

BEFORE THE ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

IN THE MATTER OF:)
)
) Docket No: 23-008-P
FINAL PERMIT DECISION FOR)
ECO-VISTA, LLC, CLASS 4 LANDFILL)
PERMIT NO. 0290-S4-R2)

MOTION TO DISMISS

Permittee Eco-Vista, LLC, (“Eco-Vista”) hereby moves to dismiss the request for hearing filed by a group of individuals, the “Petitioners,” in the above-captioned docket, and in support of this motion states as follows:

1. On March 17, 2023, the Arkansas Department of Energy and Environment, Division of Environmental Quality (“DEQ”) issued its Final Permit Decision for Eco-Vista, LLC, Class 4 Landfill, Permit No. 0290-S4-R2 (the “Class 4 Permit”).

2. On April 14, 2023, the Petitioners filed a Request for Adjudicatory Hearing and Commission Review (“Request for Hearing”) pursuant to Arkansas Pollution Control and Ecology Commission (“Commission”) Rule 8.

3. Eco-Vista moves the Commission to dismiss Petitioners’ Request for Hearing because they have not provided a detailed statement identifying the legal and factual objections to the permit action as required by Arkansas Code Annotated § 8-4-205(b)(3) and Commission Rule 8.603(C)(1)(c).

4. A Brief in Support of this Motion has been filed with the Commission and is incorporated by reference.

WHEREFORE, for the reasons stated above, Eco-Vista respectfully requests that its Motion to Dismiss be granted and moves for all other relief to which it may be entitled.

Respectfully submitted,

QUATTLEBAUM, GROOMS & TULL PLLC
111 Center Street, Suite 1900
Little Rock, Arkansas 72201
Telephone: (501) 379-1700
Facsimile: (501) 379-1701
cchiles@qgtlaw.com
mheister@qgtlaw.com
sbolden@qgtlaw.com

By: /s/ Michael B. Heister

E. B. Chiles IV (96179)
Michael B. Heister (2002091)
Sarah Keith-Bolden (2007235)

Attorneys for Eco-Vista, LLC

CERTIFICATE OF SERVICE

I, Michael Heister, hereby certify that a copy of the foregoing has been served by first-class regular mail and email to the following parties of record this 16th day of May 2023.

Richard Mays
Richard Mays Law Firm, PLLC
2226 Cottdale Ln., Ste. 210
Little Rock, AR 72202
(501) 891-6116
njackson@richmayslaw.com

Ross Noland
Noland Law Firm
P. O. Box 251402
Little Rock, AR 72225
(501) 541-7374
Ross@NolandFirm.com

Lisa Thompson
Mark Robinette
Division of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
(501) 682-0888
(501) 682-0798
lisa.m.thompson@adeq.state.ar.us
robinette@adeq.state.ar.us

/s/ Michael B. Heister
Michael B. Heister

BEFORE THE ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

IN THE MATTER OF:)
)
) Docket No: 23-008-P
FINAL PERMIT DECISION FOR)
ECO-VISTA, LLC, CLASS 4 LANDFILL)
PERMIT NO. 0290-S4-R2)

BRIEF IN SUPPORT OF MOTION TO DISMISS

Permittee Eco-Vista, LLC, (“Eco-Vista”) hereby moves to dismiss the request for hearing filed by a group of individuals, the “Petitioners,” in the above-captioned docket, and in support of this motion states as follows:

FACTUAL BACKGROUND

Eco-Vista owns 609.23 acres in Tontitown, Arkansas, of which 417.13 acres of the property are currently zoned “EU-L,” which stands for Exclusive Use – Landfill. Waste can only be disposed in the areas of the 417.13 acre site that the Arkansas Department of Energy and Environment, Division of Environmental Quality (“DEQ”) permits for waste disposal. This region of Arkansas has generally experienced higher than average growth rates for several decades, resulting in population sprawl towards the landfill, while simultaneously imposing pressure on the landfill to accept more solid waste resulting from rapid development in the region. To enable Eco-Vista to continue to support regional development, it applied to DEQ on July 6, 2021, for a “Permit Modification Application for Expansion of the Eco-Vista, LLC, Class 4 Landfill,” Permit No. 0290-S4-R1, AFIN: 72-00144 (the “Class 4 Permit Modification Application”). The Class 4 Permit Modification Application sought to add approximately 12.2 acres of new permitted capacity to the area on-site already zoned EU-L.

