



Big Surprise for Big River Steel

02.16.2016

Think only environmental groups challenge permits? Think again. Big River Steel, LLC (BRS) proposed to construct a steel mill in northeast Arkansas and needed an air permit to operate it. The state issued the permit in 2013, but the permit was challenged administratively and in court by subsidiaries of Nucor Corporation, a competitor that owns and operates steel mills in the same county as the proposed BRS mill.

Nucor's court challenge to the permit was based on both procedural and technical grounds. Among other things, Nucor challenged BRS's use of a "representative" monitor, located 40 miles northeast of the construction site, to account for background air pollution in its air quality analysis. Nucor also challenged BRS's adjustment of data that were input into an air-dispersion modeling program. The adjustment resulted in the projected PM_{2.5} emissions to be 11.91 ug/m³, just under the Federal standard of 12 ug/m³.

The Court upheld the state's issuance of the permit. It found procedural flaws in Nucor's appeal (e.g., failure to raise certain claims during the public comment period), and it gave "great deference to the agency's expertise" in upholding the technical elements of the permit.

Although Nucor stated in its petition that it was seeking to protect air quality in the county for its workers, counsel for BRS pointed out that no environmental groups opposed the permit and that the only opposition came from Nucor, an obvious competitor. This case stands as a reminder to industry: environmental groups are not the only potential litigants lurking.

Court of Appeals Opinion (2015 Ark. App. 703)

Nucor Petition for Review & Adjudicatory Hearing

BRS Memorandum in Support of Motion to Dismiss

Related People

- Ryan W. Trail ? 803.567.4605 ? Rtrail@williamsmullen.com

Related Services

- Environment & Natural Resources