

BEFORE THE ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION

IN THE MATTER OF: )  
 )  
 ) Docket No: 23-013-P  
FINAL PERMIT DECISION FOR )  
ECO-VISTA, LLC, CLASS 1 LANDFILL )  
PERMIT NO. 0290-S1-R4 )

**RENEWED MOTION FOR RELIEF FROM AUTOMATIC STAY  
AND BRIEF IN SUPPORT**

Permittee Eco-Vista, LLC, (“Eco-Vista”) respectfully renews its motion to the Arkansas Pollution Control and Ecology Commission (the “Commission”) pursuant to Rule 8.612(B) for relief from the automatic stay of Permit No. 0290-S1-R4 (the “Class 1 Permit”), which is a solid waste permit issued by the Arkansas Department of Environment and Energy Division of Environmental Quality (“DEQ”) authorizing an additional 10-acre expansion of Eco-Vista’s existing Class 1 facility in Tontitown, Arkansas.

Eco-Vista filed its first request for relief from the Commission on September 14, 2023, on the grounds that Eco-Vista and its customers will suffer substantial prejudice in the form of adverse business impacts and increased costs if the stay is allowed to remain in place while the City of Tontitown (“City”) pursues its administrative challenge to the Class 1 Permit because Eco-Vista needed to start construction immediately so the new capacity was ready when its existing capacity ran out in early 2024. The Commission granted Eco-Vista’s motion in part on September 22, 2023, in Minute Order 23-15. The Commission allowed Eco-Vista to begin construction of the new capacity and continue to operate under its existing permit, but the Commission did not allow Eco-Vista to use any of the new capacity authorized in the new Class 1 permit.

As detailed herein, Eco-Vista voluntarily implemented space-saving measures to preserve its existing Class 1 capacity, but Eco-Vista now needs approval from the Commission to begin using its newly constructed airspace. Unless the Commission acts and grants this motion, the residents and commercial customers in Northwest Arkansas in Washington, Benton, and Carroll County will need to find another Class 1 landfill to send their waste before the Commission meets again at the end of April 2024.

Eco-Vista therefore respectfully requests, pursuant to Rule 8.612(B) and (C), that the Commission Chair either (1) lift the automatic stay per Rule 8.612(C)(1) until the Commission's next regularly scheduled meeting on April 26, 2024, so Eco-Vista can continue to serve its customers in Northwest Arkansas, or (2) call a special meeting per Rule 8.612(C)(3) to hear and grant this motion as soon as practicable before the Commission's April 26, 2024, meeting. A proposed order is being submitted contemporaneously with this motion.

### **FACTUAL BACKGROUND**

As explained in Eco-Vista's prior filing, 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 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 on July 6, 2021, for a "Permit Modification Application for Expansion of the Eco-Vista, LLC, Class 1 Landfill," Permit No. 0290-S1-R3, AFIN: 72-00144 (the "Class 1 Permit Modification"). The Class 1 Permit Modification would add approximately 10 acres within the

area zoned EU-L. Eco-Vista's Class 1 Permit Modification was submitted to DEQ to evaluate whether the application satisfied the statutory and regulatory requirements.

The Class 1 Permit Modification was the result of a multi-year process to support this application. In 2018, Eco-Vista applied to the Boston Mountain Solid Waste District for a "Certificate of Need" as required by Commission Rule 22.205(b)(2). After a public hearing, the District met on May 10, 2018, and approved Eco-Vista's petition for a Certificate of Need to expand the Class 1 operation, finding that it fell within the District's regional solid waste management plan and that it met the District's criteria required by its rules and regulations. The City participated in that proceeding, confirming in a May 15, 2018, letter that the City's current zoning, as reflected in its Comprehensive Land Use Plan, did not reflect the site's use as a landfill even though the landfill was in existence before the City implemented its plan. The City confirmed, however, that it expected to update its zoning to be consistent with current actual uses.

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." The City Council's approval was conditioned on issuance of a large-scale development application and appropriate zoning for the expansion. On August 31, 2021, the City's Planning Commission approved Eco-Vista's large-scale development application pertaining to the Class 1 expansion. It included twenty-one "Conditions of Approval" and contained a detailed Memorandum of Understanding describing various actions that Eco-Vista would undertake to mitigate any effects of its operation on the City and its residents such as tree planting, installing fences, and contributing to road maintenance, among other things. Separately, the City implemented comprehensive rezoning in October 2020 that, among other things, rezoned the Eco-Vista area as "EU-L."

On July 31, 2023, DEQ issued its Final Permit Decision for Eco-Vista, LLC, Class 1 Landfill, Permit No. 0290-S1-R4. On August 29, 2023, the City filed an appeal with the Commission raising a variety of arguments. A hearing was held on the City's claims from February 7-9, 2024. At that hearing the Commission's Administrative Law Judge ("ALJ") granted DEQ and Eco-Vista directed verdict on claims relating to odor and litter controls. The ALJ ordered post-hearing briefing, which is not due until March 29, 2024, so the ALJ is unlikely to rule on the remaining claims until April 2024, at the earliest.

