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NPDES Permitting/Clean Water Act: Arkansas Department of Energy & Environment - Division of Environmental Quality Seeks Judicial Relief Against Alleged U.S. Environmental Protection Agency Infringement of State Legal Authority

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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”) and a Petition for Review (“Petition”) in the United States Court of Appeals for the Eighth Circuit (“Eighth Circuit”) against the United States Environmental Protection Agency (“EPA”).

Both actions arise out of objections EPA raised to Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) permits DEQ issued to the City of Springdale (“Springdale”) and Northwest Arkansas Conservation Authority (“NACA”).

Like most federal environmental statutory programs, Congress encouraged EPA to delegate to willing states the ability to issue Clean Water Act NPDES permits. Arkansas obtained delegation of the Clean Water Act NPDES program in November 1986. In order to do so, it had to develop various program elements including sufficient funding to operate a delegated program.

The state’s commitment to implement and maintain the program elements necessary to operate an NPDES program were documented in a Memorandum of Agreement (“MOA”) entered into with EPA many years ago. See MOA between the Arkansas Department of Pollution Control & Ecology and the EPA Region VI concerning approval of the National Pollutant Discharge Elimination System Program (1986). As a result, DEQ has been the NPDES permitting authority in the State of Arkansas for over 35 years.

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. See Case No. 4:22-cv-359-BSM. 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.

DEQ's Petition in the Eighth Circuit argues that EPA's objections have effectively imposed as a rule numeric nutrient limits in Arkansas without following rulemaking procedures. See *Arkansas Department of Energy & Environment v. EPA, et al.*, 22-1831.

A copy of the Complaint can be downloaded [here](#) and the Petition [here](#).