

**BEFORE THE ARKANSAS COMMISSION ON
POLLUTION CONTROL AND ECOLOGY**

IN THE MATTER OF:

DOCKET NO: _____

**ECO-VISTA LANDFILL – CLASS 4
NPDES Permit No.0290-S-R2
AFIN: 72-00144**

**REQUEST FOR
ADJUDICATORY HEARING AND COMMISSION REVIEW**

1. Pursuant to Ark. Code Ann. 8-4-205(B)(1) and (2) and APCEC Regulation No. 8.601 and 8.603, the following individuals, by their attorney, Richard H. Mays of Richard Mays Law Firm, PLLC, hereby requests an adjudicatory hearing and the opportunity to present evidence and oral argument before the Arkansas Commission on Pollution Control and Ecology (the "Commission") regarding the decision of the Director of the Arkansas Department of Energy and Environment, Division of Environmental Quality (herein, "DEQ") (or the Director's delegated officer) dated March 17, 2023, to grant and issue Permit No. 0290-S4-R2 ("the Permit"), for the expansion of the Eco-Vista Landfill ("the Landfill) in or near the City of Tontitown, Washington County, Arkansas, for the reasons enumerated below (the "Appeal").

2. The parties who join in this Petition (herein, "the Petitioners") are those named in the attached Addendum.

3. Each of the Petitioners on behalf of whom this Request is filed submitted comments to DEQ during the authorized comment period established by DEQ for submission of official comments on the draft permit as required for standing to file this Request pursuant to Ark. Code Ann. 8-4-205(B)(1) and (2) and APCEC Regulation No. 8.601 and 8.603. Each such comments

addressed some, if not all, of the legal issues and factual objections being appealed as required by said statute and Regulations.

4. Pursuant to Commission Regulation 8.603(B)(1), this Request has been filed on behalf of the persons named in the Addendum within thirty (30) days of the date of the permitting decision made by the Director (or his delegated officer), which was March 17, 2023.

General Background

5. Eco-Vista Landfill, LLC (“EVL”) owns and operates a large Landfill on some 609 acres of land in Washington County, Arkansas, near the incorporated town of Tontitown. Within that Landfill, there exists an active Class 1 landfill, a closed Class 1 landfill, an active Class 4 landfill, a closed Class 4 landfill, a composting facility, and various support facilities including a landfill office, entrance/scale facilities, vehicle/equipment maintenance facilities, borrow areas, surface water management systems, and other waste processes and equipment.

6. The active Class 4 landfill is the operation for which a renewal permit for expansion of the Landfill was issued by DEQ on March 17, 2023, under NPDES Permit No. 0290-S-R2. It is this renewal permit for which this Petition for Adjudicatory Hearing and Commission Review is sought.

7. The Class 4 landfill was initially permitted on April 16, 1997 in a proceeding in which, after public notice of the filing of the application by the then-owner, Sunray, for authority to construct and operate the landfill, no comments were submitted by the public. At that time, the landfill was in a sparsely populated area, and few people were affected by it.

8. In the intervening years since 1997, northwest Arkansas (including Washington and Benton Counties) have seen and continue to experience some of the most explosive growth of any area in the United States. As population in those two counties has rapidly and steadily

expanded, the landfill is now located in an increasingly populated area, with numerous residences surrounding the general landfill area. That growth is projected to continue without abatement for years to come.

9. During the intervening years from 1997 to the present, the landfill has also expanded rapidly as waste products from the increasing population and construction have made significant demands upon the landfill and its capacity to handle additional wastes. In addition, the record on DEQ's website clearly establishes that the landfill has experienced significant and troubling problems in managing and containing the emission of air and water pollutants from the facility, creating conditions that are physically and mentally unbearable and potentially harmful to the health and safety of persons who live in the general proximity of the landfill, and to birds and other animals in the vicinity, and to trees and other vegetation.

10. Based upon the records of DEQ relative to this Class 4 landfill and the Class 1 landfill in the EVL complex, the landfill has reached its capacity, or is very close to doing so. That capacity is the cause of many complaints from the public and also from DEQ as evidenced by the inspection reports that appear in the record.

11. This Appeal is taken from the Permit Decision of the Director based upon the issues more particularly described below. Petitioners request an adjudicatory hearing and Commission review with respect to the Permit Decision, as more particularly described in the specific issues enumerated below and based upon the process contained in Commission Regulation 8.

12. Petitioners request that the Commission find that: (i) the Permit Decision is contrary to the Commission's rules and its governing statutory authority; (ii) that DEQ has failed to provide an adequate written explanation of the rationale for the Permit Decision; that DEQ has failed to demonstrate that the Permit Decision was based upon generally accepted scientific knowledge

and engineering practices; and that DEQ has failed to address the issues raised and established by the Petitioners during the Comment period, all as required by Regulation No. 8, Section 8.211(A)(2).

