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Trafalgar Stump Dump: Arkansas Pollution Control and Ecology Commission Addresses Bella Vista Property Owners Association, Inc.'s Request for Hearing to Set Aside Consent Administrative Order

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The Arkansas Pollution Control and Ecology Commission (“Commission”) addressed at its January 24th meeting a request by the Bella Vista Property Owners Association (“POA”) that it conduct an adjudicatory hearing to review the Consent Administrative Order (“CAO”) issued by the Arkansas Department of Energy and Environment – Division of Environmental Quality (“DEQ”) in the matter of Thomas Fredericks and Fredericks Construction Company, Inc. (collectively “Fredericks”).

The POA request relates to what is described in its pleadings as the “former stump dump located on Trafalgar Road in Bella Vista, Benton County, Arkansas.”

The site has been further described as real property which is leased to Thomas Fredericks for what is referenced as a stump, brush, rock, concrete, stump and dirt dump. The site suffered an underground fire which was the subject of a DEQ emergency order 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 related to the site.

Fredericks responded in subsequent pleadings arguing that nothing in the POA filings identifies “any new, material piece of evidence that Director Keogh failed to consider when executing Mr. Frederick’s CAO.”

The Commission, after hearing arguments from counsel for Fredericks, the POA, and DEQ issued Minute Order No. 20-07.

The Minute Order cites Arkansas Pollution Control and Ecology Commission Regulation 8.406(B) which states:

“[a]ny person who comments on a proposed Consent Administrative Order settling an enforcement action may petition the Commission within thirty (30) calendar days of the effective date of the Order to set aside the order and provide an adjudicatory hearing. That person shall file a Request for Hearing with the Commission Secretary. If the evidence presented by the petitioner is material and was not considered in

the issuance of the order, and the Commission finds in light of the new evidence that the order is not reasonable and appropriate, it may set aside the order and provide an adjudicatory hearing. If the Commission denies an adjudicatory hearing, it shall give the petitioner notice of its reasons for the denial. The denial of a hearing shall constitute final Commission action."

After hearing oral argument and reviewing the pleadings and exhibits submitted by the parties, the Commission voted to find that Petitioner (POA) had presented material evidence that should have been considered by the DEQ in the issuance of CAO LIS-19-005.

As a result, the POA's request for an adjudicatory hearing was granted and Administrative Law Judge Moulton was instructed to hold a hearing to establish a procedural schedule and hold an adjudicatory hearing on the request to set aside the Fredericks' CAO.

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