Rel: April 9, 2021

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2190999

Alabama Department of Environmental Management

v.

Wynlake Development, LLC

Appeal from Jefferson Circuit Court
(CV-19-901762)

THOMPSON, Presiding Judge.

Wynlake Development, LLC ("Wynlake"), owns a parcel of property in Alabaster that it has subdivided into 96 lots for a residential

subdivision called "Wynlake Subdivision" ("the subdivision"). Wynlake constructed houses on approximately 28 of those lots, and the remaining lots in the subdivision remain undeveloped. It is undisputed that, in developing that property, Wynlake was required to obtain certain permits. One of those permits, required by Alabama Department of Environmental Management ("ADEM") pursuant to certain state and federal laws, was a National Pollutant Discharge Elimination System ("NPDES") permit.[1] The NPDES permit for Wynlake expired in either 2010 or 2012.[2]

On March 24, 2011, ADEM issued an order finding, among other things, that "[s]ediment and other pollutants in storm water runoff from [the subdivision] have the potential to discharge and/or have discharged to an unnamed tributary to Spring Creek, a water of the State," that Wynlake has failed to implement best management practices ("BMPs") to remedy and prevent further pollution of nearby waters of the State, and

[1]ADEM's regulations are designed to implement, in pertinent part, the federal Clean Air Act, 33 U.S.C. 1251 et seq., and the Alabama Water Pollution Control Act, § 22-22-1 et seq., Ala. Code 1975.

[2]The evidence in the record conflicts as to the exact date of the expiration of the NPDES permit; that conflict is not material to the issue presented to this court on appeal.

that, in spite of a notice of violation ("NOV"), Wynlake has failed to remedy the identified problems.[3] Therefore, in the March 24, 2011, order, ADEM, among other things, ordered that Wynlake immediately cease all construction operations at the subdivision except for "BMP implementation/maintenance and sediment removal/remediation."

Six years later, in 2017, ADEM again inspected the subdivision and found additional violations of its regulations. It issued another NOV to Wynlake and requested a response demonstrating that the deficiencies identified by ADEM had been addressed. Wynlake did not respond to that NOV. On May 1, 2018, ADEM entered an order finding that Wynlake had

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[3]Under ADEM regulations, "waters of the state" is defined as

> "all waters of any river, stream, watercourse, pond, lake, coastal, ground or surface water, wholly or partially within the state, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership or corporation unless such waters are used in interstate commerce."

Ala. Admin. Code (ADEM), r. § 335-6-5-.02(ww). The term "best management practices," or BMPs, is defined and discussed at Ala. Admin. Code (ADEM),r. 335-6-12-.02(c), and Ala. Admin. Code (ADEM), r. 335-6-12-.21(2)(b)8.

failed to correct deficiencies that it had identified, and it assessed a civil penalty totaling $50,300 for Wynlake's violations of ADEM regulations.[4]

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[4]In its May 1, 2018, order, ADEM explained its consideration of the factors relevant to the assessment of civil damages as follows:

> "A. SERIOUSNESS OF THE VIOLATIONS: Considering the general nature of the violations, the seriousness of the violations, the duration of the violations, their effects, if any on impaired waters, and any available evidence of harm to the environment or threat to the public, [ADEM] determined the base penalty to be $28,500.
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> "B. THE STANDARD OF CARE: In considering the standard of care manifested by [Wynlake], [ADEM] noted the violation of operating without a permit was a nontechnical requirement and easily avoided. [ADEM] also noted that the receiving streams are on the Clean Water Act Section 303(d) list of the Clean Water Act, 33 U.S.C § 1313(d) (2012), for impaired waters. In considering this factor, [ADEM] noted that the standard of care taken by [Wynlake] was not commensurate with the applicable regulatory requirements. Therefore, [ADEM] enhanced the penalty by an additional $9,500.
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> "C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: [Wynlake] has delayed certain costs associated with obtaining/maintaining a valid NPDES permit. Additionally, [Wynlake] has delayed certain costs associated with implementing and maintaining effective BMPs. In consideration of the economic benefit to [Wynlake], [ADEM] enhanced the penalty by an additional $2,800.

See § 22-22A-5(18)c., Ala. Code 1975 (setting forth the power of ADEM to assess civil penalties). Attached to that May 1, 2018, order was an exhibit summarizing Wynlake's violations and ADEM's assessment of damages for those violations.