Factual and Legal Matters Applicable to All Issues

1. DEQ Was Not Authorized by Law to Process EVL’s Application for Increased Landfill Acreage

13. Commission Rule 22.204 (a) (Host Community Approval of Site Selection) provides in relevant part as follows:

(a) Applicability and Scope – In accordance with A.C.A. §8-6-1501 et seq., a rebuttable presumption exists against permitting the construction or operation of any new landfill within twelve miles of an existing high-impact solid waste facility. [Here follows certain exceptions not relevant to this matter]

14. A “high-impact solid waste management facility” is defined in Rule 22.204(b)(1) as “any open or closed solid waste landfill. EVL is a “high-impact solid waste management facility.

Rule 22.204(c) (Division Action and Compliance Requirements) further provides:

The Division shall not process any pre-application for a new or increased landfill acreage or an application for increased landfill capacity until definitive findings in conformance with this section have been provided by the host community and accepted by the Division. Acceptance or denial of landfill siting by the host community shall be by formal resolution of the governing body of the host community.

15. The “host community” in regard to EVL is the City of Tontitown, Washington County, Arkansas. The governing body of the City of Tontitown has not officially approved EVL’s proposed increased landfill acreage or an application for increased landfill capacity. The resolution by the City of Tontitown in July 2018 referred to in Sec. 2.0 of EVL’s Application is not an unconditional approval of the proposed expansion, and the 2020 Ordinance rezoning approximately 417.1 acres of EVL property to an exclusive use-landfill zoning classification is

also not an unconditional approval of the proposed expansion. The City of Tontitown has not provided a definitive acceptance of the proposed expansion by formal resolution in satisfaction of Rule 22.204(c).

2. The Certificate Of Need Supporting EVL's Application For Expansion Was Not Valid

16. In EVL's Application for Permit Modification of the Class 4 Landfill, it is stated in relevant part in Section 2.1 (Certificate of Need for Landfills and Transfer Stations (§22.305)):

A notice of intent (NOI) to apply for a CON [Certificate of Need] was submitted to the Boston Mountain Solid Waste District on January 22, 2018. The CON petition was submitted to the district on March 16, 2018, and a public hearing was held on April 18, 2018. The CON was approved by the district on May 10, 2018 (DIN 73979). The rules and regulations of the district require the submittal a [sic] permit application for a solid waste landfill permit to DEQ within 6 month of receipt of a CON. In August 2018, the district issued an extension on this timeline until July 6, 2020. In May, 2020, a second extension was granted by the district until July 6, 2021. Additionally, in May 2021, Eco-Vista submitted a request to the district regarding alternative designs or equivalencies as allowed by Regulation No. 22. The district approved the request from Eco-Vista. The NOI, CON petition, and district letters are included in Appendix D.

17. It should be noted that the original application for a CON was made by EVL in January 2018, and the CON was issued by the Boston Mountain Waste Management District ("the District") on May 10, 2018. The Application for the modification of the permit in question was not submitted by the consultant for EVL until July 7, 2021, more than three years after the CON was issued to EVL by the District.

18. As EVL acknowledged in its Application (p. 2-2), the District's regulations require that the CON be submitted with a permit application to DEQ within *six (6) months* after the CON is issued. One reason for this requirement is that conditions relative to landfills that affect permitting change relatively rapidly. Consequently, there are no provisions in the District's regulation that authorize an extension of the six (6) month deadline for submission of the CON to

DEQ *with an application for a permit*. Yet, EVL's Application for Permit – filed July 7, 2021—acknowledges that two extensions of the CON were issued to EVL by the District increasing the effective date to July 6, 2021 – the day before the Application was received at DEQ, according to DEQ's digital stamp. Even assuming the CON was otherwise valid, it was not received by DEQ within the time for which it was valid based upon the District's extension of the CON to July 6, 2021. All of the extensions were unauthorized and in excess of the authority of the District to issue as extensions were not authorized by the District's regulations nor Commission Regulation 22.

19. Without waiving any of the foregoing objections, to the extent that the City of Tontitown did issue any approval, or what might be deemed an approval of EVL's Application for expansion of the Class 4 landfill, that approval was withdrawn prior to a decision having been made, and during the official public comment period on the draft permit. That withdrawal of approval was in the form of Resolution No. 2022-11-1017R, dated November 3, 2022, a copy of which was submitted to DEQ. A second Resolution of similar import, Resolution No. 2023-01-1027R, was also adopted by the City of Tontitown on January 3, 2023, and also provided to DEQ. A copy of Resolution No. 2022-11-1017R is attached to this Request as **Exhibit No. 1**, and a copy of Resolution No. 2023-01-1027R is attached to this Request as **Exhibit No. 2**.

