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# Trafalgar Road/Stump Dump Site/Fredericks Construction Company, Inc., Administrative Order: Bella Vista Village Property Owners Association Files Arkansas Pollution Control and Ecology Commission Request for Hearing

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The Bella Vista Property Owners Association (“POA”) filed a November 19th pleading before the Arkansas Pollution Control and Ecology Commission (“Commission”) titled:

*Request for Hearing and to Set Aside Administrative Order (“Request”)*

The POA asks that the Commission conduct an adjudicatory hearing to review an Administrative Order (“AO”) (No. 19-080) issued by the Division of Environmental Quality 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 what is referenced as a “stump, brush, rock, concrete and dirt dump.”

The Site suffered an underground fire which is the subject of a Division of Environmental Quality (“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.

The POA’s *Request* challenges the AO subsequently entered into between DEQ and Fredericks related to the Site. It asks that the Commission conduct an adjudicatory hearing to review issues of law and fact related to the Fredericks Administrative Order, arguing the Order:

1. Rewrites and contradicts a final Administrative Order entered into by the POA and DEQ in which the parties agreed that the POA would perform a scope of remedial work to extinguish the fire and remediate the Site under the Arkansas Remedial Action Trust Fund Act
2. Absolves Fredericks of liability related to the Site at the expense of the POA which is actively litigating the exact issues against Fredericks that are the subject of the Fredericks Administrative

Order in the Circuit Court of Benton County, Arkansas, Macomber et al. v. Samuel Care Enterprises d/b/a Brown's Tree Care, Thomas Fredericks, the POA, et al., Case No. 04CV-18-3332

3. Includes unsupported Findings of Fact and erroneous Conclusions of Law that lack a sufficient basis in the record to be the subject of a final agency action
4. Sets a new precedent in Arkansas environmental law that will discourage parties from assuming responsibility and expending their own private funds on remediation at environmental sites identified by DEQ

Legal issues put forth by the *Request* include:

- The Fredericks Administrative Order contradicts the POA Administrative Order and violates Arkansas law by redefining remedial action under RATFA.
- The Fredericks Administrative Order attempts to absolve Fredericks of liability despite DEQ's promise to support the POA's efforts to recoup remediation costs and the POA's claim seeking contribution for remediation costs from Fredericks in Macomber.
- The Fredericks Administrative Order redefines hazardous waste in contravention of RATFA and the POA Administrative Order.
- The Fredericks Administrative Order contains unsupported pronouncements of fact and law.
- The Fredericks Administrative Order will discourage private parties from expending their own funds and working cooperatively with DEQ to remediate an environmental sites under RATFA.

The *Request* asks that the Commission set aside the Fredericks AO and bind DEQ to abide by its AO with the POA.

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