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February 8, 2023

### **REQUEST FOR HEARING**

APC&E Commission Secretary  
3800 Richards Road  
North Little Rock AR 72117

RE: Eco-Friendly Materials, LLC Permitting Decision (Permit No. 0798-MN-A1)

Dear Secretary of APC&E,

Pursuant to the Arkansas Pollution Control and Ecology Commission's Rule No. 8, I wish to appeal the ADEQ Director's Final Permit Decision and request a hearing before the Commission on the matter. The permit action being appealed is described as a modification of Permit Number 0798-MN, which was issued by the Arkansas Department of Environmental Quality on June 26, 2020. The date of the final decision and modification issue date is January 9, 2023 and the Permit number is 0798-MN-A1. The specific action of the permit that is being appealed is and increased acreage of the permitted area from 80 to 160 acres. The legal issues and factual objections being appealed are as follows.

Comment 4: Prepared response from Arkansas Energy & Environment (AE&E) re: the notice provided concerning the transfer, issuance, or the modification of the Open-Cut Mining Permit being inadequate is correct in noting that Washington County had no open-cut mining permit to be transferred to Eco-Friendly Materials, LLC. But the issuance notice was inadequate because the Division did not follow its own Regulation 8.205(5), which states "The notice shall include: the city, town or community nearest to the proposed facility;". A "governmental" storm water permit for sand and gravel (subsector JI) had been maintained by Washington County, Arkansas since January, 2005 (**exhibit A**). The initial permit number was ARR150696 for AFIN 72-01047 and was later changed by an ADEQ request on 8/8/2016 to AR001599 for the same AFIN (**exhibits B, C & D**). The "governmental" use was always permitted only for an area on Washington County parcel number 001-12643-000 that fluctuated between 14, 13 and 20 acres over the years. In fact, a Washington County Quorum Court presentation by Planning Department staff on October 17, 2019 illustrated that this singular parcel had been mined by the County (**exhibit E**). The previously noted storm water permits (and renewals) ALL had the same physical address of 14988 Highway 16 West. ADEQ inspectors still use this same address for the location of the facility (see <https://www.adeg.state.ar.us/downloads/WebDatabases/InspectionsOnline/120607-insp.pdf> and **exhibit F**). And yet, per Regulation 8.205(5), no mention was made of this location in the "Publication of Notice of Open-Cut Mining Permit Application", which was posted in the March, 7, 2020 edition of the Northwest Arkansas Democrat Gazette. The name of the business was also not recognizable to the surrounding residents, who knew the property had been owned by the Lindsey's for years and had been continuously operated

under the name “Jay Cole Mine”. A search for properties on the Washington County Assessor’s website would have yielded no results for Eco-Friendly Materials LLC. The parcel was, and is still, shown as being owned by “Go Hogs Dirt Mine, LLC” (**exhibit G**). The March 7, 2020 notice stated “Washington County”, in its entirety, for the required nearest “city, town or community...” (**exhibit H**). The surrounding residents could have had no idea that the small, seldom-mined permit area would be granted a 300% increase in size and converted to a “commercial” mining operation. Similarly, when the Notice of Application for Permit to modify the new mining permit was posted in the April 24, 2022 edition of the Northwest Arkansas Democrat Gazette (**exhibit I**), expanding from the original 20 acre permitted area by 700%, the entirety of “Washington County” was provided again instead of listing the 14988 Highway 16 West location for the “city, town, or community nearest to the proposed facility”, a second violation of Regulation 8.205(5).

