controversy requirement has been satisfied. *See Ericsson GE Mobile Communications, Inc. v. Motorola Communications*

& Elec., Inc., 120 F.3d 216 (11th Cir. 1997). *See also Central Mexico Light & Power Co. v. Munch*, 116 F.Supp. 85, 87 (2d Cir. 1940). While this rule was first advocated by a Fourth Circuit judge, precedent suggests that courts in this circuit have not restricted their assessment of the amount in controversy to the plaintiff's viewpoint. Rather, it now appears that courts in the Fourth Circuit are willing to look to either the viewpoint of the plaintiff or defendant in determining if the amount in controversy is adequate. *See In re Microsoft Corp. Antitrust Litigation*, 127 F.Supp.2d 702 (D.Md. Jan 12, 2001) (citing *Gov't Emp. Ins. Co. v. Lally*, 327 F.2d 568, 569 (4th Cir. 1964)). Because the plaintiff in this matter has established that its interest in this action exceeds \$75,000, the amount in controversy requirement set forth in 28 U.S.C. §1332(a) has been satisfied.

III.

For the reasons stated above, defendant's motion is denied. An appropriate order shall this day be ordered.

ENTERED: _____

Senior United States District Judge

Date