Wynlake appealed the May 1, 2018, ADEM order, and an ADEM hearing officer conducted a hearing on Wynlake's appeal. On March 14, 2019, the hearing officer issued a report and a recommendation that set forth the following statement of relevant facts:

> "1. Wynlake Development, LLC, was formed in 1990 and has as its members, Mr. John Michael White (hereinafter 'White') and Selma Holdings, LLC. Its purpose was to purchase property in Alabaster, Alabama, for development. Property was purchased, and it became known as Wynlake Subdivision.
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> "2. Approximately ninety acres was purchased and development was begun in phases. Lots were sold and development continued until 'the recession came' and

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> "D. HISTORY OF PREVIOUS VIOLATIONS: [ADEM] has documented previous violations by [Wynlake] resulting in formal enforcement action(s). Therefore, [ADEM] enhanced the penalty by an additional $9,500.
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> "E. THE ABILITY TO PAY: [ADEM] is unaware of any evidence regarding [Wynlake's] inability to pay the civil penalty."

everything was 'shutdown.' At that time, there were 28 lots of a planned 96 lots that had been developed.

"3. White testified that he did not think the entity made any profit but knows there has been none since 2008. There has been no development in the subdivision and no soil disrupted by the entity since 2008.

"4. White testified [Wynlake] had no money to correct the violations charged by ADEM. White also testified he had tried to market this property but that ADEM restrictions and the City of Alabaster moratorium on development have prevented any sale of lots or the entire property.[5]

"5. White has driven and inspected the property and has seen no harm to off site water.

"6. [Wynlake] had a history of registration for NPDES permit coverage for this facility dating back to at least 2005 and continuing in the years following with Notices of Re-registration.

"7. The last permit coverage for this site expired on July 10, 2012.[6]

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[5]The record indicates that the "City of Alabaster moratorium" to which the hearing officer referred is specific to Wynlake. The City of Alabaster, within which the subdivision is located, refused to award Wynlake a permit to continue construction other than that necessary to comply with ADEM's May 1, 2018, order, and it specified that its refusal to allow residential construction in the subdivision is to continue until Wynlake meets ADEM's requirements for reducing or eliminating the water-pollution problems identified by ADEM.

[6]See note 2, supra, and accompanying text.

"8. On March 24, 2011, ADEM issued [Administrative Order] 11-069-WD to [Wynlake] requiring all activity to cease other than BMP and sediment removal or remediation.

"9. [Wynlake] has not produced any inspection reports required under ADEM Admin. Code R. § 335-6-12-.28(1) showing inspections designed to ensure that BMPs are properly designed, implemented, and maintained.

"10. An inspection was made of the Wynlake property, by ADEM on September 5, 2017, [by ADEM] employee Olivia Johnson. That inspection and subsequent report established that no re-registration or application for a new permit coverage had occurred. This is a violation of ADEM Admin. Code R. § 335-6-12-.05(1) and § 335-6-12-.11(1). Further, this inspection and report showed that BMPs had not been implemented and maintained, which is a violation of ADEM Admin. Code R. § 335-6-12-.21(11), and it established that accumulations of sediment from discharge were observed, in violation of ADEM Admin. Code R. § 335-6-12-.35(10).

"11. An NOV was issued by ADEM to [Wynlake] on September 15, 2017, with various deficiencies listed and requirements stated, including a required written report due in 10 days.

"12. [Wynlake] failed to respond to ADEM's September 15, 2017, NOV, which notified [Wynlake] of the deficiencies and required a response. This failure to respond is a violation of Code of Alabama 1975 § 22-22-9(e).

"13. ADEM attempted graduated enforcement by means of a draft Consent Order and conference with [Wynlake's] representative, but the parties were unable to reach an agreement.

> "14. Subsequent inspections by Mr. Derick Houston, chief of the facility unit in the Birmingham branch and an environmental scientist for ADEM, on August 29, 2018, showed that deficiencies continued, including continued discharges and a failure of [Wynlake] to use BMPs.
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> "15. The [administrative order] dated May 1, 2018, was entered by ADEM, which noted all deficiencies and ordered [Wynlake] to pay a civil penalty in the amount of $50,300 for violations. It also required [Wynlake] to take specific action in regards to the Wynlake construction site."