The Class 4 Permit Modification Application was the result of a multi-year process. In 2018, Eco-Vista applied to the Boston Mountain Solid Waste District (the “District”) for a “Certificate of Need” as required by Commission Rule 22.205(b)(2), and the resulting certificate was included in the Class 4 Permit Modification Application. On July 3, 2018, the City Council also adopted Resolution 2018-07-7970-R, approving the proposed landfill expansion pursuant to “Arkansas Department of Environmental Quality Regulation 22.204.” This too was provided to DEQ as part of the Class 4 Permit Modification Application.

On March 17, 2023, DEQ issued its Final Permit Decision for Eco-Vista, LLC, Class 4 Landfill, Permit No. 0290-S4-R2 (the “Class 4 Permit”). The Class 4 Permit that DEQ issued authorizes the disposal of bulky, inert, non-putrescible solid waste as defined by Commission Rule 22. Class 4 Permit, Site Specific Conditions at ¶ 4. It requires implementation of a detailed Operating Plan (Doc Id. 80453) and requires Eco-Vista to comply with all of the operating requirements of Rule 22. *Id.* at ¶ 9. Petitioners filed their Request for Hearing on April 14, 2023.

LEGAL BACKGROUND

As a matter of law, a request for hearing must contain a “detailed statement identifying the legal and factual objections to the permit action.” Commission Rule 8.603(C)(1)(c) and Ark. Code Ann. § 8-4-205(b)(3). Commission Rule 8.603(C)(2) further requires that “a failure to file a Request for Hearing in the form and manner set out in Reg.8.603(C)(1) may result in the dismissal of the Request for Hearing.” The DEQ’s Brief in Support of Motion to Dismiss filed in this action correctly details how these requirements are implemented by means of a two-step analysis: (1) does the statement provide sufficient factual detail; and (2) does the statement provide a citation

to the applicable law that DEQ has allegedly violated within the jurisdiction of the permitting authority?”¹

ARGUMENT

I. PETITIONERS’ ARGUMENTS BASED ON HOST COMMUNITY APPROVAL IDENTIFY NO APPLICABLE LAW THAT DEQ VIOLATED

Petitioners’ first challenge to the Class 4 Permit argues that the requirements for host community approval were not met because “[t]he City of Tontitown has not provided a definitive acceptance of the proposed expansion by formal resolution[.]” Petitioners’ Request for Hearing at ¶ 15. That is not an accurate statement of the legal requirement and is factually incorrect. It therefore fails to meet the requirements of Arkansas Code Annotated § 8-4-205(b)(3) and Commission Rule 8.603(C)(1)(c).

Arkansas law creates a rebuttable presumption against permitting a site that Eco-Vista assumes for the sake of argument applies under the current circumstances. Ark. Code Ann. § 8-6-1504(a)(1). However, that presumption is rebutted where the host community, prompted by incentives, has accepted the siting of the facility. Ark. Code Ann. § 8-6-1504(b)(2)(A). Commission Rule 22.204(c) further provides that “[t]he Department shall not process any . . . application for increased landfill capacity until definitive findings in conformance with this section have been provided by the host community and accepted by the Department.”

