



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

# NPDES Permitting/Clean Water Act: U.S. Environmental Protection Agency Motion to Dismiss Arkansas Department of Energy & Environment - Division of Environmental Quality U.S. District Court Action

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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 (“Complaint”) in the United States District Court (“Eastern District – Arkansas”) against the United States Environmental Protection Agency (“EPA”).

The action arose 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”).

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.

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

- Motion to Dismiss
- Defendants’ Brief in Support of Motion to Dismiss and in Response to Plaintiff’s Motion for Preliminary Injunction

DOJ’s Motion to Dismiss undertakes three arguments:

- The Court should dismiss for lack of jurisdiction
- DEQ’s claims are not ripe as DEQ has not exhausted its administrative remedies
- Any potential future judicial jurisdiction lies in the Circuit Court of Appeals
- The Court should dismiss for failure to allege final agency action
- EPA’s objections do not consummate EPA’s decision-making process
- EPA’s objections have no legal consequences

- The Court should deny DEQ's Motion for Preliminary Injunction
- DEQ fails to demonstrate a substantial likelihood of success on the merits
- DEQ fails to demonstrate irreparable harm
- The balance of equities and public interest factor weighs in favor of EPA

A copy of the DOJ Motion to Dismiss can be downloaded [here](#) and the Brief in Support of the Motion to Dismiss [here](#).