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Nonmunicipal Domestic Wastewater Treatment Facility/Pulaski County Improvement District: Arkansas Department of Energy & Environment - Division of Environmental Quality Motion for Summary Judgment Addressing Permit Challenge Before the Arkansas Pollution Control & Ecology Commission

10/09/2023

Three Requests for Hearing and Adjudicatory Review (“Requests”) were filed before the Arkansas Pollution Control & Ecology Commission (“APC&EC”) challenging a nonmunicipal domestic wastewater treatment facility discharge permit issued to the Pulaski County Property Owner’s Multipurpose Improvement District No. 2021-2 (“District”) by the Arkansas Department of Energy & Environment – Division of Environmental Quality (“DEQ”).

The Requests were filed by:

- Pinnacle Mountain Community Coalition (“PMCC”) and Christina Centofante (filed July 13th)
- Barbara Ann (Barbie) and Roger Henley; Cheryl and Scott Stubenrauch; Noelle and Stanley Butski; Christina Centofante; John and Cheryl Killingsworth; Randall and Cynthia Van Den Berg; Mary Katherine and Heath Henderson; Robbie and Bridget Hudson; Dale and Tonya McDaniel; Clayton and Miranda Moore; Meredith Hawkins; Al Drinkwater; Pinnacle Mountain Community Coalition (filed July 14th)
- Maumelle Water Corporation (filed July 14th)

The PMCC Requests stated that PMI, Inc. submitted an initial permit application to DEQ for a facility that would be titled Saddler Ranch Subdivision WWTP. The permit application is stated to have sought approval to discharge from a package plant to an unnamed tributary of Mill Bayou, then to Mill Bayou from 200 homes at a rate of 30,000 to 50,000 gallons per day. However, the Request indicated that later information from subsequent applicants sought a permit to serve 300 homes.

The Requests addressed a number of legal issues. They were subsequently consolidated.

DEQ filed on September 29th the following:

Motion for Summary Judgment, or in the Alternative, Motion to Dismiss (“Motion”)

A Brief in Support of Motion for Summary Judgment (“Brief”) was also filed.

DEQ’s Brief states that it addresses each issue in the consolidated Requests by identifying what it describes as deficiencies that warrant dismissal. It then states that DEQ’s arguments are being provided in support of its Motion for Summary Judgment on each issue – as appropriate.

DEQ further allocates what it states are deficiencies in the consolidated Requests that are argued to fall into the following categories:

1. Failure to identify the rule or law that DEQ violated by issuing this permitting decision.
2. Failure to provide a detailed factual basis for the objection to the permit, including a failure to articulate facts that support PMCC’s conclusive restatements.
3. Failure to plead facts that are supported by the record that was before DEQ.

The arguments outlined in DEQ’s Brief include:

- PMCC’s objections to DEQ’s Anti-Degradation analysis are without basis.
- PMCC’s Anti- Degradation argument is not supported by facts or legal analysis.
- DEQ’s permitting decision is consistent with Arkansas’s Anti-degradation Policy.
- DEQ responded to public comments in compliance with APC&EC Rule 8.211.
- PMCC’s claim that DEQ failed to respond to some comments should be dismissed.
- DEQ provided responses to substantive comments and the facts presented by PMCC fail to support its claim that DEQ’s responses were inadequate.
- PMCC makes no arguments about DEQ’s responses to comments on antidegradation and on concerns about existing uses being inadequate.
- PMCC’s arguments about DEQ’s general statement are not based on facts or law.
- PMCC fails to provide facts to support its claim that DEQ’s response to MWC is inadequate based on the word upstream.
- DEQ’s Response to Comments appropriately addressed the issues raised by Maumelle Water Corporation, and DEQ is entitled to summary judgment.
- The permitting record demonstrates that Arkansas Department of Health performed an analysis and communicated the results to DEQ.
- ADH performed the analysis and communicated its results to EPA.
- PMCC claims about unaddressed water quality criteria are without basis.
- APC&EC Rule 2.502 does not require a Temperature limit for this facility.
- PMCC misrepresents how Dissolved Oxygen limits work in APC&EC Rule 2.505.
- APC&EC Rule 2.511 does not require Minerals, chlorides, and sulfates limits for this permit.
- DEQ included appropriate Ammonia-Nitrogen limits based on APC&EC Rule 2.
- PMCC fails to identify any provision of APC&EC Rule 2 that requires more frequent monitoring.
- DEQ included appropriate Fecal coliform bacteria limits based on APC&EC Rule 2.
- PMCC’s argument regarding Phosphorus is not based on this permitting decision violating a rule or law, but on speculation about future events.
- PMCC’s argument regarding Phosphorus is not based on this permitting decision violating a rule or law, but on speculation about future events.
- DEQ addressed limits for Total Phosphorus in accordance with APC&EC Rule 2.509.
- PMCC’s objection to the discharge of Chlorine into Mill Bayou is without basis.
- Contrary to PMCC’s assertions, the permit does contain an effluent limitation for TRC.

- PMCC's arguments regarding the discharge of Chlorine into Mill Bayou are not based on this permitting decision.
- The TRC effluent limitation in the permit is based on APC&EC Rule 2.409.
- PMCC's objection to the permit based the claim that the requirements for nonmunicipal domestic sewage treatment works have not been met is without basis.
- PMCC's conclusions about the record are not facts that support its allegations.
- Pulaski County Property Owners' Multipurpose Improvement District No. 2021- 2 provided updated information to fulfil the requirements of Ark. Code Ann. § 8- 4-203(b).
- PMCC's objections based on Local Planning are without basis.
- Concerns about Mr. Ferguson based on inspection reports for the Waterview Estates Wastewater Treatment Plant.
- PMCC's objection to a "permit transfer" is without basis and untimely.
- Wastewater Operator License requirements are appropriate.
- Dismissal is appropriate for this issue.
- PMCC's concerns are unfounded and addressed in the permit.
- PMCC's objection based on low or no-flow streams is without merit.
- PMCC's Objection to the permitted design flow are without merit.
- PMCC fails to identify the exiting uses that are not protected by the permit.
- PMCC's objection to the permit based on the required accuracy for Flow Measurement is without basis.
- PMCC's objection fails to state a legal and factual basis for its objection to the required accuracy for Flow Measurement.
- DEQ included appropriate conditions in the permit to address increases in flow.
- Concerns about the 100-year floodplain are addressed.
- Dismissal is appropriate for this issue.
- PMCC misstates the requirements of the "10 State Standards."
- Concerns about lack of common control.
- Concerns about pollution of Mill Bayou.
- Claims that there is a high potential for Contamination of MWC's well were not found credible by ADH.
- Dismissal is appropriate for this issue.
- PMCC's assertion about the likely impact on MWC's well is not supported by ADH's analysis.
- Concerns about Section 404 of the CWA permitting.

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