Petitioners argue the City of Tontitown’s (“City”) approval, which expressly stated it was intended to satisfy the requirements of what is now Rule 22.204, was not “unconditional” or “definitive” so the foregoing requirements were not met. Petitioners’ Request for Hearing at ¶ 15. The Administrative Law Judge will search the statute in vain for any legal requirements that a

¹ *In the Matter of Big River Steel, LLC*, Docket No. 13-006-P, Order No. 9 at p. 16; *In the Matter of Eco-Friendly Materials, LLC*, Docket No. 23-001-P, Order No. 5 at 5.

city's approval be "unconditional" or "definitive" because they do not exist. Under Rule 22.204(c), a city need only make "definitive findings in conformance with [Rule 22.204]." Petitioners identify no legal requirement that the City breached with its adoption on July 3, 2018, of Resolution 2018-07-7970-R (Exhibit 1) approving the expanded siting of the Class 4 operation. Petitioners likewise identify no legal bar to DEQ acting on the City's approval and continuing to process Eco-Vista's application, as Rule 22.204(c) requires.² Rather, Petitioners argue that the City's approval was not definitive but provide no citation to applicable law imposing any requirement that a city's approval, as opposed to its findings, be definitive. Commission Rule 8.603(C)(1)(c) has not been satisfied.

Petitioners also argue that the City's approval was "withdrawn prior to a decision having been made" by DEQ on the Class 4 Permit. Petitioners' Request for Hearing at ¶ 19. However, neither the statute nor the applicable Commission rule allows a city to withdraw an approval once granted. Arkansas Code Annotated § 8-6-1503 only requires that DEQ "shall not process any application for a permit subject to § 8-6-1504 until the affected local and regional authorities have issued definitive findings regarding the criteria set out in § 8-6-1504." Commission Rule 22.204(c) similarly requires only that approval must be "provided by the host community and accepted by the Division" before the DEQ continues to process an application. Nothing in either the statute or the rule allows a host community to revoke its approval after a permit application has been processed or imposes any legal obligation on DEQ should that occur. DEQ's recognition of the City's approval and processing of Eco-Vista's application was the only lawful option under the

² Petitioners' argument also lacks sufficient factual detail. Petitioners do not identify any "definitive findings" that should have been in the City's 2018 approval but were not.

circumstances. Again, the Petitioners cannot cite any applicable law that the DEQ violated so Commission Rule 8.603(C)(1)(c) has not been satisfied and this claim must be dismissed.

II. PETITIONERS' COLLATERAL ATTACK ON THE CERTIFICATE OF NEED IS UNTIMELY AND WITHOUT MERIT

There can be no dispute that the application included a "Certificate of Need" issued by the Boston Mountain Regional Solid Waste Management District (the "District").³ *See* Exhibit 2. Petitioners argue, however, that the Certificate of Need expired before the application was submitted. Petitioners' Request for Hearing at ¶ 15. Petitioners also raise several challenges attacking the adequacy of the certificate, arguing that the District lacked the ability to extend the 6-month expiration date of the Certificate, that additional public notice and comment were required, and that the certificate was issued based on a "directive" from the Division to the District. *Id.* at ¶¶ 22-27. None of these arguments identify any applicable law that DEQ violated when issuing the Class 4 Permit.

A. The Certificate Of Need Was In Effect When The Application Was Submitted.

The Certificate of Need was issued in January 2018. Petitioners' Request for Hearing at ¶¶ 17-18. Petitioners do not dispute that, although the certificate was initially set to expire in July 2019, the District extended the expiration date to July 6, 2021. *Id.* at ¶ 18. Petitioners assert, however, that the Class 4 Permit Modification Application was not "received at DEQ" until July 7, 2021, the day after the District's extension expired. Petitioners' Request for Hearing at ¶ 18. In fact, the application was received by the Division on July 6, 2021, when it was served by email to Christina Coker (DEQ) and Annette Cusher (DEQ).

³ Permit Modification Application for Expansion of the Eco-Vista, LLC, Class 4 Landfill," Permit No. 0290-S4-R1, AFIN: 72-00144, Appendix D.

