

SUPREME COURT OF LOUISIANA

Christian Ministers Missionary Baptist Ass'n of Plaquemines Parish v. Louisiana Department of Environmental Quality

165 So. 3d 73 (La. 2015) · Decided April 17, 2015

SUMMARY

The document concerns a challenge to the Louisiana Department of Environmental Quality's expedited approval of a minor-source air permit for a coal terminal. Chief Justice Johnson would remand for a hearing on whether the plaintiffs had good cause for failing to timely seek judicial review, reasoning that approval without public comment could undermine affected parties' right to appeal under Louisiana's Environmental Quality Act.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Johnson, Chief Justice
JURISDICTION	Louisiana
DECIDED	April 17, 2015
DISPOSITION	writ_denied
PROCEDURAL POSTURE	The plaintiffs sought judicial review of a Louisiana Department of Environmental Quality minor-source air permit. The trial court dismissed the claims for lack of subject matter jurisdiction because the petition was not filed within thirty days of notice of permit approval.
PRECEDENTIAL VALUE	published dissenting opinion; nonbinding
PARTIES	Christian Ministers Missionary Baptist Association of Plaquemines Parish, Inc. v. Louisiana Department of Environmental Quality

TOPICS

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QUESTIONS PRESENTED

1. Whether plaintiffs who did not receive notice of a minor-source air-permit approval because they had not submitted public comments should be permitted to establish good cause for filing a judicial-review petition more than thirty days after notice was sent to the permit applicant.
2. Whether denying affected parties judicial review after LDEQ approved a permit without public comment is consistent with the Louisiana Environmental Quality Act.

HOLDINGS

1. In Chief Justice Johnson's view, the case should be remanded to the district court for a hearing on whether the plaintiffs could show good cause under La. R.S. 30:2014.3 for failing to file within thirty days of the notice sent to the permit applicant.
2. Chief Justice Johnson would conclude that allowing LDEQ to approve a permit without public comment and then deny affected parties judicial review is inconsistent with the purpose of the Environmental Quality Act.

KEY QUOTATIONS

“To allow LDEQ to unilaterally approve a permit without public comment and then deny the affected parties a right of judicial review is inconsistent with the purpose of the Environmental Quality Act.” (74)

FACTUAL BACKGROUND

RAM Terminals, Inc. applied for a minor-source air permit for a coal terminal in Ironton, Louisiana, and LDEQ approved the permit after expedited review without an opportunity for public comment. A group of local ministers representing Ironton residents challenged the permit, asserting risks to nearby communities and to the Barataria Basin and coastal wetlands. Because the plaintiffs had not submitted public comments on the application, they did not receive notice of the approval and did not file their judicial-review petition within thirty days of notice sent to RAM Terminals.

PROCEDURAL HISTORY

RAM Terminals applied for and received a minor-source air permit from LDEQ without a public-comment period. The plaintiffs filed a petition for judicial review after the statutory thirty-day period measured from notice sent to the permit applicant. The trial court dismissed for lack of subject matter jurisdiction. In this separate opinion, Chief Justice Johnson stated that she would grant relief and remand for a hearing on whether the plaintiffs could establish good cause for the late filing.

DISPOSITION

writ_denied

REMAND INSTRUCTIONS

Chief Justice Johnson would remand to the district court for a hearing on whether the plaintiffs could demonstrate good cause for not filing the judicial-review petition within thirty days of the notice of approval

sent to the permit applicant.

OPINION

JOHNSON, J.

JOHNSON, Chief Justice would grant and assigns reasons. pOn May 31, 2012, RAM Terminals, Inc. applied to the Louisiana Department of Environmental Quality (hereinafter “LDEQ”) in order to obtain a minor source air permit for a coal terminal that would emit air pollutants in the town of Ironton in Plaquemines Parish, Louisiana.

After expedited review without an opportunity for public comment, LDEQ approved and issued the permit. The Plaintiffs, Christian Ministers Missionary Baptist Association of Plaquemines Parish, Inc., a group of local Christian ministers representing the residents of Ironton, filed a petition for judicial review asserting that the minor source air permit granted to RAM Terminals created unacceptable risks to the communities near the facility and posed dangers to the ecological needs of the central Barataria Basin and Louisiana’s disappearing coastal wetlands.

Because the petitioners here did not make a public comment pertaining to the pending permit application, they were not entitled to receive notice of the permit approval and therefore did not file a petition for judicial review within thirty days of when notice of approval was sent to the permit applicant pursuant to La. R.S. 30:2050.21 and La. R.S. 30:2022.

It is on this basis that the plaintiffs’ claims were dismissed for lack of subject matter jurisdiction in the trial court. |gLDEQ has a constitutional duty as a public trustee to provide environmental protection “insofar as possible and consistent with the health, safety and welfare of the people.” La. Const, art. IX § 1. While LDEQ regulations do not require that a public comment period be held on a draft permit for minor source air permits,¹ it is essentially the notice of a pending permit application that alerts the public to a proposed permit, and allows members of the public to voice their concerns to LDEQ.

The statutory scheme crafted around the permit approval process for minor air source permits does not lend itself to public comment for those most adversely affected by decisions of the LDEQ. Although the plaintiffs did not timely file a petition for judicial review according to *74La. R.S. 30:2050.21, La. R.S. 30:2014.3(0 allows a party to raise new issues that were not submitted to LDEQ prior to its final permit decision if it can show good cause that it could not reasonably have ascertained the issues or made the evidence available within the applicable time period.

I would therefore remand the case to the district court for a hearing on whether or not the plaintiffs here can show good cause as to why a petition for judicial review was not filed within thirty days of the notice of approval sent to the entity that applied for the permit.

To allow LDEQ to unilaterally approve a permit without public comment and then deny the affected parties a right of judicial review is inconsistent with the purpose of the Environmental Quality Act. See La. R.S. 30:2001 et seq.

The plain language of the Act gives such parties a right of appeal to challenge the final decision of LDEQ. See La. R.S. 30:2050.21.. See LAC 33:111.519.