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Washington County Landfill/Expansion: Administrative Law Judge Addresses Motions to Dismiss Petitioners' Request for Adjudicatory Hearing/Commission Review

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As previously noted in [April 18th](#) and [April 19th](#) blog posts, the Mayor of Tontitown and certain individuals filed separate (two) Requests for Adjudicatory Hearing and Commission Review (collectively "Petitions") before the Arkansas Pollution Control & Ecology Commission ("Commission") challenging the Arkansas Department of Energy & Environment – Division of Environmental Quality's ("DEQ") issuance of a permit for the Eco-Vista Landfill ("Eco-Vista") in or near the City of Tontitown, Washington County, Arkansas. See Docket No. 23-0008-P and 23-009-P.

The permit has been described as involving the expansion of the Eco-Vista Landfill.

The Petitions allege certain grounds in support of their challenge to the permit.

Both DEQ and Eco-Vista had previously filed separate Motions to Dismiss ("MTDs") addressing each Petition. Responses to those MTDs were filed.

The MTD filed in response to the Petition in Docket No. 23-008-P argued:

1. Petitioners have failed to present objections that have a legal and factual basis as required by Ark. Code Ann. § 8-4-205(b)(3) and APC&EC Rule 8.603(C)(1)(c); and,
2. Petitioner Brandt Burress lacks standing to appeal pursuant to Ark. Code Ann. § 8-4-205(b)(1) and APC&EC Rules 8.208(A) and 8.603(B)(2).

The MTD filed in response to the Petition in Docket No. 23-009-P argued:

1. On April 17, 2023, thirty-one (31) calendar days after the issuance and effective date of the final permitting decision, Petitioners Mayor Angie Russell, and the City of Tontitown submitted a Request for Hearing and Adjudicatory Review on the permit decision.
2. DEQ moves the Commission to dismiss Petitioners' Appeal and Request for Hearing as untimely pursuant to Ark. Code Ann. § 8-4-205(b)(1) and APC&EC rule 8.603(B)(2).

Administrative Law Judge ("ALJ") Charles Moulton issued decisions on both MTDs on June 6th (styled as Orders No. 4).

By way of summary, the ALJ decided the following in Docket No. 23-008-P:

- Denied the MTDs relating to the issue of Tontitown's withdrawal of support for Eco-Vista's Landfill expansion
- Granted the MTDs relating to the issues raised by Petitioners involving the Certificate of Need
- Denied the MTDs relating to the issue that DEQ was not responsive to public comments in violation of Rule 8.211
- Granted the MTDs and dismisses Mr. Brandt Buress from the Petition

By way of summary, the ALJ decided the following in Docket No. 23-009-P:

- Denied DEQ's and Eco-Vista's Motion to Dismiss relating to an alleged untimely filing, stating in part:

Based on the totality of the facts and exhibits provided by the parties the ALJ finds that the date of issuance and the effective date of the final permitting decision in this case is March 20, 2023, the day Arkansas Mailing Service delivered the Notice of Permitting Decision to the U.S. Postal Service .

- Mayor Russell and the City's Motion to Strike, Motion to Determine Service date, and Motion for Extension of time is rendered moot by Order No. 4.
- Mayor Russell and the City can file an amended Request for Hearing consistent with Rule 15 of the Arkansas Rules of Civil Procedure.

A copy of both Orders No. 4 can be downloaded [here](#).