From: Melissa Vaught [mailto:mmv@ftn-assoc.com]
Sent: Tuesday, July 6, 2021 3:12 PM
To: Coker, Cristina; Cusher, Annette

CC: David Conrad; Caldwell, Mike; Simmons, Carl; Small, Blake; Nick Schoggin; Paul Crawford; Dana Derrington
Subject: Eco-Vista Class 4 Landfill Permit Modification Application, Permit No. 0290-S4-R1

Annette / Cristy – Good afternoon. On behalf of Eco-Vista, LLC, FTN is submitting the permit modification application for the proposed expansion of the class 4 landfill. The application is available for download through the following link:

<https://owncloud.ftn-assoc.com/owncloud/index.php/s/xb3NH2ijgiccD3E>

A check for the permit fee was mailed separately. Please contact me or Nick Schoggin (copied) with questions.

Thank you,

Melissa Vaught, P.E.*
FTN Associates
Environmental Engineer
124 W. Sunbridge Drive, Suite #3
Fayetteville, Arkansas 72703
Office: (479) 571-3334
Fax: (479) 571-3338
*Arkansas and Oklahoma

Rec'd Digitally	
AFIN: 72-00144	
PMT#: 0290-S4-R1	
RECEIVED By Karen Blue at 1:38 pm, Jul 07, 2021	S W
DOC ID#: 80453	M D
TO: AC>FILE <KMB	

Petitioners' claim that the Class 4 Permit Modification Application was filed July 7, 2021, is therefore demonstrably incorrect.

However, what is important for purposes of this motion is that Petitioners' Request for Hearing identified no statute or rule that the DEQ violated by accepting the Class 4 Permit Application and the appended Certificate of Need emailed on July 6, 2021.

B. Petitioners Did Not Timely Challenge The Issuance Of The Certificate Of Need Or Its Extension

Petitioners next attack the validity of the Certificate of Need, arguing that the certificate expired before the application was filed because the District's rules do not specifically address the District's authority to extend a certificate's expiration date. Petitioners' Request for Rehearing at ¶ 18. Petitioners also assert that the Certificate of Need was void because Eco-Vista's "request to the District regarding alternative designs or equivalencies are substantial modifications to the scope of the CON" that required public notice and comment. *Id.* at ¶ 21.

Both of these arguments are time barred. Arkansas law requires that a challenge to a Certificate of Need must first be filed with DEQ, and Petitioners never filed any such challenge.

See Ark. Code Ann. § 8-6-706(c). Commission Rule 22.206 elaborates on this statutory requirement and provides a thirty-day deadline to file appeals of certificate determinations with DEQ. There can be no dispute that this deadline has long expired. Petitioners did not raise either of their attacks on the Certificate of Need in the time and manner required by Commission Rule 22.206, and DEQ could not have raised such challenges as part of the Class 4 permitting process. Thus, Petitioners have fallen fall short of identifying any statute or rule DEQ violated when issuing the Class 4 Permit.

C. Petitioners Identify No Law That DEQ Violated During The Certification Process

Petitioners also attack the validity of the Certificate of Need by asserting that it was issued as a result of a “directive” from the Division to the District. Petitioners’ Request for Rehearing at ¶¶ 22-27. It is unclear what Petitioners’ argument is. Petitioners do not identify any law defining what constitutes a “directive,” and Petitioners identify no law that prohibits DEQ from acting in the manner Petitioners describe. Because Petitioners do not identify any applicable legal requirement that DEQ arguably violated, their claim should be dismissed. Moreover, Petitioners’ argument is a collateral attack on the Certificate of Need and is time barred and outside the scope of the DEQ’s permitting jurisdiction as explained in Part II.A.

III. PETITIONERS’ CLAIM THAT THE PERMIT DOES NOT ADDRESS THEIR CONCERNS IDENTIFIES NO VIOLATION OF APPLICABLE LAW

Finally, Petitioners assert that the permit issued by DEQ did not address Petitioners’ concerns, such as odor and spreading mud on roads. Petitioners’ Request for Rehearing at ¶¶ 28-31.⁴ As noted above, the Class 4 Permit does in fact contain a multitude of site-specific restrictions

⁴ The remainder of Petitioners’ Request for Rehearing consists of requests for relief to which no response is required. As demonstrated in this Brief in Support of Motion to Dismiss and the DEQ’s Motion to Dismiss and Brief in Support as well, Petitioners’ Request for Hearing should be dismissed, and Petitioners are not entitled to any of the relief requested.

addressing these concerns and others. For purposes of this motion, however, Petitioners do not identify any applicable law within the permitting jurisdiction of DEQ that has been allegedly violated. Petitioners have (again) failed to satisfy the test outlined in *Big River Steel, LLC*, and reaffirmed in *Eco-Friendly Materials, LLC*, and their Request for Rehearing should therefore be dismissed.