In his order, the hearing officer concluded that Wynlake had not met its burden of proof of establishing that ADEM's action against it should be disapproved or modified. However, the hearing officer found the civil penalty to be "excessive," and he recommended that the it be reduced to $30,000.

ADEM filed objections to the hearing officer's March 14, 2019, report, and the matter was considered by the Alabama Environmental Management Commission ("the AEMC"). On April 12, 2019, the AEMC issued an order confirming in part and rejecting in part the hearing officer's report. The AEMC adopted the hearing officer's March 14, 2019, report and recommendation except for that part that reduced the civil

penalty; the AEMC stated that it approved ADEM's administrative action set forth in the May 1, 2018, order.

Wynlake filed a timely notice of appeal to the Jefferson Circuit Court ("the trial court") pursuant to the Alabama Administrative Procedure Act ("the AAPA"), § 41-22-1 et seq., Ala. Code 1975.[7] See § 41-22-27(f), Ala. Code 1975. The matter was submitted to the trial court on the briefs of the parties. The trial court entered a June 15, 2020, judgment in which it noted that Wynlake contended that the errors in the ADEM and the AEMC orders were errors of law. With regard to that argument, the trial court concluded:

> "As alluded to above, this Court's review of ADEM's Administrative Order 18-57-LD is limited to a review of [certain] standards set forth on appeal. Those standards are [set forth in § 41-22-20(k), Ala. Code 1975, of the AAPA and provide]:
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> > " '(k) Except where judicial review is by trial de novo, the agency order shall be taken as prima

[7]The parties have not raised any argument pertaining to whether venue was proper in the trial court. See § 40-22-20(b), Ala. Code 1975, and § 22-22A-7, Ala. Code 1975. The issue of venue is subject to waiver, and, therefore, this court does not address it in this opinion. Todd v. Discover Bank, 115 So. 3d 167, 175 (Ala. Civ. App. 2012).

facie just and reasonable and the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, except where otherwise authorized by statute. The court may affirm the agency action or remand the case to the agency for taking additional testimony and evidence or for further proceedings. The court may reverse or modify the decision or grant other appropriate relief from the agency action, equitable or legal, including declaratory relief, if the court finds that the agency action is due to be set aside or modified under standards set forth in appeal or review statutes applicable to that agency or if substantial rights of the petitioner have been prejudiced because the agency action is any one or more of the following:

> " '(1) In violation of constitutional or statutory provisions;
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> " '(2) In excess of the statutory authority of the agency;
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> " '(3) In violation of any pertinent agency rule;
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> " '(4) Made upon unlawful procedure;
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> " '(5) Affected by other error of law;
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> " '(6) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

> " '(7) Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.'

"Upon perusal of the ADEM decision at bar, the Court finds that such decision does not offend the first six standards set forth [in § 41-22-20(k)], viz., the decision was not in violation of constitutional or statutory provisions; was not in excess of the statutory authority of the agency; was not in violation of any pertinent agency rule; was not made upon unlawful procedure; was not affected by other error of law; and, was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. The Court now turns its attention to whether the instant decision was unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion. [See § 41-22-20(k)(7), Ala. Code 1975.]

" 'Unreasonable, arbitrary and capricious' is best defined as whether 'the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.' D'Olive Bay v. U.S. Corps of Engineers, 513 F. Supp. 2d 1261[, 1282] (S.D. Ala. 2007).

"....

"In reviewing ADEM's decision on issuing fines against [Wynlake], this Court notes that ADEM fails to state any specific reason for the fines imposed. By way of illustration, a fine of $28,500 was imposed on [Wynlake] for 'the general nature of the violations, the seriousness of the violations, the duration of the violations, their effects, if any on impaired waters, and any available evidence of harm to the environment or threat to the public'; a fine of $9,500 was imposed on

