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## Titan Tire of Natchez, Inc. v. Miss. Comm'n on Env'tl. Quality, 891 So. 2d 195 (Miss. 2004)

Cheryl R. Miller

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While not determinative of the need for EIS preparation, the court considered recommendations by the USFWS regarding the detrimental effects of increased boating traffic on NELs. The court determined the County's EAW did not contain an adequate evaluation or description of these potential impacts and, furthermore, the proposed boating restriction mitigation techniques would not alleviate the proven negative impacts. The court noted, while the County did not entirely fail to consider the impacts of boat traffic, the County could not appropriately tailor the proposed restrictions to mitigate impacts when the potential impacts remained unknown without an EIS. Therefore, the court ruled the County's decision not to prepare an EIS was improper. The court reversed the grant of summary judgment and remanded the case to the County for a more complete study of the environmental consequences of the proposed development on Dead Lake.

*Amy Mockenhaupt*

### MISSISSIPPI

**Titan Tire of Natchez, Inc. v. Miss. Comm'n on Env'tl. Quality, 891 So. 2d 195 (Miss. 2004)** (affirming the fine the Mississippi Commission on Environmental Quality imposed on a company for violating the company's National Pollutant Discharge Elimination System Permit).

In September 1998 Titan Tire of Natchez ("Titan") purchased a tire facility from Fidelity Tire Manufacturing Company ("Fidelity"). Fidelity had a National Pollutant Discharge Elimination System ("NPDES") permit to discharge storm water runoff and treated process water into state waters. In 1996 Fidelity requested a modification of the permit to install additional groundwater monitoring wells. The Mississippi Department of Environmental Quality ("MDEQ") granted the requested modification, but Fidelity did not install the groundwater wells before Titan purchased the plant in 1998. Titan began operating under the existing NPDES permit. In June 2000 Titan renewed the NPDES permit. In December 2001 MDEQ issued a written complaint to Titan asserting that in 1999 and 2000 Titan violated its NPDES permit sixteen times. MDEQ granted Titan a two-day hearing before the Mississippi Commission on Environmental Quality ("Commission"). The Commission found that Titan violated its permit and fined Titan \$5000. Titan appealed to the Hinds County Chancery Court, which affirmed the Commission's order. Titan subsequently appealed to the Mississippi Supreme Court.

MDEQ maintained that when Titan purchased the facility from Fidelity, Titan became responsible for all of the environmental conditions associated with the facility, including the conditions specified in the 1996 NPDES permit. Additionally, when Titan renewed the NPDES permit in 2000, Titan did not request a modification of the 1996 permit. Thus, the permit condition established in 1996 remained

applicable. Conversely, Titan maintained that the conditions of the 1996 NPDES permit were not applicable because Fidelity never installed the groundwater wells. Titan also asserted that MDEQ's method for calculating the concentration of regulated substances was incorrect.

The court reviewed the Commission's decision to fine Titan. Specifically, the court addressed whether the Commission's order (1) was supported by substantial evidence, (2) was arbitrary or capricious, (3) was beyond the power of the administrative agency to make, or (4) violated one of Titan's statutory or constitutional rights.

The court determined that substantial evidence supported the Commission's order and that the Commission did not act arbitrarily and capriciously in issuing the order. During the two-day hearing, the Commission heard evidence from both parties, including discharge monitoring reports submitted by Titan indicating that Titan exceeded discharge limits specified in its NPDES permit. Thus, the Commission had substantial evidence for concluding that Titan violated the conditions of its NPDES permit. Similarly, given the length of the hearing and the information submitted, the Commission did not act arbitrarily or capriciously. The Commission could have imposed a \$400,000 fine on Titan for the NPDES permit violations, but instead only fined Titan \$5000.

Mississippi statutes authorized the Commission to impose a penalty of up to \$25,000 for each violation of a statute or regulation. Thus, the court found the Commission to be well within the Commission's power upon imposing a mere \$5000 fine. Additionally, the court deferred to the Commission's interpretation of the Commission's own regulation and methods for calculating the concentration limits imposed by the NPDES permit.

Lastly, the court found the Commission did not violate Titan's statutory or constitutional rights. The court rejected Titan's allegation that the MDEQ engaged in selective enforcement. To maintain a claim of selective enforcement, the court reasoned that Titan, in addition to showing other similarly situated facilities violated the law at issue, also needed to show that the Commission based its decision to selectively prosecute Titan on impermissible grounds, such as race or religion. The court determined Titan failed to demonstrate the Commission singled Titan out or that MDEQ based its prosecutorial decisions on impermissible grounds. Therefore, Titan could not demonstrate that MDEQ engaged in selective enforcement. Accordingly, the court affirmed MDEQ's order fining Titan \$5000.

*Cheryl R. Miller*

## MONTANA

**Bitterroot River Protective Ass'n v. Siebel, 108 P.3d 518 (Mont. 2005)**  
(holding significant amendments to a pending water appropriation