CONCLUSION

The Commission's long-standing rules governing requests for hearing of DEQ's permitting decisions require that requests contain basic information regarding the applicable law that was violated so that the Commission, DEQ, and in this case the permittee, understand what factual and legal issues are in dispute. The Petitioners have failed to satisfy that threshold requirement and their Request for Hearing should be dismissed pursuant to Arkansas Code Annotated § 8-4-205(b)(3) and Commission Rule 8.603(C)(1)(c).

Respectfully submitted,

QUATTLEBAUM, GROOMS & TULL PLLC
111 Center Street, Suite 1900
Little Rock, Arkansas 72201
Telephone: (501) 379-1700
Facsimile: (501) 379-1701
cchiles@qgtlaw.com
mheister@qgtlaw.com
sbolden@qgtlaw.com

By: /s/ Michael B. Heister
E. B. Chiles IV (96179)
Michael B. Heister (2002091)
Sarah Keith-Bolden (2007235)

Attorneys for Eco-Vista, LLC

CERTIFICATE OF SERVICE

I, Michael Heister, hereby certify that a copy of the foregoing has been served by first-class regular mail and email to the following parties of record this 16th day of May 2023.

Richard Mays
Richard Mays Law Firm, PLLC
2226 Cottondale Ln., Ste. 210
Little Rock, AR 72202
(501) 891-6116
njackson@richmayslaw.com

Ross Noland
Noland Law Firm
P . O. Box 251402
Little Rock, AR 72225
(501) 541-7374
Ross@NolandFirm.com

Lisa Thompson
Mark Robinette
Division of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
(501) 682-0888
(501) 682-0798
lisa.m.thompson@adeq.state.ar.us
robinette@adeq.state.ar.us

/s/ Michael B. Heister
Michael B. Heister



Doc ID: 018094870002 Type: REL
Kind: RESOLUTION
Recorded: 07/05/2018 at 11:00:43 AM
Fee Amt: \$20.00 Page 1 of 2
Washington County, AR
Kyle Sylvester Circuit Clerk

File **2018-00019560**

RESOLUTION NO. 2018-07-797-R
CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

A RESOLUTION BY THE CITY OF TONTITOWN TO ACCEPT THE LOCATION OF THE PROPOSED EXPANSION OF THE ECO-VISTA CLASS I AND CLASS 4 LANDFILL SUBJECT TO THE FILING, REVIEW, APPROVAL AND ISSUANCE OF A LARGE SCALE DEVELOPMENT PERMIT ALONG WITH APPROPRIATE ZONING.

WHEREAS, Eco-Vista, LLC (“Eco-Vista”) owns and operates the Eco-Vista Class 1 and Class 4 Landfill which is located within the municipal limits of the City of Tontitown, Arkansas pursuant to Solid Waste Permit No. 0290-S1-R3 and AFIN 72-00144 issued by the Arkansas Department of Environmental Quality (the “Landfill”);

WHEREAS, Eco-Vista desires to expand the Class 1 Landfill by approximately 7.1 million cubic yards capacity, and expand the Class 4 Landfill by approximately 1.2 million cubic yards capacity, including the development of land located adjacent to the Landfill;

WHEREAS, Boston Mountain Solid Waste District has recommended the issuance of a Certificate of Need for the expansion of Phase 1 of the Class 1 Landfill and the expansion of the Class 4 Landfill on May 10, 2018;

