



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

State Program Delegation: North Carolina Department of Environmental Quality Responds to EPA Region 4 Citizen Access/Judicial Review Concerns

Arkansas Environmental, Energy, and Water Law Blog

01/18/2016

The North Carolina Department of Environmental Quality ("DEQ") in a January 11, 2016 letter responded to an October 30, 2015 letter from the Region 4 Office of the United States Environmental Protection Agency ("EPA") in which it expressed concern about citizen access to judicial review of environmental permits in North Carolina.

A previous post describing EPA's letter can be found here <http://www.mitchellwilliamslaw.com/state-program-delegation-epa-region-4-letter-addressing-north-carolina-department-of-environmental-quality-citizen-accessjudicial-review>.

The EPA letter referenced two North Carolina Administrative Law Judge and one Superior Court decision interpreting the North Carolina Administrative Procedure Act ("Act"). The federal agency expressed concern that the Act was being interpreted in a way that unduly restricted the ability of citizens to pursue judicial appeal of state-issued Clean Water Act National Pollution Discharge Elimination System and Clean Air Act permits. It also noted that:

...We want to emphasize the potential implication of those decisions on the adequacy of the State's federally authorized administration of the Clean Water Act (CWA) National Pollution Discharge Elimination System (NPDES) and Clean Air Act (CAA) permitting programs.

DEQ's Secretary Donald R. van der Vaart in a January 11th letter states that EPA was wrong in suggesting that citizen groups could not challenge in court environmental permits issued by the agency. The Secretary further argued that North Carolina provides more opportunity than is required by federal law to undertake legal challenges noting:

North Carolina recognizes the important role our citizens play in protecting the environment. We will continue to protect the public's voice in the permitting process.

The Secretary stated that the two "ongoing cases" regarding permits issued by DEQ were provided to EPA in draft and neither case did the federal agency object to the permits nor identify inconsistencies with the Clean Water Act or Clean Air Act.

As to the two cases cited by EPA, the Secretary's letter also argues:

You appear to misunderstand how the North Carolina Attorney General and our judges interpreted North Carolina laws.

The cases you cited actually illustrate that North Carolina provides third parties with fair and ample access to judicial review.

The eight page letter provides a comparison of “Citizen Access under North Carolina Law” and “Federal Citizen Access” along with illustrations of the North Carolina Administrative Procedures Act.

[Click here to download a copy of Secretary’s letter.](#)