The comment #4 prepared response from AE&E also states the procedures and requirements were followed. However, it was noted in *several* complaints from area residents that this was not the case. One example is evident on the transfer of the previously cited storm water permit from Washington County to the Eco-Friendly Materials LLC. The Notice of Change (NOC) received on October 28, 2020 from Washington County, [https://www.adeq.state.ar.us/downloads/WebDatabases/PermitsOnline/NPDES/PermitInformation/ARR001599 Permit%20Transfer%20Form\\_20201028.pdf](https://www.adeq.state.ar.us/downloads/WebDatabases/PermitsOnline/NPDES/PermitInformation/ARR001599%20Permit%20Transfer%20Form_20201028.pdf), simply transferred ownership of the storm water permit for ARR001599 (AFIN 72-01047). Since the property owner had no previous mining experience (see item No. 6 on Disclosure Statement on ADEQ file immediately referenced), and did not possess a permit to mine prior to issuance on June 26, 2020, there was a fair amount of collaborative effort required between Washington County and Eco-Friendly Materials, LLC to get the timing right for the transfer. Once FOIA requests began to be received regarding the permit modification, questioning the operating outfalls, and correct operating sector on record, an email string (**exhibit J**) obtained via FOIA revealed that, on June 13, 2022, Brian Leamons of ADEQ’s Office of Water Quality, notified several other ADEQ representatives that a proper NOC had yet to be received to change outfalls, the industrial sector (or the area of coverage). The storm water permit *still* lists the SIC code as 1442 (construction sand & gravel), which is under industrial subsector J1, (see [https://www.adeq.state.ar.us/home/pdssql/p\\_permit\\_details\\_water\\_npdes.aspx?AFIN=72-01047&AFIN=7201047&PmtNbr=ARR001599](https://www.adeq.state.ar.us/home/pdssql/p_permit_details_water_npdes.aspx?AFIN=72-01047&AFIN=7201047&PmtNbr=ARR001599) and attached **exhibit K**). No request for change has been received, even though ADEQ records show the “permit type” listed for the newly-created permit to mine for Eco-Friendly Materials, LLC on June 26, 2020 as “clay”. If the prepared response from AE&E on comment 11 is correct, and Subsector J1 requires more stringent reporting with regard to Nitrate plus Nitrite Nitrogen monitoring, then Eco-Friendly has been under-reporting required parameters for more than two (2) years. A NOC has, also, yet to be received requesting an increase in the area of coverage, even though correspondence indicates that this storm water permitted area magically increased from 20 to 80 acres. The first mining permit application was not administratively correct. In addition, Mr. Leamons notes in his email that he “doesn’t see any inspection reports”. Why is that (please refer back to exhibit F)? In light of the fact that the on-site inspection, with a total of ten (10) violations – including an Arkansas Air Pollution and Control Act violation- was conducted PRIOR TO the permittee’s request for permit modification on November 8, 2021, it should have been listed on the required Disclosure

Statement, Item 7 (3) “actions that have resulted in a finding...of a violation”. The request for permit modification was not administratively correct.

Comment 6: Prepared response from Arkansas Energy & Environment (AE&E) re: the adverse impacts of mining operations like heavy truck traffic, noise, dust, property damages, decreased property values, etc. is that the allegations are not within the regulatory requirements that the Division administers and, may be, correct. It is true that, when the Washington County Code of Ordinances are appropriately applied, the aforementioned adverse impacts can be mitigated. When Washington County chose not to submit the property owner to county ordinances governing non-agricultural and commercial property use in the unincorporated parts of the county, it became apparent that officials within the county administration sought to provide a way for this property owner to commercially mine for mineral resources without subjecting them to the conditional use permitting (CUP) process, which is incorrect as a matter of law. But Part 7.13 of the Industrial Stormwater General Permit allows that nothing in the permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable local, state, or federal law or regulation. And county residents are not prevented from seeking relief and application of the Code of Ordinances. Here is a link to the petition currently making its way through the courts; [https://images.arcourts.gov/IMAGESimg/CK\\_Image.Present2?DMS\\_ID=A746BA61EF7D9CED7388ACB8245692A591E5ED867770BED7D8C35D12C7947AC5A2B766E230CD2180BD62B66C7D930C6C8F9297B7D44DFD35B4DF4743A67DB6E8&i\\_url=https://images.arcourts.gov/IMAGESimg](https://images.arcourts.gov/IMAGESimg/CK_Image.Present2?DMS_ID=A746BA61EF7D9CED7388ACB8245692A591E5ED867770BED7D8C35D12C7947AC5A2B766E230CD2180BD62B66C7D930C6C8F9297B7D44DFD35B4DF4743A67DB6E8&i_url=https://images.arcourts.gov/IMAGESimg). Comment numbers 5, 6 and 9, all call into question why ADEQ would issue a permit to mine when Washington County chose not to submit the property owner to county ordinances governing non-agricultural and commercial property use in the unincorporated parts of the county. Provided here is Section 11-100, Large-scale development standards from the Washington County website; <https://www.washingtoncountyar.gov/home/showpublisheddocument/356/636119604316070000> and **exhibit L** (the last page). The editor’s note on the referenced page verifies that the county did, indeed, have large-scale development ordinances in place prior to Mr. Lindsey’s ownership of the property and the date of the first ADEQ stormwater permit. In addition, **exhibit M** is an explanation of the newly adopted zoning ordinances by, then, County Judge Jerry Hunton, which outlines *specifically* that rural properties converting to commercial operations must be subjected to the CUP and large-scale development processes. In 2020, the property owner sought to convert its “contracted” governmental-use ADEQ status operating on a parcel that was zoned “agricultural” to a commercially operating industrial mine. In late 2005, the PARA task force provided a grace period to all property owners wishing to convert, and a reminder that all commercial and industrial activity taking place on parcels over an acre in size was, even then, required to come before the Planning Board. Mr. Lindsey had a two-year window to convert, but did not (see <https://www.washingtoncountyar.gov/government/departments-f-z/planning/para-task-force/executive-summary-recommendation> and **exhibit N**).