WHEREAS, the City of Tontitown is a Host Community for the purposes of Arkansas Department of Environmental Quality Regulation 22.204;

WHEREAS, the City of Tontitown has adopted a comprehensive land use plan, including zoning and development regulations, and is in the process of revising its comprehensive land use plan in order to provide for the appropriate development and growth within the City of Tontitown, including the appropriate location of a landfill operation; and

WHEREAS, subject to the filing, review, approval and issuance of a permit for a large-scale development, along with the appropriate zoning, for the Landfill expansion in order to address the appropriate infrastructure, including roads, required to serve the Landfill, the City of Tontitown desires to set forth its approval of the geographic location of the Landfill.

EXHIBIT


1

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF TONTITOWN,
WASHINGTON COUNTY ARKANSAS:**

1. Subject to the filing, review, approval and issuance of a permit for a large-scale development, along with appropriate zoning, for the Landfill expansion in order to address the appropriate infrastructure, including but not limited to roads, and other related impacts to the surrounding community, which are required to serve the Landfill, the City of Tontitown hereby sets forth its approval of the geographic location of the Landfill.


PASSED and APPROVED this 3RD day of July, 2018

APPROVED:



Paul Colvin, Jr., Mayor

ATTEST:



Rhonda Ardemagni, City Recorder-Treasurer
(SEAL)





Boston Mountain
SOLID WASTE DISTRICT

June 13, 2018

ADEQ
c/o Maria Matoska
5301 Northshore Drive
North Little Rock, AR 72118-5317

**Subject: Certificate of Need Petition Class 4 Landfill
Eco-Vista Class 4 Landfill, Tontitown, Arkansas**

Dear Ms. Matoska,

Please let this confirm that on May 10, 2018 the Boston Mountain Regional Solid Waste Management District, Board of Directors (Board) met to consider the petition for a certificate of need to expand the Class 4 Landfill at Eco-Vista 12 acres. After a public hearing and consideration of application information and staff recommendations, the Board determined that the proposed petition should be approved and voted to do so.

In its determination, the Board made the specific determination that expansion proposal did fall within the District's regional solid waste management plan. Further, the Board found that the petition met the required criteria set forth in the District's Rules and Regulations.

Please contact me if you have questions or would like to discuss this action.

Sincerely,

Robyn Reed
Director
Boston Mountain Regional
Solid Waste Management District

cc: David Conrad, Waste Management

EXHIBIT
2

BEFORE THE ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

IN THE MATTER OF:)
)
) Docket No: 23-009-P
FINAL PERMIT DECISION FOR)
ECO-VISTA, LLC, CLASS 4 LANDFILL)
PERMIT NO. 0290-S4-R2)

MOTION TO DISMISS

Permittee Eco-Vista, LLC, (“Eco-Vista”) hereby moves to dismiss the request for hearing filed by Mayor Angie Russell and the City of Tontitown, the “City,” in the above-captioned docket, and in support of this motion states as follows:

1. On March 17, 2023, the Arkansas Department of Energy and Environment, Division of Environmental Quality (“DEQ”) issued its Final Permit Decision for Eco-Vista, LLC, Class 4 Landfill, Permit No. 0290-S4-R2 (the “Class 4 Permit”).

2. On April 17, 2023, the City filed a Request for Hearing and Adjudicatory Review (“Request for Hearing”) pursuant to Arkansas Pollution Control and Ecology Commission (“Commission”) Rule 8.

3. Eco-Vista moves the Commission to dismiss the City’s Request for Hearing because it is not timely as required by Arkansas Code Annotated § 8-4-205(b)(1) and Commission Rule 8.603(B)(2).

4. A Brief in Support of this Motion has been filed with the Commission and is incorporated by reference.

WHEREFORE, for the reasons stated above, Eco-Vista respectfully requests that its Motion to Dismiss be granted and moves for all other relief to which it may be entitled.