20. Furthermore, EVL's Permit Application also states in Section 2.1, p. 2-2, regarding the CON, that:

Additionally, in May, 2021, Evo-Vista submitted a request to the district regarding *alternative designs or equivalencies* as allowed by Regulation 22. The district approved the request from ECO-Vista. (Italics added)

21. EVL's request to the District regarding alternative designs or equivalencies are substantial modifications to the scope of the CON, and no public notice or opportunity to submit

comments on those designs or equivalencies was issued by EVL or the District. The District's approval of the CON was therefore void.

3. The Certificate of Need Issued by The Waste Management District Was A Result of a Directive by the Department.

22. On January 22, 2018, a letter was issued to Ms. Annette Cusher of DEQ from Carl Simmons, Senior District Manager of EVL and David Conrad, Engineering Manager of EVL, advising DEQ that EVL was in the process of obtaining a CON from the District for the proposed modification of the Class 4 EVL landfill in Tontitown. The letter further states that the District rules require that any applicant for a CON obtain "confirmation from ADEQ that the applicant has requested a statement concerning the current and proposed solid waste landfill disposal capacity respective to the area and landfill class being proposed," citing Section 7.01(f) of the District Rules.

23. In the January 22, 2018 letter, EVL requested that DEQ issue a statement "addressing this disposal capacity issue." EVL then inserted the following paragraph in that letter:

To assist you in your statement, the Eco-Vista Landfill facility in Tontitown is the only permitted Class 4 Landfill available within the District and northwest Arkansas. As of January 1, 2018, the Eco-Vista Class 4 Landfill has a total remaining permitted capacity of approximately 955,000 cubic yards. At the current fill rate, this capacity will provide the District with approximately 8 years of capacity. Therefore, Eco-Vista Landfill believes that the District is facing a complete lack of construction and demolition debris disposal capacity without a modification of the Eco-Vista facility. (Italics Supplied)

24. A copy of the January 22, 2018 letter from EVL to DEQ is attached to this Request as

Exhibit No. 3.

25. On February 7, 2018, DEQ, writing through Maria Matoska, Permit Engineer assigned to the EVL Class 4 landfill permit, issued a letter to Robyn Reed, Director of the District. The letter first quoted the District Rule 7.01(f) (cited in the EVL letter to DEQ above), and then stated:

The Eco-Vista Landfill facility in Tontitown is the only permitted Class 4 Landfill available within the District and northwest Arkansas. As of January 1, 2018, the Eco-Vista Class 4 Landfill has a total remaining permitted capacity of approximately 955,000 cubic yards. At the current fill rate, this capacity will provide the District with approximately 8 years of capacity. Therefore, Eco-Vista Landfill believes that the District is facing a complete lack of construction and demolition debris disposal capacity without a modification of the Eco-Vista facility.

26. The DEQ letter of February 7, 2018 to the District is attached to this Request for Hearing as **Exhibit No. 4**.

27. The paragraph quoted above is a *verbatim* copy of the paragraph that was contained in the EVL letter to DEQ “to assist” [DEQ]” in preparing its statement to the District. Instead of submitting a simple statement to the effect that “DEQ has requested that EVL apply for a CON from the District,” the letter from DEQ is an advocacy piece on behalf of EVL that is a directive to the District to issue the CON. The CON should be voided, and the draft Permit that is based upon the CON should likewise be voided.

4. The Proposed Permit Does Not Address Issues Raised by the Petitioners’ Comments

28. The comments submitted by the Petitioners herein addressed the following issues (in no order of priority):

- (a) Air contamination in the form of putrescent odors/fumes from the landfill;
- (b) Air contamination in the form of sickening odors/fumes from chemicals used at the landfill causing respiratory distress, headaches and other health problems, death to birds in the landfill and surrounding areas, and to trees and other vegetation;
- (c) Contamination of surface waters from leakage of the landfill;
- (d) Spread of debris from the landfill to adjoining properties;
- (e) Consistent tracking of mud and dirt from the landfill onto the adjoining roads;
- (f) Spillage of nails and other objects onto the highways that cause flat tires, cracked windshields and other vehicular damage;

(g) Increase in vectors at the landfill and the adjoining areas;

29. These problems have been existent for many years, and the Petitioners and other members of the public who reside in the general vicinity of the Landfill have complained to EVL and to DEQ during that time, often without any result. The problems are, to a degree, operational, but they are also systemic and worthy of being addressed in the permit renewal process.

