Arkansas Department of Energy & Environment - Division of Environmental Quality v. U.S. Environmental Protection Agency: Joint Status Report to U.S. District Court

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

06/27/2023

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 ("Complaint") 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 regarding Clean Water Act National Pollutant Discharge Elimination System ("NPDES") permits issued to the City of Springdale ("Springdale") and Northwest Arkansas Conservation Authority ("NWACA").

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 sought preliminary and permanent injunctions ordering EPA to withdraw its objections to the Springdale and NWACA permits.

United States District Court Judge Brian S. Miller subsequently denied a United States Department of Justice ("DOJ") Motion to Dismiss filed on behalf of EPA.

DOJ and DEQ subsequently filed a document styled:

Joint Motion to Establish a Briefing Schedule for Summary Judgment

On August 22, 2022, DEQ and the DOJ on behalf of EPA filed a "Joint Motion to Stay" case which asked that the Court stay proceedings for 60 days to:

. . . allow the parties to explore whether a basis for settlement of action exists.

On June 21st the parties filed a Joint Status Report ("Report").

The Report states in part that:

. . . The parties continue to hold settlement discussions and envision a multi-step settlement framework. The parties therefore continue to believe that good cause exists to further explore a global settlement of

both this litigation and the related litigation pending in Circuit Court (Arkansas Dep't of Energy and Envt. v. EPA, Case No. 22-1831 (8th Cir.)).

Both DEQ and DOJ on behalf of EPA therefore requested that the United States District Court:

. . . continue the stay to allow sufficient time for extended discussions to take place and propose to submit another status report in 120 days, on or before October 19, 2023.

A copy of the Report can be downloaded here.