Respectfully submitted,

QUATTLEBAUM, GROOMS & TULL PLLC
111 Center Street, Suite 1900
Little Rock, Arkansas 72201
Telephone: (501) 379-1700
Facsimile: (501) 379-1701
cchiles@qgtlaw.com
mheister@qgtlaw.com
sbolden@qgtlaw.com

By: /s/ Michael B. Heister
E. B. Chiles IV (96179)
Michael B. Heister (2002091)
Sarah Keith-Bolden (2007235)

Attorneys for Eco-Vista, LLC

CERTIFICATE OF SERVICE

I, Michael Heister, hereby certify that a copy of the foregoing has been served by first-class regular mail and email to the following parties of record this 16th day of May 2023.

Richard Mays
Richard Mays Law Firm, PLLC
2226 Cottdale Ln., Ste. 210
Little Rock, AR 72202
(501) 891-6116
njackson@richmayslaw.com

Ross Noland
Noland Law Firm
P . O. Box 251402
Little Rock, AR 72225
(501) 541-7374
Ross@NolandFirm.com

Lisa Thompson
Mark Robinette
Division of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
(501) 682-0888
(501) 682-0798
lisa.m.thompson@adeq.state.ar.us
robinette@adeq.state.ar.us

/s/ Michael B. Heister
Michael B. Heister

The Class 4 Permit Modification Application was the result of a multi-year process. In 2018, Eco-Vista applied to the Boston Mountain Solid Waste District (the “District”) for a “Certificate of Need” as required by Commission Rule 22.205(b)(2), and the resulting certificate was included in the Class 4 Permit Modification Application. On July 3, 2018, the City Council also adopted Resolution 2018-07-7970-R, approving the proposed landfill expansion pursuant to “Arkansas Department of Environmental Quality Regulation 22.204.” This too was provided to DEQ as part of the Class 4 Permit Modification Application.

On March 17, 2023, DEQ issued its Final Permit Decision for Eco-Vista, LLC, Class 4 Landfill, Permit No. 0290-S4-R2 (the “Class 4 Permit”). *See* Exhibit 1. The Class 4 Permit that DEQ issued authorizes the disposal of bulky, inert, non-putrescible solid waste as defined by Commission Rule 22. Class 4 Permit, Site Specific Conditions at ¶ 4. It requires implementation of a detailed Operating Plan (Doc Id. 80453) and requires Eco-Vista to comply with all of the operating requirements of Rule 22. *Id.* at ¶ 9. The City filed its Request for Hearing on April 17, 2023, thirty-one calendar days after the Class 4 Permit was issued. *See* Exhibit 2.

LEGAL BACKGROUND

Arkansas law provides that “[o]nly those interested persons, other than the applicant, that have submitted comments on the record regarding a proposed permit action during the public comment period shall have standing to request a hearing by the commission in connection therewith, upon written application made within thirty (30) days after the date of the Division of Environmental Quality’s final decision regarding the permit action.” Ark. Code Ann. § 8-4-205(b)(1). Commission Rule 8.603(B)(2) likewise provides that, “[a]n applicant or permittee seeking review of a permitting decision must file a Request for Hearing within thirty (30) calendar

days after the date of issuance of the Director’s final decision as provided in Reg.8.211(B)(1).” (emphasis added).

ARGUMENT

The City’s Request for Hearing was not filed within thirty calendar days of issuance of the Director’s final decision as required by Commission Rule 8.603(B)(2) and is therefore time barred. *See* Exhibits 1, 2. The Administrative Law Judge (“ALJ”) squarely addressed this in another proceeding. *See In the Matter of Elemental Environmental Solutions, LLC*, Docket No. 20-004-P, Order No. 8 at 7-8. In that docket, the ALJ ruled that a party challenging a permit must include weekends when calculating the deadline by which a permit challenge must be filed and should file on the weekend if doing so is necessary to file within the thirty-day window provided by statute and rule. *Id.* The ALJ specifically identified Rule 8.606(E), which authorizes email and fax filing, as authorizing parties to file at night and on weekends if necessary to comply with a deadline. *Id.* The Commission adopted the ALJ’s recommendation in Minute Order 21-10, passed March 26, 2021.