30. The proposed Permit does not do so. The only portion of the Final Permit that comes close to mentioning these problems is on page 3 of 10 of the Permit, in a lengthy paragraph relating to the type of waste materials that may be disposed of in the Landfill as extended by the Permit. It states that only bulky inert, non-putrescible Class 4 solid waste, such as non-compostable wood wastes (tree trunks, stumps, demolition and construction debris, shredded or processed tires, and furniture) may be disposed of in the landfill. “Hazardous and/or toxic waste materials, liquid or semi-liquid wastes, household wastes of any kind, putrescible waste, paper wastes” are not authorized for disposal.

31. These are essentially the same wastes that were authorized or not authorized for disposal in the Landfill under previous Class 4 permits. However, the problems that have existed with the Landfill indicate that materials other than inert, non-putrescible Class 4 solid waste have been deposited in the Landfill, and are reacting through contact with other wastes, water and decay to cause noxious odors, gasses, and debris to emanate from the Landfill.

32. Pursuant to Commission Regulation 8.211, which authorizes the Director to impose special conditions upon the issuance of a permit, the Permit should be used as a vehicle to

address the long-standing and well-known problems described above by requiring EVL to take additional measures to ensure that:

- (i) the materials placed in the proposed extension are only those within the Class 4 wastes;
- (ii) wastes placed in the Landfill remain there (not blown out);
- (iii) adequate cover is placed on the wastes at a more frequent interval than once a week;
- (iv) vehicles leaving the Landfill do not track mud and other dirt materials onto the roads and highways in the area; and
- (v) reduce or eliminate the presence of vectors at and around the Landfill.

33. Regarding the long-standing and well-known odor/gas problems, the Permit should also require EVL to:

- a. conduct a study by a qualified independent contractor of the cause of the odors that are being released from the existing Landfill;
- b. propose a plan to DEQ to remediate the existing Landfill to prevent the continued release of odors, with the Petitioners allowed to comment on the Plan;
- c. implement the remediation plan approved by DEQ and Petitioners.

34. Under Arkansas Code § 8-4-205(c)(6)(B) and APC&EC Regulation 8.612(A)(2), the issuance of the Permit at issue is automatically stayed. However, in a letter of March 28, 2023, Promus Engineering, a contractor of EVL, notified Ms. Annette Cushner, P.C., of DEQ of a construction schedule for construction of Cell 8A at the Eco-Vista Class 4 Landfill. In that letter, Promus gave notice that it proposed to commence construction on a 5.5 acre compacted clay

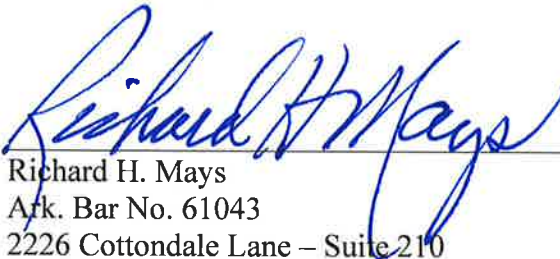
bottom liner and leachate collection system for Cell 8A on April 1, 2023, and complete the construction in approximately July 2023. A copy of the Promus letter to DEQ dated March 28, 2023, is attached to this Request as **Exhibit No. 5**.

35. EVL should be ordered to cease or refrain from any activities, such as construction, on implementing the Final Permit until final review of the Permit is obtained.

36. A copy of the Request for Hearing is being served on all appropriate parties identified in Regulation 8.603(C)(1)(a)-(e).

Respectfully submitted,

RICHARD MAYS LAW FIRM PLLC

A handwritten signature in blue ink that reads "Richard H. Mays". The signature is written in a cursive style and is positioned above a horizontal line.

Richard H. Mays
Ark. Bar No. 61043
2226 Cottdale Lane – Suite 210
Little Rock, AR 72202
Tel: 501-891-6116
Email: rmays@richmayslaw.com
njackson@richmayslaw.com

CERTIFICATE OF SERVICE


I, Richard H. Mays, hereby certify that, on the date set forth below, I served the foregoing document upon the following persons by depositing same in the U.S. Postal Service, via regular mail:

Director, Division of Environmental Quality
Department of Energy & Environment
5301 Northshore Drive
North Little Rock, Arkansas 72118