Comment 8: Prepared response from Arkansas Energy & Environment (AE&E) re: storm water issues and stormwater permitting are that the Office of Water Quality (OWC) is the proper authority to address water quality concerns, via the Industrial Stormwater General Permit, currently numbered AR001599, and that obtaining an Open Cut Mining

Permit requires permit coverage to be issued. ADEQ received several complaints regarding the accuracy of the permit modification (please see link and attached **exhibit K**, above, regarding incorrect mineral resource mined), questions regarding the blatant duplication of the mining plan from the original permit application, and the months-old site inspection form. Was this delayed by design? Page 24 of 84 in that on-line inspection report contains an admission from the cognizant official that the stormwater requirements were missing from the request for permit modification. The email was dated June 14, 2022, many months after ADEQ proclaimed the request for permit modification “administratively correct.” And what, exactly, is Industrial Sector J11? This term is used *multiple* times in the permittee’s response to the 10-point violation site inspection. It is abundantly clear that the permittee, while most likely a very capable builder of homes, apartment buildings or warehouses, has no business running a red dirt mine.

Comment 9: Prepared response from Arkansas Energy & Environment (AE&E) references the failed CUP application of Wedington Mine LLC. The Quorum Court of Washington County initially denied the CUP application on November 21, 2019. Because the property owner appealed the decision through the Circuit Court, ADEQ withheld its final determination regarding enforcement of Part 7.13 of the Industrial Stormwater General Permit until June 29, 2020 (**exhibit O**), and then revoked their stormwater permit after the legal action was settled. I am asking for the same consideration until this legal matter can be resolved. A link to the petition currently making its way through the courts was provided in the “Comment 6” section.

I request that the permit modification be revoked and the status of the original mining permit changed to “pending”, until such time as the legal petition currently making its way through the courts is settled.

A copy of this request for hearing is being served on all appropriate parties as is identified in Regulation 8.601.

Respectfully submitted,

Shelley Buonaiuto  
13866 Pin Oak  
Fayetteville AR 72704

February 2, 2023

Arkansas Pollution Control and Ecology Commission  
Attn: Commission Secretary, Ms Patricia Goff  
3800 Richards Road  
North Little Rock, AR 72117

Secretary  
Arkansas Pollution Control & Ecology  
3800 Richards Rd

North Little Rock, AR 72117

Filed 2/10/23 PLG

RE: Appeal Open-Cut Mining No. 0798-MN-A1

Dear Ms. Goff, Commission Secretary

I respectfully request a hearing concerning the Final Decision referenced above for Eco-Friendly Materials, LLC located in Washington County, Arkansas.

My appeal will address the Conditional Use Permit (CUP) process, storm water permit, large scale developments, and grandfathering. However my main concerns are the location of the project to the adjacent residential area of Wedington Woods, where I live, and the lack of oversight for all of the mines and quarries that surround our area.

The process for receiving a Conditional Use Permit (CUP) was not properly followed for Eco-Friendly Materials, LLC. The executive and legislative branches of Washington County should be held accountable to follow their own regulations on the issuing of this permit.

