

NPDES Stormwater Permit/Clean Water Act: Alabama Appellate Court Addresses Challenge to Steel-Galvanizing Effluent Limits



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

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The Court of Civil Appeals of Alabama (“Appellate Court”) addressed in a February 18th Opinion a challenge to the issuance by the Alabama Department of Environmental Management (“ADEM”) of two Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) permits to Metalplate Galvanizing, L.P. (“Metalplate”). See *Black Warrior Riverkeeper, Inc. v. Alabama Department of Environmental Management*, 2022 WL 497466.

The challenged permits involve Metalplate’s two hot-dipped steel galvanizing plants (“Plants”) in Birmingham, Alabama, whose processes use zinc and zinc compounds.

ADEM issued NPDES permits for Plants 1 and 2 in 2018. The permits authorized storm-water runoff associated with:

- Metal-finishing storage and operations areas
- Equipment parking and maintenance areas
- Petroleum storage and handling areas

The permits impose certain monitoring requirements on the storm-water outflows for dissolved zinc, oil and grease, and suspended solids. However, neither permit included a numeric limitation on zinc in the storm-water discharges because ADEM concluded that it was not feasible:

. . . because storm-water events are very unpredictable resulting in varying discharge rates, varying pollutant loadings, and different flows in the receiving waterbodies . . .

The Plants were required to meet technology based effluent limits (“TBELs”) in the form of best-management practices (“BMPs”). BMPs are generally described as plans to prevent or minimize the potential for the release of pollutants into waters of the state. They may include activities, prohibition of practices, maintenance procedures, etc.

ADEM is stated to have conducted a “reasonable potential analysis” prior to issuing the permits and determined that the storm-water discharge at both Plants had a reasonable potential to cause or contribute to an amount of zinc to enter the waterways beyond water-quality standards. Therefore, the state agency included in the individual permits certain water quality based effluent limitations (“QBELs”) to achieve the water quality standards.

The permits required Metalplate to develop zinc-minimization plans (“ZMPs”). This included a mandate that a professional engineer prepare and certify a report identifying the potential sources of zinc in the storm-water runoff. A method of reducing the impact of those sources to the unnamed tributaries was also required. The reports were required to be submitted and approved by ADEM and be incorporated into an updated BMP plan.

Black Warrior Riverkeeper (“Black Warrior”) filed an administrative challenge with the ADEM Commission. The ADEM Commission’s Hearing Officer rejected the challenge and approved the permits. The Commission’s decision was upheld after an appeal to Circuit Court.

The Appellate Court upheld both the Commission and Circuit Court concluding that the issuance of the NPDES permits comply with applicable law. It rejected what it considered the two key Black Warrior arguments:

- TBELs and the WQBELs are virtually indistinguishable and therefore the WQBELs were neither additional to nor more stringent than the TBELs as required by Alabama law
- Because the permits failed to include the terms of the specific, enhanced BMPs that would be adopted when the ZMPs were implemented the issuance of the permits violated the Clean Water Act’s requirements for public review and comment

As to the first argument, the Appellate Court agreed with ADEM’s contention that:

. . . its “non-numeric” WQBELs as written in the individual permits, which include the ZMPs and significantly enhanced monitoring requirements for zinc, meet that requirement.

The Appellate Court cited the requirement that the NPDES permits TBELs require Metalplate to generally examine each of the facility’s components and systems for potential release of pollutants and the development of measures to prevent those releases. These were deemed in combination with the ZMPs and increased monitoring for zinc to go beyond the TBELs.

The Appellate Court also rejected Black Warrior’s argument that:

. . . by failing to flesh out the effluent limitations in the permits and deferring development of key permit conditions until after the close of the normal permit development process, ADEM has denied the public its full right to public participation in the development of permit standards and effluent limitations.

The Appellate Court noted that public participation was provided. Further, it stated:

. . . As discussed, the narrative WQBELs in the permits themselves include effluent limitations and the means of monitoring the WQBELs are also included in the permits and, therefore, are subject to public scrutiny.

The Appellate Court rejected the challenge to the permits.

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