> [Wynlake] for 'the standard of care' manifested by [Wynlake], [ADEM] noted the violation of operating without a permit was a non-technical requirement and easily avoided. [ADEM] also noted that the receiving streams are on the Clean Water Act Section 303(d) list of the Clean Water Act, 33 U.S.C § 1313(d) (2012), for impaired waters. In considering this factor, [ADEM] noted that the standard of care taken by [Wynlake] 'was not commensurate with the applicable regulatory requirements'; and a fine of $2,800 was imposed because '[Wynlake] has delayed certain costs associated with obtaining/maintaining a valid NPDES permit. Additionally, [Wynlake] has delayed certain costs associated with implementing and maintaining effective BMPs.' Finally, an additional fine of $9,500 was imposed for 'previous violations by [Wynlake] resulting in formal enforcement action(s).' Simply put, this Court finds that ADEM failed to demonstrate how it arrived at the aforementioned amounts. The Court further finds that by engaging in such failing, ADEM's decision was not based on a consideration of the relevant factors and thereby made a clear error in judgment. This Court does not find that the fines imposed violate any statute, but, rather, that ADEM offered no evidence to show how they achieved those amounts. Accordingly, the Court finds that ADEM's imposition of the aforementioned fines was unreasonable, arbitrary, and capricious.
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> "It is therefore ORDERED, ADJUDGED, and DECREED that since ADEM failed to demonstrate how it arrived at the amounts imposed as fines against [Wynlake], then this court hereby REVERSES the decision of [ADEM] and REMANDS this matter for proceedings consistent with this order."

(Emphasis added.) ADEM filed a postjudgment motion, which the trial court denied. ADEM filed a timely notice of appeal.

The standard pursuant to which a decision of an administrative agency such as ADEM is reviewed under the AAPA is set forth in § 41-22-20(k), Ala. Code 1975, which is included in the quoted excerpt of the trial court's June 15, 2020, judgment. In reviewing a decision by ADEM, which is set forth in the order of the AEMC, this court applies the same standard as did the trial court, i.e., that set forth in § 41-22-20(k). Gipson v. Alabama Dep't of Env't Mgmt., 297 So. 3d 448, 457 (Ala. Civ. App. 2019). This court and the trial court must afford the decision of an administrative agency a presumption of correctness because of the agency's " ' "recognized expertise in a specific area." ' " Id. at 458 (quoting Alabama Dep't of Env't Mgmt. v. Kuglar, 668 So. 2d 809, 811 (Ala. Civ. App. 1995) (quoting, in turn, other cases)). This court's review of a trial court's judgment addressing an administrative agency's order or judgment is without any presumption of correctness, because this court reviews the same record as did the trial court. Alabama Dep't of Hum. Res. v. Dye, 921 So. 2d 421, 424 (Ala. Civ. App. 2005).

In this case, the parties agree that ADEM's assessment of a civil penalty against Wynlake is governed by § 22-22A-5(18)c., Ala. Code 1975.

Among other things, § 22-22A-5(18)c. places limitations on the periods for which a penalty can be imposed and the amounts of the total penalties that may be assessed. In addition, that section requires ADEM, in determining whether to impose a penalty and the amount of any penalty, to consider

> "the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty."

In its judgment, the trial court found that ADEM had failed to identify specific reasons for the civil penalties it had imposed on Wynlake, and "how it arrived at the aforementioned amounts," and that ADEM had "offered no evidence to show how it achieved those amounts," which, it concluded, meant that ADEM had failed to consider the factors set forth in § 22-22A-5(18)c.

However, the evidence in the record submitted to the trial court and to this court demonstrates that ADEM presented evidence indicating that

it had considered each of the factors set forth in § 22-22A-5(18)c. Derick Houston, an environmental scientist and supervisor at ADEM who is the chief of the facility unit in Birmingham, testified regarding each of the factors listed in § 22-22A-5(18)c. Houston testified, and was cross-examined, in detail about certain factors, such as the standard of care and the seriousness of the violations. See § 22-22A-5(18)c. He testified only briefly about some of the other factors.[8] In addition, Houston stated that he and others at ADEM had considered the factors set forth in § 22-22A-5(18)c., together with ADEM's interactions with Wynlake, in determining the amount of the penalty ADEM assessed against Wynlake. Also, ADEM submitted a significant amount of documentary evidence indicating that it had issued notifications about violations at the subdivision over the past nine years and that no action in relation to those violations had been taken.

[8]For example, Houston explained that ADEM had no information about Wynlake's ability to pay because, he said, Wynlake did not respond to ADEM's request that it provide its three most recent years' income-tax returns.

