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# Trafalgar/Stump Dump Site: Fredericks Construction Company, Inc. Motion to Dismiss Bella Vista Property Owners Association Arkansas Pollution Control and Ecology Commission Request for Hearing

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Fredericks Construction Company, Inc. (“Fredericks Construction”) and Thomas Fredericks (“Fredericks”) filed a Motion to Dismiss and Incorporated Brief in Support (“Motion”) before the Arkansas Pollution Control and Ecology Commission (“Commission”) addressing the Bella Vista Property Owners Association (“POA”) pleading in which it challenged a Consent Administrative Order (“CAO”). See Docket No. 19-004-MISC.

The POA asked that the Commission conduct an Adjudicatory Hearing to review the CAO issued by the Division of Environmental Quality (“DEQ”) in the Matter of Thomas Fredericks and Fredericks Construction Company, Inc., Trafalgar Road Former Stump Dump Site (“Site”).

The Site relates to what is described by the POA as the “former stump dump located on Trafalgar Road in Bella Vista, Benton County, Arkansas.” It is further described by the POA as real property which is leased to Thomas Fredericks (as Lessor) for what is referenced as a “stump, brush, rock, concrete, and dirt dump.”

The Site suffered an underground fire which was the subject of a DEQ Emergency Order issued in 2018. The POA and DEQ subsequently entered into a CAO in which the POA agreed to take responsibility for remediating the Site pursuant to the Arkansas Remedial Action Trust Fund Act.

The POA challenged the CAO subsequently entered into between DEQ and Fredericks Construction and Fredericks related to the Site. It asked that the Commission conduct an Adjudicatory Hearing to review issues of law and fact related to the CAO.

Fredericks Construction and Fredericks put forth two principal arguments in support of their Motion to Dismiss. They include:

- Director Keogh was well within her statutory authority to execute the CAO citing Ark. Code Ann. § 8-1-202(b)(2)(B).

- The POA fails to identify new evidence that was not considered in the issuance of the CAO which is stated to be necessary for the Commission to set aside a CAO citing Ark. Code. Ann. § 8-4-103(d)(4)(B).

A copy of the Motion can be downloaded [here](#).