EcoVista Landfill
2210 Waste Management Drive
Springdale, Arkansas 72762

Mayor, City of Tontitown
235 East Henri De Tonti Blvd.
Tontitown, Arkansas 72762

Dated: April 14, 2023


Richard H. Mays

ADDENDUM

ADDENDUM

- Nina Brown
- Brandt Burress
- Jacqui Calcagni
- Mark Calcagni
- Mikaila Calcagni, MD
- Dale and Theresa Cleveland
- David and Renee Etchison
- Fern Etchison
- Jacob Etchison
- Daryle “Russ” Greene, RN
- Greg and Darlene Humphries
- Kenneth Lovett
- Danielle and Heston McFatrige
- Glen Odglen
- Marty and Karen Phillips
- Donna Pianalto
- Mayor Angela Russell
- Kelly and Kim Young

EXHIBIT 1

RESOLUTION NO. 2022-11-1017R

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

A RESOLUTION EXPRESSING THE INTENT OF THE TONTITOWN CITY COUNCIL RELATED TO THE ECO-VISTA CLASS 1 AND 4 LANDFILL EXPANSIONS IN THE CITY OF TONTITOWN, ARKANSAS.

Doc ID: 020822870002 Type: REL
Kind: RESOLUTION
Recorded: 11/03/2022 at 12:42:48 PM
Fee Amt: \$20.00 Page 1 of 2
Washington County, AR
Kyle Silvester Circuit Clerk
File 2022-00036021

WHEREAS, Eco-Vista, LLC (“Eco-Vista”) owns and operates a Class 1 and Class 4 Landfill (“Landfill”) which is located within the municipal limits of the City of Tontitown (“Tontitown”) and Tontitown has been considered a “Host Community” pursuant to Arkansas Department of Environmental Quality (“ADEQ”) Regulation 22.204 ; and

WHEREAS, Eco-Vista desires to expand the Class 1 and Class 4 Landfill and has been engaged in a process through the ADEQ for said expansion of the Landfill; and

WHEREAS, on July 3, 2018, the Tontitown City Council adopted Resolution No. 2018-07-797-R accepting the location of the proposed Landfill expansion; and

WHEREAS, on November 6, 2018, the Tontitown City Council adopted Resolution No. 2018-11-815R to approve a future land use and master street plan, called the “Vision Plan”, which identified the current Landfill site as a future use of “LE-Landfill Exclusive”; and

WHEREAS, on July 7, 2020, the Tontitown City Council adopted Ordinance No. 2020-7-892 to establish an Exclusive Use provide for a zoning district called “EU-L Exclusive Use-Landfill” which included various zoning regulations which would apply to any new landfill use in the City; and

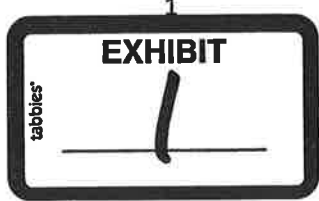
WHEREAS, on October 6, 2020, the Tontitown City Council adopted Ordinance No. 2020-10-900 to rezone approximately 417.1 Acres of the Landfill property from R-MH and R-1 zoning districts to EU-L, Exclusive Use-Landfill; and

WHEREAS, in the fall of 2021, the Landfill received Large Scale Development approval from the Tontitown Planning Commission for the Landfill expansion project; and

WHEREAS, since the approval of the above resolutions and ordinances, the Tontitown City Council has become aware of continuous problems and issues related to the Landfill operation that cannot be regulated by a municipality under Arkansas law, with such problems and issues affecting the health, safety and welfare of the residents surrounding the Landfill and others in the city; and

WHEREAS, the Tontitown City Council is aware that such problems and issues related to the Landfill operation which have occurred with regularity over the course of the past number of years include, but are not limited to, loud noises, debris, serious air quality concerns including noxious gases and odors, pollutants in the ground, water quality issues and other issues; and

WHEREAS, these problems and issues have been communicated to proper regulatory authorities and Eco-Vista by citizens and others, but to date have not been mitigated or addressed; and



15⁺ Resolution Passed

WHEREAS, the Tontitown City Council is aware that growth in the region and the city is robust and more people will be negatively impacted by increased Landfill operations; and

WHEREAS, the Tontitown City Council acknowledges that the city has become administratively burdened through the receipt of continuous complaints regarding Landfill operations; and

WHEREAS, the Tontitown City Council acknowledges that a municipality has a significantly limited role in the regulation of Landfill operations, but believes it is necessary to protect the health, safety and welfare of the citizens of Tontitown by affirming to regulatory authorities that the Tontitown City Council, to the extent possible, desires to express its belief that the approval of the expansion of the Landfill will be detrimental to the public health, safety and welfare; and

WHEREAS, the final decision for the expansion of the Landfill has not been made; and

WHEREAS, after thorough consideration of the above, the City Council has determined that the location of the Landfill expansion gives rise to concern for potential limitations to the City's opportunity for growth and desires to withdraw their support of the Landfill expansion in order to protect the best interest and benefit of the citizens of Tontitown.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Tontitown, Arkansas:

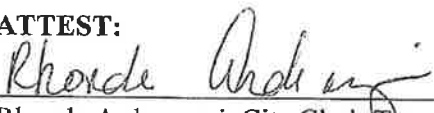
Section 1. It is hereby the express desire of the Tontitown City Council, for the reasons set forth above and to the extent possible, that the final approval of the Landfill expansion be denied, or in the alternative delayed until such issues which are negatively affecting the health, safety and welfare of the community can be investigated and addressed by the appropriate regulatory authorities.

