



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

Lawsuit to Compel Recycling of Plastic Blasting Medium: Did a Federal Court (Mississippi) Have Jurisdiction to Hear a Private Action Against the Mississippi Department of Environmental Quality?

Arkansas Environmental, Energy, and Water Law Blog

08/16/2016

U.S. Technology Corporation ("UST") filed a Complaint in the United States District Court for the Southern District of Mississippi ("Court"), seeking both monetary and injunctive relief from the Mississippi Department of Environmental Quality ("MDEQ") and two of its employees (sued in their official capacity). See *U.S. Tech. Corp. v. Mississippi Dep't of Env'tl. Quality*, No. 5:15-CV-66(DCB)(MTP), 2016 WL 4098600.

The Court in a July 28th opinion addressed a Motion to Dismiss all state law claims for lack of jurisdiction or, in the alternative, Motion for Summary Judgment of all state law claims against MDEQ and the individuals in their official capacity or in the alternative, summary judgment.

UST specializes in the painting and depainting of aircraft, in addition to electronics, ships, vehicles, bridges, and buildings. The opinion referenced a depainting process which includes blasting dry plastic-particulate against aircraft, a byproduct of which is spent blast material ("SBM"). The primary subject matter of the lawsuit was the disposal of SBM.

In addition to seeking damages under state-based tort claims, and bringing federal claims under 42 U.S.C. § 1983 for deprivation of due process and a violation of the dormant commerce clause, UST asked the Court to compel the MDEQ to:

- (1) continue to permit it to recycle "non-treated, bagged SBM;"
- (2) accept its Toxicity Characteristic Leaching Procedure test results, which it alleged showed that the SBM was nonhazardous; and
- (3) compel the MDEQ to allow already recycled SBM to remain at its current location.

The Court dismissed all of UST's federal claims against the defendants. It cited precedent establishing that the Eleventh Amendment provides to states, state agencies, and state agents serving in their official capacity, immunity from suit by private citizens in federal court.

The Court, in part, determined that the claims were barred by the Eleventh Amendment, and that none of the three exceptions to Eleventh Amendment immunity applied, because UST's complaint sought money damages in addition to injunctive relief. It also determined that the defendants were not "persons" within

the meaning of § 1983. This finding was deemed further support for dismissing the federal claims. Therefore, the Court found that it lacked jurisdiction to hear the case.

The Court, however, only dismissed UST's state law claims without prejudice. Therefore, UST's claims can be reasserted in state court.

[A copy of the opinion can be downloaded here.](#)