



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

Arkansas Department of Energy & Environment v. U.S. Environmental Protection Agency: U.S. District Court Sets Briefing Schedules for Summary Judgment Motions

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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-(BMS).

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 and Northwest Arkansas Conservation Authority (“NWACA”).

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. The Complaint for Declaratory and Injunctive Relief sought preliminary and permanent injunctions ordering EPA to withdraw its objections to the Springdale and NWACA NPDES permits.

The United States Department of Justice (“DOJ”) on behalf of EPA had filed on May 20th a Motion to Dismiss to which DEQ on June 3rd responded. United States District Court Brian S. Miller issued an Order on July 1st denying EPA’s Motion to Dismiss. Further, the Order provided that the parties had until July 8 to confer and provide a date for a hearing on DEQ’s motion for a preliminary injunction.

DOJ and DEQ subsequently filed a document styled:

Joint Motion to Establish Briefing Schedule for Summary Judgment (“Joint Motion”)

As a result of the Joint Motion, EPA agreed to:

... stay further administrative activities pending an outcome on the merits of the case ... (i.e., no further EPA action on the Springdale or NWACA NPDES permits, including publishing or scheduling administrative hearing until a summary judgment decision)

The parties agreed there would be no need for a hearing or decision on DEQ’s previous motion for preliminary Injunction. Instead, the parties are stated to have reached:

... a resolution that proceeds directly with summary judgment briefing.

Therefore, the Joint Motion sets out a schedule for the parties to file their motions/briefs related to summary judgment and the Court issued an Order adopting the briefing schedule.

The Joint Motion indicates that DEQ will file its motion for summary Judgment by September 16th and DOJ will file its cross motion for summary judgment and respond to DEQ's motion by October 14th. DEQ is then required to file its response to DOJ's cross motion and its reply brief to its motion for summary judgment by November 4th while EPA is required to file its reply brief by November 25th.

A copy of the Joint Motion can be downloaded [here](#) and the U.S. District Court Order [here](#).