### **LEGAL BACKGROUND**

Any person who submitted timely public comments has standing to appeal DEQ's permit decision. Commission Rule 8.214(A). Such person must file a Request for Hearing with the Commission's Secretary within 30 days of the final permitting decision. Commission Rule 8.214(B). The permittee is automatically a party to such a proceeding. Commission Rule 8.601(B). DEQ also participates in the proceeding as a party to defend its permitting decision. By default, terms of permits that have been modified and that are being appealed are stayed during an appeal. Commission Rule 8.612(A)(2) ("During the pendency of a Commission review...the issuance, modification, or revocation of a permit or that part of a permit which is the subject of the appeal shall be stayed") (emphasis added). However, a party may make a request to the Commission Secretary under Commission Rule 8.612(B) for relief from a stay to avoid "substantial prejudice," and the Commission Chair can grant/deny/modify the request immediately subject to review at the next regularly scheduled APCEC meeting, which is at the end of the month, or call a special meeting of the APCEC to consider the request. Commission Rule 8.612(C). The APCEC's decision regarding a stay is not appealable. Commission Rule 8.612(F).

## ARGUMENT

Eco-Vista will suffer substantial prejudice unless the automatic stay imposed by Rule 8.612(A)(2) on using additional Class 1 capacity is lifted before the Commission's next regularly scheduled meeting on April 26, 2024. "Substantial prejudice" is defined by Ark. Code Ann. § 8-4-205(c)(6) as one of "the following [that] will occur to the party seeking a stay, a modification of the terms of a stay, or the termination of a stay if the request is denied: (a) Actual harm to health; or (b) Adverse economic impact, including without limitation interruption, curtailment, or deferral of business or increased cost of construction or operation." Ark. Code Ann. § 8-4-205(c)(6). The Commission has interpreted this broadly and following its ordinary, plain meaning. *See In re U.S. Dept. of the Army Pine Bluff Ark.*, Nos. 99-002-P & 99-003-P (APC&EC Feb. 26, 1999) (order granting relief from stay due to disruptions in the workforce and potential harm to the community from the storage of aging chemical weapons).

Eco-Vista is approximately four weeks away from exhausting the existing capacity of its Class 1 permitted space. *See* Aff. of Carl Simmons at ¶ 5 (attached hereto as Exhibit A). It cannot, however, wait until this capacity is completely exhausted to start using new space. Eco-Vista has worker and customer safety concerns about continuing to have too many trucks on top of Cell 10, where turning space is now very limited. *Id.* Eco-Vista needs an alternative location to send some trucks to avoid this congestion. Also, while Eco-Vista has prepared new Class 1 space, it needs to obtain DEQ approval to use the new space, and Eco-Vista then needs to start placing Class 1 material there to build truck turnaround pads before the space is usable. *Id.* at ¶¶ 6-7. Eco-Vista is currently prohibited from doing this under the Commission's Minute Order 23-15.

If Eco-Vista is not able to use the additional capacity authorized by the new Class 1 permit as soon as possible, Eco-Vista will have to stop its Class 1 operation completely and turn away its

customers who pay to dispose of Class 1 material at the site and Eco-Vista will suffer curtailed business and lost income. *See* Aff. of Carl Simmons at ¶¶ 6-8, 10. If the Commission waits until its April 26, 2024, meeting to act, that will be too late to prevent a shutdown of services to Northwest Arkansas because the new area will not have turnaround areas ready, as explained by Mr. Simmons. *Id.* at ¶¶ 7, 10. Eco-Vista has already lost revenue in 2024 by turning away customers to extend the life of the Class 1 area. *See* Aff. of Carl Simmons at ¶ 8. Eco-Vista will lose over a million of dollars in revenue per month more if the stay is not lifted, so the statutory requirement under Ark. Code Ann. § 8-4-205(c)(6) for the Commission to lift the stay is satisfied. *Id.* at ¶ 9. Furthermore, Eco-Vista also will be put at risk of being accused of not performing under contracts with various third parties if Eco-Vista cannot accept their Class 1 material and they are forced to incur increased costs to transport the material to other disposal facilities miles away. *Id.* at ¶ 13.