With regard to factual issues, such as whether the evidence supports the administrative agency's decision, " '[w]e may not substitute our judgment for that of the agency as to the weight of the evidence or question of fact, nor could the circuit court substitute its judgment for that of the [agency].' " Medical Licensure Comm'n of Alabama v. Herrera, 918 So. 2d 918, 926 (Ala. Civ. App. 2005) (quoting Evers v. Medical Licensure Comm'n, 523 So. 2d 414, 415 (Ala. Civ. App.1987)). See also § 41-22-20(k) ("[T]he agency order shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact."). A presumption of correctness is afforded to the decision of an administrative agency because of its " 'recognized expertise in a specific, specialized area.' " Alabama Real Estate Comm'n v. Hodge & Assocs., Inc., 203 So. 3d 851, 854 (Ala. Civ. App. 2015) (quoting Hamrick v. Alabama Alcoholic Beverage Control Bd., 628 So. 2d 632, 633 (Ala. Civ. App.1993)). The prohibition against a trial court's or an appellate court's substituting its own judgment for that of the administrative agency " ' "holds true even in cases where the testimony is generalized, the evidence is meager, and reasonable minds might differ as

to the correct result."' " ABC Coke v. GASP, 233 So. 3d 999, 1004 (Ala. Civ. App. 2016) (quoting Colonial Mgmt. Grp., L.P. v. State Health Planning & Dev. Agency, 853 So.2d 972, 974-75 (Ala. Civ. App. 2002), quoting in turn Health Care Auth. of Huntsville v. State Health Planning Agency, 549 So. 2d 973, 975 (Ala. Civ. App. 1989)). The record contains evidence supporting ADEM's and the AEMC's decisions, and those decisions are to be afforded a presumption of correctness. Thus, the trial court erred to the extent that it determined that there was a lack of evidence supporting a conclusion that ADEM had properly considered the § 22-22A-5(18)c. factors.

ADEM also argues on appeal that the trial court, in reaching its June 15, 2020, judgment, failed to enforce § 22-22A-5(18)c. as it is written. As ADEM points out, in its May 1, 2018, order that was later adopted by the AEMC in its April 12, 2019, order, ADEM set forth a discussion of each of the § 22-22A-5(18)c. factors, along with brief explanations of its conclusions with regard to each factor. However, the trial court based its judgment on its determination that ADEM had failed to present sufficient evidence regarding how, under § 22-22A-5(18)c., it had calculated the

penalty it had imposed against Wynlake. ADEM argues that the § 22-22A-5(18)c. does not contain language requiring ADEM to demonstrate the manner in which it made its specific calculations of the penalty it assessed against Wynlake.

ADEM contends that the language of § 22-22A-5(18)c. is unambiguous and that it should be interpreted as it is written. See Perry v. City of Birmingham, 906 So. 2d 174, 176 (Ala. 2005) (" '[W]hen possible, the intent of the legislature should be gathered from the language of the statute itself.' ") (quoting Beavers v. Walker Cnty., 645 So. 2d 1365, 1376, (Ala. 1994))).

> "Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect."

IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala.1992). "When the language of a statute is plain and unambiguous, ... courts must enforce the statute as written by giving the words of the statute their ordinary plain meaning -- they must interpret that language

to mean exactly what it says and thus give effect to the apparent intent of the Legislature." Ex parte T.B., 698 So. 2d 127, 130 (Ala. 1997).

Section 22-22A-5(18)c. requires that ADEM consider six factors, discussed above, in assessing a penalty against a party found to have violated its regulations. We agree with ADEM that § 22-22A-5(18)c. contains no language requiring that ADEM set forth evidence concerning the manner in which a penalty is to be precisely calculated, nor does that statute require ADEM to create regulations setting forth a standard method of mathematical calculations for the determination of penalties.

