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Polk County Fuel Station/Arkansas Petroleum Storage Tank Trust Fund: Arkansas Department of Energy & Environment - Division of Environmental Quality Motion for Summary Judgment/Dismissal

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As previously noted in a [June 26th post](#), Mena Short Stop, LLC (“Mena Short Stop”) filed a pleading before the Arkansas Pollution Control & Ecology Commission (“Commission”) addressing an issue arising under the Arkansas Department of Energy & Environment – Division of Environmental Quality’s (“DEQ”) administration of the Arkansas Petroleum Storage Tank Trust Fund (“Trust Fund”) styled:

Request for Adjudicatory Hearing and Commission Review and for a Declaratory Order (“Request”)

The Request addressed DEQ’s requirement that a regulated storage tank (“Tank”) owner or operator provide evidence that the costs of corrective action for a petroleum release have been paid in full before a claim for reimbursement for the Trust Fund will be considered.

Mena Short Stop argued in part that:

- DEQ exceeded its legal authority by requiring proof of payment of remediation costs as a condition of receiving reimbursement from the Trust Fund
- The controlling Arkansas statute specifically does not require payment in full of remediation costs prior to reimbursement from the Trust Fund

DEQ responded on July 26th by filing a Motion for Summary Judgment or, in the Alternative, Motion to Dismiss arguing in part:

- No genuine issues as to any material facts exist and DEQ is entitled to summary judgment as a matter of law
- Mena Short Stop has failed to state facts upon which relief can be granted

DEQ’s arguments in support of its Motions include:

- Issues presented in Mena Short Stop’s Request for Hearing were not ripe for review
- The DEQ Director has not made a final decision on the application’s reimbursement
- Mena Short Stop has not been injured by a decision of the DEQ Director
- Mena Short Stop’s Request for a Declaratory Order is improper

- Arguing that allegation that Rule 12.308(C)(5) is discriminatory against small, independent owners and was not properly addressed by the Commission in a Declaratory Order
- The argument that the Trust Fund's statutory language is analogous to an insurance policy is incorrect
- Mena Short Stop has failed to exhaust its administrative remedies

A copy of the Brief in Support of Motion for Summary Judgment or, in the Alternative, Motion Dismiss can be downloaded [here](#).