Unfortunately our county runs on "the good old boy" principal which is clearly demonstrated by the use of "grandfathering" as the reason the Washington County Attorney, Brian Lester, used to justify approving this CUP. It was not taken into consideration that the area next to the mine expansion has grown and become more residential in the past eighteen years and continues to change. This should have been the first consideration when a major commercial business was being located next to a zoned residential/agricultural zone.

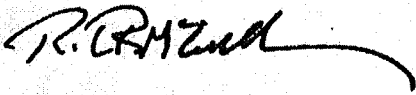
Storm water is a major concern. Eco-Friendly should have been constrained to the 14-acre limit imposed on the storm water permit that has been the standard held by Washington County for years. If the storm water is not properly contained it will flow in a creek toward Savoy and into the Illinois River.

The ADEQ is correct that the county is wrong in it's position that Section 11-100 for large scale developments does not apply to this project expansion. Section 11-100 does apply - the county and its' attorney have misinterpreted the county ordinance. The ADEQ also has questioned the safety requirements on the property as it relates to traffic, set backs, dust, and the numerous other concerns residents have who will live next to a major noisy commercial enterprise.

Our residents have made comments about dust, the lack of a Cultural Resources Survey, noise, traffic, damage to homes and buildings, and an overall disruption to a rural peaceful way of life. Eco-Friendly and the other mine and quarry operators should be required to contribute to a fund that would compensate property owners for damages and employ a county employee to inspect these major county businesses on a regular basis to make sure they are following the numerous conditions to which they have agreed in their permits.

Looking forward to a hearing to discuss these issues and concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "R. McConnell", with a long horizontal flourish extending to the right.

Robert McConnell  
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[bobmcconnell2@gmail.com](mailto:bobmcconnell2@gmail.com)

cc: Shane Khoury, Secretary, Arkansas Dept. of Energy & Environment

Eco-Friendly Materials LLC

Shawn & Megan Hammack  
15933 Paw Paw Lane  
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February 6, 2023

APC&E Commission Secretary  
3800 Richards Road  
North Little Rock AR 72117

### **REQUEST FOR HEARING**

RE: Eco-Friendly Materials, LLC Permitting Decision (Permit No. 0798-MN-A1)

Dear Secretary of APC&E, and all other parties involved,

Pursuant to the Arkansas Pollution Control and Ecology Commission's Rule No. 8, I wish to appeal the ADEQ Director's Final Permit Decision and request a hearing before the Commission on the matter.

My husband and I are requesting a hearing. We are seeking help in this matter, there doesn't seem to be any resolution in sight. Between the dust abatement, air pollution, the noise pollution and the mental anguish, my family is deeply affected. I don't understand how any of this is legal.

Is there a CUP permit?

Where does the water run off, is there a current storm water permit?

This property was owned by Jay Cole and all of the permitting through him, why it is being allowed to use his permits and things be "grandfathered in"?

How are they able to pay taxes and run a business with permitting through someone who is deceased?

How is it possible to use permits and approvals that were approved from when the red dirt was being used for Washington County work, when now when they are not using it for that.

They are selling to individuals and businesses.

How is it possible that the dirt is being farmed from one person's property, yet the billing is coming from someone else (Benny Holtzclaw).

From my understanding they are digging, farming and selling red dirt from a piece of the property not even on the permits.

How are they able to receive an agricultural exemption for taxes, when they are selling for profit? Red dirt is not agricultural. According to the Washington County Planning office it is industrial.

According to the PARA task force "All commercial and industrial development taking place on a parcel of land over an acre in size is currently required to come before the Planning Board. The conditional use zoning certificate would allow the county planning board and Quorum court to apply certain conditions of approval to the site, or to deny the application if it appears to be entirely unsuitable for the proposed area.

The conditions of approval would be conditions that responded directly to the needs of that site, a tool that has the potential to solve major problems in some cases. For instance, if the proposed use was an industrial dirt pit, and many neighbors were upset due to concern with machinery noise and dust blowing from the site, two conditions that could be placed on the property might be (1) limiting times of operations (2) requiring a 60' vegetative buffer be left (uncleared) around the perimeter of the entire site to help reduce dust. If the individual were in agreement to these conditions then he/she would be granted the zoning to proceed with the operation. If the individual applying for the conditional zoning was not in agreement with the conditions laid out by the County, then he/she would be unable to receive permission to build on that site because industrial/commercial endeavors are only allowed by the granting of a Conditional Use Zoning Certificate. In other words- agricultural and residential uses are allowed by right- while commercial, industrial and multi-family uses are not dis-allowed, but allowed only if/when certain conditions are met which make that use acceptable in that area. In some cases, due to the nature of the use and the surrounding existing uses/environments, some requests for a conditional use certificate may not be granted if there is no way to put conditions upon the site which make it acceptable for a certain use."