The Commission should take note that the adverse economic impacts of leaving the stay in place affects more than just Eco-Vista. The closest licensed Class 1 facility is the City of Fort Smith's Sanitary Landfill. *See* Aff. of Carl Simmons at ¶ 8. According to its website, it will not accept material from most counties in Northwest Arkansas. *Id.* Regardless of where the Class 1 material in Northwest Arkansas is sent, it will be significantly further away than Eco-Vista and Northwest Arkansas's residents and commercial businesses are likely going to pay for the increased costs associated with long-haul waste transport, such as increased driver time, truck maintenance, and fuel, required to reach more distant facilities. *Id.* at ¶¶ 9-11. Furthermore, Eco-Vista remits fees to Washington County, the City of Tontitown, the Boston Mountain Solid Waste District, and the Benton County Solid Waste District for waste disposed at the Class 1 landfill, so

Eco-Vista’s loss of revenue will reduce the fees it remits to these local government entities. *Id.* at ¶ 12.

Eco-Vista will suffer from more than the economic harm detailed above if the Commission does not lift the stay while an appeal is pending. The Commission has recognized that non-economic harms such as time pressure can satisfy the “substantial prejudice” requirement. *See In the Matter of Garland County Landfill*, Docket No. 01-005-P (April 27, 2001). The Commission has also found “substantial prejudice” where a party needed to avoid workforce disruptions and potential harm to the community. *See In re U.S. Dept. of the Army Pine Bluff Ark.*, Nos. 99-002-P & 99-003-P (APC&EC Feb. 26, 1999). The Commission also found a party to be substantially prejudiced because it would be forced to suspend commissioning activities when the facility could not accommodate low volumes of wastewater and stormwater. *In the Matter of Southwestern Electric Power Company*, Nos. 11-014-P & 11-015-P (APC&EC Dec. 2, 2011). All of the foregoing apply to Eco-Vista. *See* Aff. of Carl Simmons at ¶¶ 6-12. The Commission necessarily found that this standard had been met in April 2023, when it granted Eco-Vista relief from the automatic stay on the Class 4 permit, and the Commission ought to do the same again with respect to the Class 1 permit.

Eco-Vista has therefore established that it will suffer substantial prejudice as defined by Ark. Code Ann. § 8-4-205(c)(6), if the Commission does not allow Eco-Vista to use the Class 1 capacity authorized by its new Class 1 permit. The Commission should grant Eco-Vista’s request for relief from the stay while the City’s appeal of the Class 1 Permit is pending.

### **CONCLUSION**

Eco-Vista respectfully requests pursuant to Rule 8.612(B) and (C), that the Commission Chair either (1) lift the automatic stay per Rule 8.612(C)(1) until the Commission’s next regularly

scheduled meeting on April 26, 2024, so Eco-Vista can continue to serve its customers in Northwest Arkansas, or (2) call a special meeting per Rule 8.612(C)(3) to hear and grant this motion as soon as practicable before the Commission’s April 26, 2024, meeting. Eco-Vista will be substantially prejudiced, as demonstrated above, if the Commission allows the default stay to remain in place. Eco-Vista further requests that the Commission promptly hear and reject the City’s appeal.

Respectfully submitted,

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**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 27<sup>th</sup> day of March 2024.

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Michael B. Heister

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AFFIDAVIT OF CARL SIMMONS

I, Carl Simmons, having first been duly sworn, state the following:

1. I am over the age of 18 and have personal knowledge of the statements made herein.
2. I am a Senior District Manager for Post-Collections at Waste Management (“WM”) and I have worked at WM for over sixteen years. Since 2016, the Eco-Vista Landfill located at 2210 Waste Management Drive, Springdale, Arkansas 72762 (“Eco-Vista”) has been one of the facilities for which I have responsibility.
3. My responsibilities include overseeing the operations at the Eco-Vista Landfill and providing support and leadership to local management and support personnel, including environmental and engineering staff.
4. In the course of performing my job, I have become personally familiar with the general state of the solid waste disposal market in Northwest Arkansas, Eco-Vista’s Class 1 and Class 4 solid waste disposal operations, and the needs of Eco-Vista’s customers as described below.
5. We expect to exhaust Eco-Vista’s remaining Class 1 permitted capacity under Permit No. 0290-S1-R3 (“Existing Permit”) on or around the end of April 2024. However, because the only remaining Class 1 space under the Existing Permit is located at the top of the cell 10 hill



where the turning space for trucks and safe maneuverability is limited and the road to top of the hill is narrowed, Eco-Vista will have to start disposing waste under the New Class 1 Permit in mid-April 2024 to meet its customers' needs and continue to safely operate the Class 1 facility. In addition, waste needs to be disposed in the New Class 1 Permit cell no later than mid-April in order to establish a layer of compacted trash upon which a truck turnaround pad can be established in the new cell area by the time the Existing Permit airspace on the hill is depleted.

6. Eco-Vista has been diligently constructing a new waste cell authorized under the New Class 1 Permit since the Commission decided on September 14, 2023, that Eco-Vista could begin construction. The new cell is nearly complete and Eco-Vista plans to file its required Construction Quality Assurance report ("CQA Report") related to the waste cell construction completion with DEQ on or around March 27, 2024. Eco-Vista cannot begin to dispose waste in the new cell until DEQ approves the CQA Report, and DEQ has a maximum of fourteen days from receipt of the CQA Report to do so.

