

Trafalgar/Stump Dump Site: Bella Vista Property Owners Association Response to Fredericks Construction Company, Inc.,'s Motion to Dismiss



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

01/02/2020

The Bella Vista Property Owners Association (“POA”) filed a Brief in Opposition to Thomas Fredericks and Fredericks Construction Company Inc.’s (collectively, “FCC”) Motion to Dismiss the POA’s challenge to a Consent Administrative Order (“CAO”).

The POA had previously asked that the Arkansas Pollution Control and Ecology 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 as the “Former Stump Dump located on Trafalgar Road in Bella Vista, Benton County, Arkansas.” The Site is described as real property which the POA leased to Thomas Fredericks (as Lessor) for use as what is referenced as a “stump, brush, rock, concrete and dirt dump.”

The Site suffered an underground fire which is the subject of a DEQ Emergency Order that was issued in 2018. The POA and DEQ are stated to have subsequently entered into an Administrative Order (described as the Trafalgar Road Remedial Action) in which the POA agreed to take responsibility for remediating the Site pursuant to the Arkansas Remedial Action Trust Fund Act.

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).

The POA argues in its response to FCC’s Motion to Dismiss that its request for a hearing should be granted because:

. . . it identifies multiple instances of the failure to consider material evidence of hazardous waste at the Stump Dump in the formulation of the Administrative Order for Thomas Fredericks and Fredericks Construction Company, Inc. . . .

The Brief further argues that FCC’s disagreement with such matters:

. . . shows the factual dispute that the Commission must resolve at a hearing.

The Brief cites certain facts in support of the Motion and puts forth three principal arguments which include:

- The Director failed to consider material evidence in issuing the Fredericks Administrative Order
- The Director acted inappropriately and unreasonably in issuing the Fredericks Administrative Order

A link to the Brief in Opposition can be found [here](#).