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NPDES Permitting/Clean Water Act: Arkansas Department of Energy & Environment - Division of Environmental Quality and U.S. Environmental Protection Agency File Motions in 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 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 to Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) permits 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 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 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
- Defendant’s Brief in Support of Motion to Dismiss and Response to Plaintiff’s Motion for Preliminary Injunction

DOJ had argued:

- The Court should dismiss for lack of jurisdiction
- The Court should dismiss for failure to allege final agency action
- The Court should deny DEQ’s Motion for Preliminary Injunction

DEQ filed on June 3rd a responsive pleading to EPA’s Motion to Dismiss styled:

Plaintiff's Reply Brief in Support of Motion of Preliminary Injunction and Response to Defendant's Motion to Dismiss

DEQ's 35-page pleading argues in response:

- A preliminary injunction is necessary to preserve the status quo
- DEQ will succeed on the merits of its claims
- DEQ will be irreparably harmed absent preliminary relief
- The balance of equities and public interest favor a preliminary injunction
- The Motion to Dismiss should be denied
- The Court has jurisdiction to review EPA's final actions
- DEQ's claims are ripe
- The Clean Water Act does not preclude the Court's review

DOJ filed, on behalf of EPA, on June 17th a response to DEQ's pleading which was styled:

Defendant's Reply Brief in Support of Motion to Dismiss

DOJ's 22-page pleading argues in response:

- DEQ's claims improperly infringe upon future Circuit Court jurisdiction
- DEQ's claims are not ripe
- DEQ's claims are not fit for judicial review
- Delaying review would not impose undue hardship

A copy of DEQ's 35-page pleading can be found [here](#) and DOJ's 22-page pleading [here](#).