Arkansas Department of Energy & Environment v. U.S. Environmental Protection Agency: U.S. District Court Addresses Motion to Dismiss



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As noted in an April 27th blog post, the Arkansas Department of Energy & Environment – Division of Environmental Quality ("DEQ") filed a Complaint for Declaratory and Injunctive Relief in the United States District Court (Eastern District – Arkansas) against the United States Environmental Protection Agency ("EPA"). See Case No. 4:22-cv-359-BSM.

The action arose out of objections EPA raised to Clean Water Act National Pollutant Discharge Elimination System ("NPDES") permits issued to the City of Springdale and Northwest Arkansas Conservation Authority.

DEQ's action in the United States District Court contends EPA's objections to the two NPDES permits were procedurally defective because they were raised after the review period provided by the Memorandum of Understanding between the agencies.

The Complaint for Declaratory and Injunctive Relief seeks preliminary and permanent injunctions ordering EPA to withdraw its objections to the Springdale and NACA NPDES permits.

The United States Department of Justice ("DOJ"), on behalf of EPA, filed on May 20th two pleadings:

- Motion to Dismiss
- Defendant's Brief in Support of Motion to Dismiss and Response to Plaintiff's Motion for Preliminary Injunction

DEQ filed on June 3rd a responsive pleading to EPA's Motion to Dismiss.

United States District Judge Brian S. Miller issued an Order on July 1st denying EPA's Motion to Dismiss. Further, the Order provides that the parties had until July 8 to confer and provide a date for a hearing on DEQ's motion for a preliminary injunction.

In denying the Motion to Dismiss Judge Miller's Order states in support:

- EPA waived its right to object to the permits
- DEQ appears to have no administrative process to exhaust at this point in the proceedings
- DEQ has alleged it will be irreparably harmed if:
- The permits are construed as proposed instead of final
- DEQ is forced to submit to a lengthy administrative process

Judge Miller notes that at the Motion to Dismiss stage the allegations are accepted as true and viewed in the light most favorable to DEQ. Further, he states there is a factual dispute concerning:

. . . whether the comments issued by the EPA and Oklahoma agencies were “significant” and thus, whether the EPA’s objection was untimely.

A copy of Judge Miller’s Order can be downloaded here.