7. Even with DEQ approval of the CQA Report, Eco-Vista will need relief from the Commission's automatic stay to start allowing some trucks delivering waste to begin using the New Class 1 Permit cell to establish a layer of compacted trash upon which Eco-Vista can build a truck turnaround pad. Consistent with standard landfill industry practice, Eco-Vista intends to ask DEQ to allow Eco-Vista to open a second working face at the newly constructed cell for a limited time to ensure safe operations and waste disposal activities at the Class 1 landfill.

8. Eco-Vista has been able to prolong the limited Class 1 space under the Existing Permit so that Eco-Vista could continue serving the waste disposal needs of Northwest Arkansas and the surrounding region by diverting some Class 1 waste to other facilities and limiting the tonnage that third-party customers can deliver. Eco-Vista has therefore lost revenue due to the

Commission leaving in place the automatic stay during the appeal of the New Class 1 Permit, and Eco-Vista will lose additional revenue if the Commission does not authorize the use of the newly constructed space by, at the latest, mid-April 2024.

9. If the Commission does not allow Eco-Vista to begin disposing waste in the cell authorized under the New Class 1 Permit no later than mid-April 2024, then Eco-Vista's Class 1 landfill will have to close on or around April 30, 2024, which will have a significant adverse economic effect on Eco-Vista because it will lose all revenue associated with the disposal of waste in its Class 1 facility. In 2022, Eco-Vista received between \$1,031,265.00 and \$2,044,248.00 in revenue per month for the disposal of waste delivered by third-party customers to its Class 1 facility. I expect the monthly revenues for 2024 - once Eco-Vista is allowed to dispose of waste under the New Class 1 Permit in mid-April 2024 - to fall within the same general range.


10. Eco-Vista operates the only Class 1 landfill in Washington County. Eco-Vista's Class 1 landfill receives the non-hazardous solid waste generated not just by residents in Tontitown but also the vast majority of residential and commercial waste generated in Washington County as well as waste generated in nearby Benton County and Carroll County. If Eco-Vista is not allowed to use the capacity authorized by the New Class 1 Permit in the next few weeks, then the cities and businesses in northwest Arkansas will have to find an alternative place to dispose of their Class 1 solid waste (i.e., the putrescible garbage that is collected at citizens' homes and commercial businesses on at least a weekly or more frequent basis). The closest Class 1 landfill in Arkansas of which I am aware is the City of Fort Smith's Sanitary Landfill. It may accept solid waste from Washington County. Based on its website, it will not accept waste from Benton County or Carroll County.

11. Every household and company that needs to dispose of Class 1 waste, which is essentially all of them, will therefore incur additional costs for transportation (e.g., driver time, increased wear and tear on trucks, additional fuel) and potentially higher disposal rates. Normally, such costs are passed along to customers.

12. Eco-Vista remits fees to Washington County, the City of Tontitown, and the Boston Mountain Solid Waste District, for waste disposed at its Class 1 landfill. If Eco-Vista cannot accept Class 1 material because it is not allowed to use the new capacity authorized by the New Class 1 Permit, these governmental entities will lose the fees that they rely on to finance their own environmental and waste related needs, including recycling activities. In 2022, just for the disposal of Class 1 waste, Eco-Vista remitted over \$326,200.00 to the City of Tontitown, over \$726,000.00 to the Boston Mountain Solid Waste District, over \$662,000.00 to Washington County, and over \$155,000.00 to the Benton County Solid Waste District. If Eco-Vista can no longer accept Class 1 waste and must divert these customers to a distant landfill, then these local governments will no longer receive these fees.

13. Eco-Vista has contracts with different cities and waste transportation companies that require Eco-Vista to accept and dispose of those entities' Class 1 waste. If Eco-Vista cannot accept waste deliveries from all these customers because it cannot dispose waste in its new cell under the New Class 1 Permit, then Eco-Vista could be accused of not performing under its contracts. In addition, Eco-Vista is likely to lose third-party customers if the Commission does not allow Eco-Vista to start disposing waste in the cell constructed under the New Class 1 Permit. Other solid waste disposal facilities, being aware of Eco-Vista's inability to dispose waste under its New Class 1 Permit could require the third parties to enter into long-term contracts knowing the third parties have no other reasonable disposal alternatives.

FURTHER, AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Carl Simmons

County of Desoto  
State of Mississippi

Subscribed and sworn to before me, a notary public, this 21<sup>st</sup> day of March, 2024, by Carl Simmons personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.

  
\_\_\_\_\_  
Notary Public

My commission expires:

6-27-29

[SEAL]