It is apparent to us that officials within the county administration sought to provide an avenue for this property owner to commercially mine for mineral resources without subjecting them to the conditional use permitting (CUP) process, which is incorrect as a matter of law, it does not prevent county residents from seeking relief and application of the Code of Ordinances.

These people are working from daylight to dark, disrupting the hard working people who live here. They are making money off our hardships. The view from our back deck is just flat disgusting. This is literally in our backyard. Our property meets directly with this property. In the future if they start blasting, there is no way our home will withstand it. What will happen when our home foundation cracks or fails? What about the fact that our property values have and are continuing to plummet.

From the dust alone, we have had umpteenth problems. We currently don't have working heating and air conditioning, it has gone out twice since this has begun. Air filters, pool filters, we have had to replace our pool pump, our electricity has shifted twice where we lost power for days on end and had to pay to repair it ourselves. Ozark electric advised us this is very rare, it was not on their side. It was in the ground and under our home. I am sick, I now have to use a CPAP machine because I cannot breathe, my son has to use his inhaler even more, my husband and daughter just cough and cough. This is not only affecting my entire family medically, mentally, monetarily, and physically. This has taken a huge toll on us, we feel like our human rights are being taken away on a daily, hourly basis. This is no longer a legacy of homesteading property for my husband and I to leave to our children.



I used to look out my windows and see deer, wild life, beautiful serene views of greenery and trees for miles. I heard birds, the wind blowing through the valley, it was so calming and peaceful, this is why we chose to live here, this is why we chose to raise our family here. But sadly this is no longer our reality. There are no longer deer, or birds, or serene views. There is no longer calm or peaceful, or sleeping in. Now our reality starting in the early morning hours is beeping, constant loud beeping and buzzing, the sounds of heavy equipment and trucks constantly in motion. Our reality now is horrible dust covering every part of our property and possessions both inside and outside our home. Dust in which we have to breathe and live 24 hours a day. Our reality is this dust clogging our air conditioning, air filters, our pool filter, our vacuums, and our children's lungs. I cannot even walk outside without this horrible dust covering my glasses to where I cannot even see. When it's cool outside I cannot even open my windows to let the breeze in, because everything will be covered in even more red dirt dusting and my entire family will be coughing all night. My husband wakes up every morning coughing and hacking, my son's asthma is affected all because of the air quality in our home. You walk in the door of our home and you can see the haze of this horrific dust. It just sits in our beautiful home and stays. It never leaves. I can sweep and mop my entire home and within minutes, not hours, minutes every surface and entire floor is covered again. Our vehicles are covered, we try and clean them and it leaves scratches on both the paint and the windows. We are having to shock our pool 3 times more than we used to and it still wont stay clear. It's impossible to keep my home and belongings clean, to keep the air safe for my family, to live normally as we once did. It's hard to breathe. The money we are having to spend to try and combat all of these issues is unreal. As a disabled mother and wife, who is home all day every day, this is heartbreaking, this pit has such a negative effect on my life and wellbeing. I cannot rest because of the constant noise, my animals are constantly barking thinking we have intruders, I am paranoid thinking there is always someone outside my home or in my backyard, leaving me constantly on edge and in fear of being home alone. This isn't fair, this isn't why we chose to live and raise a family here. This is a residential neighborhood, not a commercial business site. With as many problems this has already caused my family, I cannot fathom what will happen when they start blasting yards away from my home, my safe place. All for money, people are damaging my family's quality of life over money, to make money. I need to be heard, and need to be treated as if my family's livelihood and property matter. Enough is enough, if money is all these people care about, then they should reimburse and compensate the neighbors impacted or purchase the properties they are ruining and allow us to relocate in the same school district and regain our happiness in a place we can breathe freely again.

I request that the permit modification be revoked and the status of the origin mining permit changed to "pending", until such time as the legal petition currently making its way through the courts is settled.

Please Help us to find a resolution

Shawn & Megan Hammack  
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