Section 2. The Mayor or her designee is hereby authorized to bring this Resolution to the attention of the regulatory authorities and to provide information to such regulatory authorities as is requested or necessary.

APPROVED:


Angela Russell, Mayor

ATTEST:


Rhonda Ardemagni, City Clerk-Treasurer



Passed 11-2-22

EXHIBIT 2



Doc ID: 020913540002 Type: REL
 Kind: ORDINANCE
 Recorded: 01/05/2023 at 04:11:49 PM
 Fee Amt: \$20.00 Page 1 of 2
 Washington County, AR
 Kyla Sylvester Circuit Clerk

RESOLUTION NO. 2023-01-1027R

Fi. **2023-00000530**

TONTITOWN, WASHINGTON COUNTY, ARKANSAS

A RESOLUTION EXPRESSING THE INTENT OF THE TONTITOWN CITY COUNCIL RELATED TO THE ECO-VISTA CLASS 1 AND 4 LANDFILL EXPANSIONS IN THE CITY OF TONTITOWN, ARKANSAS.

WHEREAS, Eco-Vista, LLC (“Eco-Vista”) owns and operates a Class 1 and Class 4 Landfill (“Landfill”) which is located within the municipal limits of the City of Tontitown (“Tontitown”) and Tontitown has been considered a “Host Community” pursuant to Arkansas Department of Environmental Quality (“ADEQ”) Regulation 22.204 ; and

WHEREAS, Eco-Vista desires to expand the Class 1 and Class 4 Landfill and has been engaged in a process through the ADEQ for said expansion of the Landfill; and

WHEREAS, on July 3, 2018, the Tontitown City Council adopted Resolution No. 2018-07-797-R accepting the location of the proposed Landfill expansion; and

WHEREAS, on November 6, 2018, the Tontitown City Council adopted Resolution No. 2018-11-815R to approve a future land use and master street plan, called the “Vision Plan”, which identified the current Landfill site as a future use of “LE-Landfill Exclusive”; and

WHEREAS, on July 7, 2020, the Tontitown City Council adopted Ordinance No. 2020-7-892 to establish an Exclusive Use provide for a zoning district called “EU-L Exclusive Use-Landfill” which included various zoning regulations which would apply to any new landfill use in the City; and

WHEREAS, on October 6, 2020, the Tontitown City Council adopted Ordinance No. 2020-10-900 to rezone approximately 417.1 Acres of the Landfill property from R-MH and R-1 zoning districts to EU-L, Exclusive Use-Landfill; and

WHEREAS, in the fall of 2021, the Landfill received Large Scale Development approval from the Tontitown Planning Commission for the Landfill expansion project; and

WHEREAS, since the approval of the above resolutions and ordinances, the Tontitown City Council has become aware of continuous problems and issues related to the Landfill operation that cannot be regulated by a municipality under Arkansas law, with such problems and issues affecting the health, safety and welfare of the residents surrounding the Landfill and others in the city; and

WHEREAS, the Tontitown City Council is aware that such problems and issues related to the Landfill operation which have occurred with regularity over the course of the past number of years include, but are not limited to, loud noises, debris, serious air quality concerns including noxious gases and odors, pollutants in the ground, water quality issues and other issues; and

WHEREAS, these problems and issues have been communicated to proper regulatory authorities and Eco-Vista by citizens and others, but to date have not been mitigated or addressed;

and



WHEREAS, the Tontitown City Council is aware that growth in the region and the city is robust and more people will be negatively impacted by increased Landfill operations; and

WHEREAS, the Tontitown City Council acknowledges that the city has become administratively burdened through the receipt of continuous complaints regarding Landfill operations; and

WHEREAS, the Tontitown City Council acknowledges that a municipality has a significantly limited role in the regulation of Landfill operations, but believes it is necessary to protect the health, safety and welfare of the citizens of Tontitown by affirming to regulatory authorities that the Tontitown City Council, to the extent possible, desires to express its belief that the approval of the expansion of the Landfill will be detrimental to the public health, safety and welfare; and

WHEREAS, the final decision for the expansion of the Landfill has not been made; and

WHEREAS, after thorough consideration of the above, the City Council has determined that the location of the Landfill expansion gives rise to concern for potential limitations to the City's opportunity for growth and desires to withdraw their support of the Landfill expansion in order to protect the best interest and benefit of the citizens of Tontitown.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Tontitown, Arkansas:

Section 1. It is hereby the express desire of the Tontitown City Council, for the reasons set forth above and to the extent possible, that the final approval of the Landfill expansion be denied.