In this proceeding, DEQ issued its notice of its final permitting decision on March 17, 2023. *See* Exhibit 1. Thirty calendar days from March 17, 2023, is April 16, 2023. The City filed its Request for Hearing on April 17, 2023. *See* Exhibit 2. That is outside the thirty calendar days allowed under Rule 8.603(B)(2), and the Commission is bound by its own rules. *See City of Benton v. Ark. Soil & Water Conservation Comm’n*, 345 Ark. 249, 255, 45 S.W.3d 805, 809 (2011). The City’s Request for Hearing must therefore be dismissed.

CERTIFICATE OF SERVICE

I, Michael Heister, hereby certify that a copy of the foregoing has been served by first-class regular mail and email to the following parties of record this 16th day of May 2023.

Richard Mays
Richard Mays Law Firm, PLLC
2226 Cottondale Ln., Ste. 210
Little Rock, AR 72202
(501) 891-6116
njackson@richmayslaw.com

Ross Noland
Noland Law Firm
P . O. Box 251402
Little Rock, AR 72225
(501) 541-7374
Ross@NolandFirm.com

Lisa Thompson
Mark Robinette
Division of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
(501) 682-0888
(501) 682-0798
lisa.m.thompson@adeq.state.ar.us
robinette@adeq.state.ar.us

/s/ Michael B. Heister
Michael B. Heister

NOTICE OF FINAL PERMITTING DECISION

Class 4 Permit Expansion

Date of Decision: March 17, 2023

AFIN: 72-00144; Permit No. 0290-S4-R2

Eco-Vista, LLC
2210 Waste Management Drive
Springdale, Arkansas 72762



SCAN ME

The Director has issued a final permitting decision for the above referenced permit. The Director's decision was made upon consideration of the completed application, the public comments on the record, and other materials provided by law or regulation applicable to the application.

Effective March 17, 2023, the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ) has approved the application for a Class 4 Permit Expansion pursuant to Arkansas Pollution Control and Ecology Commission (APC&EC) Rule 22 for Permit No. 0290-S4-R2 and AFIN 72-00144. A Statement of Basis for the decision and DEQ's Response to Comments is available on DEQ's website at www.adeq.state.ar.us/downloads/WebDatabases/SolidWaste/PermittedFacilities/GenDocs/83496.pdf. To request a copy of the documents please call 501-682-0865.

The applicant and any person who submitted public comments on the record may request an adjudicatory hearing and Commission review of the final permitting decision as provided by APC&EC Rule 8, Chapter 6.

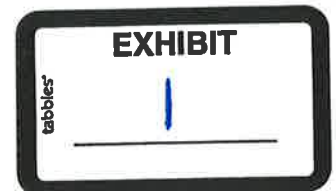
I, Karen Blue, hereby certify that this NOTICE OF FINAL PERMITTING DECISION issued on March 17, 2023, has been mailed by first class mail to the addressee of this post card.

Karen Blue



DIVISION OF ENVIRONMENTAL QUALITY

5301 NORTHSORE DRIVE
NORTH LITTLE ROCK, AR 72118-5317



Lisa Thompson (adpce.ad)

From: Patricia Goff (adpce.ad)
Sent: Tuesday, May 2, 2023 11:20 AM
To: Lisa Thompson (adpce.ad)
Subject: FW: Permit Appeal
Attachments: Tontitown Request for Hearing.pdf

FYI

From: Ross Noland [mailto:ross@nolandfirm.com]
Sent: Monday, April 17, 2023 12:28 PM
To: PCE Filings
Cc: Patricia Goff (adpce.ad)
Subject: Permit Appeal

Ms. Goff-

Please accept the attached petition for review.

If you will, please send me an email confirming receipt (or letting what else I need to do!).

Thank you for your assistance,

Ross Noland

--
Ross Noland
Noland Law Firm
P.O. Box 251402
Little Rock, AR 72225
(501) 541-7374
Ross@NolandFirm.com

