

1-1-2008

Ala. Dep't of Env'tl. Mgmt v. Ala. Rivers Alliance, Inc., Nos. 2050974 & 2050995, 2007 WL 4555339 (Ala. Civ. App. Dec. 28, 2007)

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Heather Rutherford, Court Report, Ala. Dep't of Env'tl. Mgmt v. Ala. Rivers Alliance, Inc., Nos. 2050974 & 2050995, 2007 WL 4555339 (Ala. Civ. App. Dec. 28, 2007), 11 U. Denv. Water L. Rev. 453 (2008).

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Regarding the GISWP claim, the notice already described the location of the landfill facility and its relation to surrounding waters. Further, the court found the phrase “during at least every rain event over one inch as measured by the National Oceanographic and Atmospheric Administration” sufficient to describe the time period in which Redwood engaged in illegal discharging. With regard to the NPDES claim, the court found River Watch’s use of monitoring reports sufficient in providing enough background information for Redwood to identify the location of the alleged discharges. Lastly, the court found that Redwood was sufficiently put on notice when River Watch specified a reasonable date range. The notice stated that it covered “all point source discharges occurring from February 6, 2002 through February 6, 2007.” Thus, the court determined that River Watch gave Redwood adequate notice of the dates and locations of its alleged violations.

Accordingly, the court denied Redwood’s motion to dismiss based on its determination that River Watch’s notice was sufficiently specific.

Vivian Chu

STATE COURTS

ALABAMA

Ala. Dep’t of Env’tl. Mgmt. v. Ala. Rivers Alliance, Inc., Nos. 2050974 & 2050995, 2007 WL 4555339 (Ala. Civ. App. Dec. 28, 2007) (holding that the evidence on record did not support the basis for the agency’s decision that waters were not impaired and was therefore clearly erroneous, and that the agency erred in granting a permit to a mining operation that would contribute to the further impairment of already impaired waters).

Tuscaloosa Resources, Inc, (“TRI”) applied for a National Pollutant Discharge Elimination System permit (“permit”) for mining operations in Tuscaloosa County, Alabama. In 2001, the Alabama Department of Environmental Management (“ADEM”) issued the permit. In 2002, two environmental groups, Alabama Rivers Alliance and Friends of Hurricane Creek, petitioned for an administrative hearing to contest ADEM’s decision to issue the permit to TRI. The environmental groups asserted that the law prohibited the permit because TRI’s mining operations would contribute to an existing violation of water quality standards.

In 2004, an administrative law judge (“ALJ”) agreed with the environmental groups. The ALJ held a hearing, determining that excessive iron, aluminum, and turbidity impaired Hurricane Creek and the North Fork of Hurricane Creek. Based on the waters’ impairment, the ALJ overturned the ADEM’s issuance of TRI’s permit. ADEM and TRI filed objections to the ALJ’s decision. As a result, the Alabama Environmental Management Commission (“AEMC”) held a hearing; the

AEMC rejected the ALJ's findings and again approved TRI's permit. Specifically, the AEMC held that even though the watershed of Hurricane Creek and the North Fork was impaired, there was no evidence on record of impairment due to iron, aluminum, or turbidity. The environmental groups appealed the AEMC's decision to the Montgomery Circuit Court, and the circuit court reversed the decision. The circuit court defined impaired waters as any that violate or exceed state water quality standards. In addition, the circuit court held that if water violates state water quality standards, a discharge from a new source cannot contribute to that violation. The circuit court also held that AEMC's finding that there was no evidence in the record that the iron, aluminum, or turbidity caused the impairment was clearly erroneous and ignored both the testimony of the environmental groups' experts and the Federal Clean Water Act § 303(d) list. In 2006, TRI and ADEM appealed the circuit court's decision.

The Court of Civil Appeals of Alabama noted that its standard of review of agency action was the same as that of the circuit court. The court will affirm agency action if that action and the stated basis for that action are correct. The court had to determine whether the North Fork violated Alabama water quality standards, and if so, whether TRI's mining discharges would contribute to that violation. Testimony at trial showed that Alabama has water-use classifications that include numeric and narrative criteria to ensure that waterways support their designated use. Testimony also showed that the state considered any waters not supporting their designated use impaired waters, adding them to the 303(d) list. The North Fork was on Alabama's 303(d) list in 2002 for high levels of aluminum, and Hurricane Creek was on the list for aluminum, iron, and turbidity. Based on the entire record, the court held that "[t]he overwhelming evidence" showed that the North Fork was impaired.

Next, the court considered whether TRI's mining would contribute to that impairment. ADEM and TRI argued that the mining operation would not contribute to the North Fork's impairment because the mine used sediment basins to distill runoff before it entered the North Fork. However, TRI does not regulate the basins during precipitation events. Based on the unregulated sediment basins and the testimony in the administrative hearing, the court held that TRI's mining operations would contribute to the North Fork's impairment.

The court held that AEMC's stated basis for approving TRI's permit was in error, and the court affirmed the circuit court's decision to overturn AEMC's issuance of TRI's permit.

Heather Rutherford