Section 2. The Mayor or her designee is hereby authorized to bring this Resolution to the attention of the regulatory authorities and to provide information to such regulatory authorities as is requested or necessary.

PASSED AND APPROVED this 3 day of January 2023.

APPROVED:


Angela Russell, Mayor

ATTEST:


Rhonda Ardemagni, City Clerk-Treasurer

Washington County, AR
I certify this instrument was filed on
01/05/2023 04:11:49 PM
and recorded in Real Estate
File Number 2023-00000530
Kyle Sylvester - Circuit Clerk

by 

EXHIBIT 3



January 22, 2018

Ms. Annette Cusher
Arkansas Department of Environmental Quality
Associate Director - Office of Land Resources
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317

**Subject: Landfill Disposal Capacity in the Boston Mountain Solid Waste Management District
Eco-Vista Landfill, LLC – Class 4 Landfill
AFIN #: 72-00144 and Permit #: 0290-S4-R1**

Dear Ms. Cusher:

Eco- Vista Landfill, LLC is in the process of obtaining a Certificate of Need (CON) from the Boston Mountain Solid Waste Management District (District) for a proposed modification of the existing Class 4 Eco-Vista Landfill located in Tontitown, Arkansas. Since the modification involves an increase in the permitted capacity, this CON is required prior to submitting the modification application to the Arkansas Department of Environmental Quality (ADEQ).

The first step in obtaining the CON is to submit a letter to the District from the applicant expressing the intent to formally petition for a CON. The Letter of Intent will be submitted at least fifteen (15) days prior to submitting the actual petition.

The District rules require that any applicant obtain *“confirmation from the ADEQ that the applicant has requested a statement concerning the current and proposed solid waste landfill disposal capacity respective to the area and landfill class being proposed”*. This requirement can be found in the District Rules and Regulation, Section 7.01(f) Notice of Intent. Eco-Vista Landfill, LLC formally requests your statement addressing this disposal capacity issue.

To assist you in your statement, the Eco-Vista Landfill facility in Tontitown is the only permitted Class 4 Landfill available within the District and northwest Arkansas. As of January 1, 2018, the Eco-Vista Class 4 Landfill has a total remaining permitted capacity of approximately 955,000 cubic yards. At the current fill rate, this capacity will provide the District with approximately 8 years of capacity. Therefore, Eco-Vista Landfill believes that the District is facing a complete lack of construction and demolition debris disposal capacity without a modification of the Eco-Vista facility.

Thank you for your attention in this matter. We look forward to your prompt response. If there are any questions, please contact either of us at your convenience.

Sincerely,

Carl Simmons
Senior District Manager
Eco-Vista Landfill, LLC
2201 Waste Management Drive
Springdale, Arkansas 72762

David Conrad
Engineering Manager
Eco-Vista Landfill, LLC

cc: Robyn Reed, Executive Director, Boston Mountain Solid Waste Management District



Certificate of Need Petition

EXHIBIT 4

ADEQ

ARKANSAS
Department of Environmental Quality

February 7, 2018

Robyn Reed, Director
Boston Mountain Solid Waste District
11398 Bond Road
Prairie Grove, AR 72753

RE: Confirmation of Waste Disposal Capacity regarding Eco-Vista Class 4 Landfill
Permit Number: 0290-S4-R1 **AFIN: 72-00144**
Document Number: 73120 **Cross Reference Number: 73076**

Dear Ms. Reed:

The District rules require that any applicant obtain *"confirmation from the ADEQ that the applicant has requested a statement concerning the current and proposed solid waste landfill disposal capacity respective to the area and landfill class being proposed"*. This requirement can be found in the District Rules and Regulation, Section 7.01(f) Notice of Intent. Eco-Vista landfill, LLC has formally requested a statement from ADEQ addressing this disposal capacity issue.

The Eco-Vista landfill facility in Tontitown is the only permitted Class 4 landfill available within the District and northwest Arkansas. As of January 1, 2018, the Eco-Vista Class 4 Landfill has a total remaining permitted capacity of approximately 955,000 cubic yards. At the current fill rate, this capacity will provide the District with approximately eight years of capacity. Therefore, Eco-Vista Class 4 landfill believes that the District is facing a complete lack of construction and demolition debris disposal capacity without a modification of the Eco-Vista facility.