In essence, in reaching its judgment, the trial court has imposed on ADEM a requirement that is not set forth in § 22-22A-5(18)c., i.e., that of demonstrating a specific method pursuant to which it calculated the penalty against Wynlake. However, courts may not insert additional language or requirements into a statute. Bassie v. Obstetrics & Gynecology Assocs. of Nw. Alabama, P.C., 828 So. 2d 280, 284 (Ala. 2002). See also Pace v. Armstrong World Indus., Inc., 578 So. 2d 281, 284 (Ala. 1991) (explaining that courts may not insert language into a statute). "This [c]ourt's role is not to displace the legislature by amending statutes

to make them express what we think the legislature should have done. Nor is it this [c]ourt's role to assume the legislative prerogative to correct defective legislation or amended statutes.' " Grimes v. Alfa Mut. Ins. Co., 227 So. 3d 475, 488-89 (Ala. 2017) (quoting Siegelman v. Chase Manhattan Bank (USA), Nat'l Ass'n, 575 So. 2d 1041, 1051 (Ala. 1991)). See also Ex parte Christopher, 145 So. 3d 60, 66-67 (Ala. 2013) (discussing the caselaw prohibiting courts from interpreting a statute so as to add language not included in that statute by the legislature).

We recognize the difficulty presented to the trial court in evaluating the penalty assessed by ADEM in this matter. Any assessment of a penalty for pollution, or possible pollution, of a waterway in violation of ADEM regulations would be difficult to quantify monetarily. Our legislature has entrusted such decisions to ADEM because of its specialized knowledge and expertise in the area of environmental regulation. See, e.g., Shell Offshore, Inc. v. Baldwin Cnty. Comm'n, 570 So. 2d 698, 699 (Ala. Civ. App. 1990) (citing the "recognized expertise in a specific, specialized area" of an administrative agency in explaining the basis of the presumption of correctness in favor of an agency's decision);

Marshall Durbin & Co. of Jasper v. Environmental Mgmt. Comm'n, 519 So. 2d 962, 964 (Ala. Civ. App. 1987) (" '[A]dministrative agencies necessarily acquire special knowledge in the fields of their activities, and the acquisition of this knowledge is the purpose of their existence in many instances. Accordingly, the field in which official notice may relieve from the necessity of proof is broadened to permit administrative officers to use such knowledge.' " (quoting Illinois Cent. R.R., 275 Ala. 236, 239, 153 So. 2d 794, 796 (1963))); and Alabama Dep't of Pub. Health v. Perkins, 469 So. 2d 651, 652-53 (Ala. Civ. App. 1985) (in addressing an appeal concerning a permit, the court stated that "judicial deference to an administrative agency tends to insure uniformity and consistency of decisions in light of the agency's specialized competence in the field of operation entrusted to it by the legislature"). "[W]e wish to emphasize that this case presents factual questions arising in a very specialized and complicated field -- one which the legislature has entrusted to the expertise of ADEM." Dawson v. Alabama Dep't of Env't Mgmt., 529 So. 2d 1012, 1015 (Ala. Civ. App. 1988), overruled on other grounds, Ex parte Fowl River Protective Ass'n, 572 So. 2d 446 (Ala. 1990).

ADEM has been charged by our legislature with regulating issues of water pollution, and, under § 22-22A-5(18)c., with assessing a civil penalty for any violation of its regulations. As indicated above, ADEM has specialized knowledge and expertise in the field of environmental regulation. In the absence of any specific statutory language requiring that ADEM specifically set forth the method pursuant to which it calculated a civil penalty, the courts may not require ADEM to present evidence of its mathematical determinations of the civil penalty. Section 22-22A-5(18)c., as currently set forth by our legislature, does not require mathematical precision, or evidence documenting ADEM's mathematical calculations, in the determination of a civil penalty pursuant to that statute. Accordingly, we hold that the trial court erred in determining that ADEM's assessment of the civil penalty against Wynlake was arbitrary and capricious.

Wynlake did not file a conditional cross-appeal with regard to the other findings in the trial court's June 15, 2020, judgment, i.e., that ADEM's decision did not violate the first six standards set forth in § 41-22-20(k). See Chilton Cnty. Bd. of Educ. v. Cahalane, 117 So. 3d 363, 371

(Ala. Civ. App. 2012) (explaining that if an appellate court reverses a judgment, a conditional cross-appeal filed by the prevailing party in the trial court becomes ripe for review). Therefore, we do not address the remainder of the trial court's judgment. Huntsville City Bd. of Educ. v. Frasier, 122 So. 3d 193, 202 n.17 (Ala. Civ. App. 2013).

REVERSED AND REMANDED.

Hanson, J., concurs.

Moore and Edwards, JJ., concur in the result, without writings.

Fridy, J., recuses himself.