Washington County Open-Cut Mining Facility: Arkansas Department of Energy & Environment - Division of Environmental Quality Motion to Dismiss Request for Hearing

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As noted in a February 20th post several Requests for Hearings were filed before the Arkansas Pollution Control & Ecology Commission ("Commission") addressing an application seeking to modify a permit for an open-cut mining operation in Washington County, Arkansas.

The Requests for Hearing address the application filed by Eco-Friendly Materials, LLC, ("EFM").

The referenced permitting decision is styled Permit No. 0798-MN-A1.

The Requests for Hearing specifically address what is described as an increased acreage of the permit area from 80 to 160 acres.

The Arkansas Department of Energy & Environment – Division of Environmental Quality ("DEQ") has filed Motions to Dismiss addressing several of the Requests for Hearing.

Issues raised in DEQ's Motions to Dismiss include the argument that the petitioner failed to preserve standing to request an adjudicatory hearing. This is based on the argument that the petitioner did not comment within the 30-day public comment period of the DEQ draft permitting decision addressing the EFM facility. Commission Rules 8.207, 8.208, 8.214, 8.601(C) and 8.613(B)(3) are cited.

DEQ's arguments also include an allegation that the Requests for Hearing fail to provide the legal and factual basis as required by Commission Rule 8.603(C)(1)(c). In other words, DEQ argues that the petitioner failed to allege that the agency's permitting decision violated certain rules or regulations applicable to the permitting action.

Finally, DEQ has argued that issues that were not addressed in the public comments, as required by Commission Rule 8.613(b)(5), were raised in the Requests for Hearing. Specifically, DEQ is alleging that the petitioners have put forth alleged deficiencies in terms of the rule of law that were not discussed in the comments that had been filed during the public-comment period.

A copy of one of the DEQ Motions to Dismiss can be downloaded here.