If you have any questions regarding this correspondence, please contact me at (501) 682-0608 or matoska@adeq.state.ar.us.

Sincerely,



Maria Matoska
Permit Engineer

OLR- C. Johnson, Cusher, Rich, Krou
David Conrad, Waste Management (dconrad@wm.com)

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY
5301 NORTHSHORE DRIVE / NORTH LITTLE ROCK / ARKANSAS 72118-5317
TELEPHONE 501-682-0744 / FAX 501-682-0880 / www.adeq.state.ar.us



EXHIBIT 5

Kacy Murillo (adpce.ad)

Subject: RE: Eco-Vista Class 4 Landfill - Cell 8A Notification of Construction

AFIN: 72-00144
PMT#: 0290-S4-R2
Received
By Kacy Murillo at 1:07 pm, Mar 31, 2023
DOC ID#: 83717
TO: AC>FILE <KM

From: Brad Fureigh [mailto:bfureigh@promusengineering.com]
Sent: Tuesday, March 28, 2023 6:00 PM
To: Annette Cusher (adpce.ad) <Annette.Cusher@adeq.state.ar.us>
Cc: David Conrad <dconrad@wm.com>; Simmons, Carl <CSimmons@wm.com>; Blake Small <bsmall@wm.com>; dtenniso@wm.com; Reynolds, Jodi <jreyno10@wm.com>
Subject: Eco-Vista Class 4 Landfill - Cell 8A Notification of Construction

Good afternoon Annette,

Please see attached the notification of construction schedule for proposed Cell 8A at the Eco-Vista Class 4 Landfill. Please feel free to contact us at your convenience if you have any questions concerning this notification.

Thanks!

Brad N. Fureigh, PE
Principal Engineer | Promus Engineering, LLC
M: (501) 554-4547
bfureigh@promusengineering.com
www.promusengineering.com



March 28, 2023

Ms. Annette Cusher, P.E.
Office of Land Resources, Facility Permits
Arkansas Energy & Environment
Division of Environmental Quality
5301 Northshore Drive
North Little Rock, Arkansas 72118
via Email: cusher@adeq.state.ar.us

**RE: Notification of Construction Schedule
Eco-Vista Class 4 Landfill – Cell 8A Construction
AFIN: 72-00144; Permit No. 0290-S4-R2**

Dear Ms. Cusher:

On behalf of our client, Eco-Vista, LLC, Promus Engineering, LLC is notifying the Arkansas Energy & Environment, Division of Environmental Quality (DEQ) of the tentative schedule for construction of the bottom liner and leachate collection system for Cell 8A at the Eco-Vista Class 4 Landfill.

Notification of Construction Schedule

This notification is being submitted in accordance with Site Specific Permit Condition 7. The clay liner and leachate collection system construction activities are planned to begin around April 1, 2023 with substantial completion planned for approximately July 2023. This schedule is considered tentative and may change due to weather delays. Construction of Cell 8A will generally consist of installing roughly 5.5-acres of compacted clay bottom liner and leachate collection system.

Below is a list of companies that will be coordinating construction activities during construction of Cell 8A.

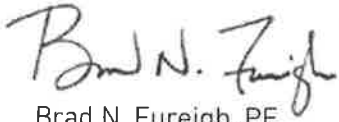
General Contractor:	SFC Contract Services
Geosynthetics Installer:	Lone Star Lining Company
CQA Services:	Promus Engineering, LLC
Surveying:	Mason Surveying & Consulting, LLC

The Earthwork Contractor has completed and documented more than 500,000 square feet of clay liner during the last three years and as a result, Promus is requesting that the DEQ waive the test fill requirements described by Regulation 22.428(c)(11) via Regulation 22.624. Following construction of Cell 8A, a documentation report will be submitted to the DEQ in accordance with Site Specific Permit Condition 8. A separate construction notification will be provided to the DEQ Office of Water Quality in accordance with Site Specific Permit Condition 6.

If you have any questions regarding this construction notification, please contact me via phone at 501.554.4547 or e-mail at bfureigh@promusengineering.com.

Sincerely,

PROMUS ENGINEERING, LLC



Brad N. Fureigh, PE
Principal Engineer

Attached: Eco-Vista Class 4, Cell 8A Construction Drawings & Technical Specifications

cc: David Conrad – WM, Engineer
Carl Simmons – WM, Sr. District Manager
Blake Small – WM, District Manager
Jodi Reynolds – WM, Environmental Protection Manager
Permanent Operating Record