

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

**IN THE MATTER OF
ISSUANCE OF FINAL PERMIT DECISION FOR ECO-VISTA, LLC
CLASS 4 LANDFILL**

PERMIT NO. 0290-S4-R2

Docket No. 23-_____ -P

**MAYOR ANGIE RUSSELL AND THE CITY OF TONTITOWN'S
REQUEST FOR HEARING AND ADJUDICATORY REVIEW**

1. Mayor Angie Russell and the City of Tontitown requests a hearing before the Arkansas Pollution Control and Ecology Commission (APCEC or the Commission) regarding the final permitting decision by the Arkansas Division of Environmental Quality (ADEQ) on the issuance of a modification to the Eco-Vista, LLC Class 4 landfill permit 0290-S4-R2 allowing an expansion.

2. Tontitown brings this petition pursuant to APCEC Regulation No. 8.

PROCEDURAL HISTORY

3. Various operators utilized the site as a landfill for several decades before Eco-Vista, LLC obtained its first Class 4 permit in the present series on April 16, 1997.

4. In July of 2021, Eco-Vista, LLC submitted an application for a permit modification to permit disposal of waste on an additional 12.2 acres at its existing 600+ acre site.

5. ADEQ issued public notice of its draft permitting decision on August 5, 2022, with the initial public comment period ending September 6, 2022.

6. ADEQ held a public hearing on November 2, 2022, after which it accepted comments until November 4, 2022.

7. Pursuant to APCEC Regulation No. 8, Reg. 8.211(B)(1) and Reg. 8.603(C)(1)(b), the date of the final permitting decision appealed from is March 17, 2023.

8. This appeal is timely filed pursuant to APCEC 8.603(B)(1).

STATEMENT OF INTEREST OF TONTITOWN

9. Tontitown is a municipal corporation in Washington County, Arkansas.
10. The Eco-Vista Landfill is within the City Limits of Tontitown.
11. Much of the record in this matter is comprised of complaints by Tontitown citizens regarding trash, road interference, and air pollution emanating from the Eco-Vista facility.
12. The City of Tontitown is forced to consistently address trash and debris escaping the landfill, mud and dirt on its roads leading to and from the site, and trucks departing from designated routes while traveling to and from Eco-Vista.
13. The City of Tontitown adopted a resolution on November 2, 2022, opposing expansion of the Eco-Vista site and the permit at issue here. *See Exhibit 1.*
14. The City of Tontitown reiterated its opposition to the landfill in a January 3, 2023, resolution. *See Exhibit 2.*
15. Mayor Russell is the duly elected Mayor of Tontitown.
16. Mayor Russell submitted a public comment on August 30, 2022, on City letterhead, opposing the “Class 4 expansion of the waste management landfill” in Tontitown.
17. Mayor Russell again submitted public comment, and the resolution attached here as Exhibit 1, at the November 2, 2022, public hearing on this permit, stating at that time the City of Tontitown retracts its support for the expansion.
18. Mayor Russell states opposition to the impact which the site’s noncompliance has on the citizens, roads, and properties in Tontitown.
19. Mayor Russell placed her concerns, as well as a Resolution withdrawing municipal support for the site expansion, in the record of this permitting decision.

STATEMENT OF LEGAL ISSUES AND FACTUAL OBJECTIONS

APCEC Reg. 22.203(b): Municipal Approval Does Not Exist Here

20. APEC Reg. 22.203(a) applies to the “expansion of the permitted acreage of landfills,” which is the very issue before the Commission in this appeal.

21. APCEC Reg. 22.203(b) states that if a “proposed solid waste facility is located within a municipality or county that has adopted restrictions on sites in conjunction with a comprehensive county-wide land use plan, specific geographic site approval from the government(s) of jurisdiction shall be obtained by the applicant for submission to the Division with the pre-application.”

22. Tontitown enforces Title XV of its land use code, as well as working to comply with the Tontitown Recharge Zone Plan. Washington County, Arkansas utilizes a series of interim and final land use plans through Washington County Planning Ordinances, specifically Chapter 11, as well accompanying zoning rules and procedures. Each of these plans constitute an APCEC Reg. 22.203(b) comprehensive plan requiring local approval of a landfill expansion.

23. Eco-Vista’s pre-application package, page 2-1, cites a July 2018, resolution, and an October 2020, ordinance, as documents complying with APCEC Reg. 22.203 and 22.204.

24. Tontitown withdrew all support when it passed the November, 2022, resolution attached as Exhibit 1, restating this withdrawal in January of 2023, as shown by Exhibit 2, thus this permit does not have APCEC Reg. 22.203 approval.

25. ADEQ failed to consider or analyze what impact the resolutions have on compliance with APCEC 22.203. For this reasons, Mayor Russell and the City of Tontitown request the Commission deny the permit, or remand it to the Director for consideration documentation of their decision regarding the impact of the resolutions on APCEC Reg. 22.203.

APCEC Reg. 8.211(A)(2): ADEQ Fails to Properly Respond to the Tontitown Resolution

26. In response to Mayor Russell’s comment submitting the resolution in the record, ADEQ simply states “DEQ acknowledges the subsequent city resolution withdrawing support.”

27. This response does not constitute a legal analysis, determination of the impact of the resolution on the permitting process, or acknowledge the specific role local government entities have in approving expansion of solid waste disposal facilities.

28. ADEQ’s response fails to comply with APCEC Reg. 8.211(A)(2), which requires “a response to each issue raised in any public comments,” and in the “case of any” “environmental standard,” that response must include a “written explanation of the rationale” based on “generally accepted scientific knowledge and engineering practices.”

29. ADEQ’s statement that it acknowledges the presence of the resolution in the record is not a response to an issue raised, nor is it a written explanation of rationale for failing to analyze the impact of the resolution on the permitting process.

30. ADEQ fails to comply with APCEC Reg. 8.211(A)(2).

31. Mayor Russell and the City of Tontitown request the Commission deny the permit, or remand it to the Director for further consideration and development of responses to comments.

APCEC Reg. 22.204: The Applicant and ADEQ Fail to Consider Alternative Locations

32. APCEC Reg. 22.204(a) creates a rebuttable presumption “against permitting the construction or operation of any new landfill within twelve miles of any existing high-impact solid waste facility.”

33. Pursuant to APCEC Reg. 22.204(b), a high-impact solid waste management facility includes landfills.

34. An applicant may overcome the APCEC Reg. 22.204(a) rebuttable presumption by showing:

(1) No other suitable site for such a facility is available within the region or service area because of the constraints of geology or any other factors listed in Rule 22.205(b); or

(2) Incentives have prompted the host community to accept the siting of the facility. Such incentives may include, without limitation:

- (i) Increased employment opportunities;
- (ii) Reasonable host fees not to exceed the prevailing state average;
- (iii) Contributions by the facility to the community infrastructure (e.g. road maintenance, park development, litter control);
- (iv) Compensation to adjacent individual landowners for any assessed decrease in property values; or
- (v) Subsidization of community services.

35. The permit application makes no mention of alternative site suitability analysis, or incentives put in place to overcome the presumption against new landfill capacity, yet many commenters in the record request consideration of another site, away from Tontitown, for waste disposal.

36. Page 2-1 of the application mentions APCEC Reg. 22.204, stating the applicant meets its requirements, but Section 4 (Site Selection Limitations and Location Restrictions) does not consider alternative locations. The application makes no mention of incentives utilized to overcome the rebuttable presumption.

37. Despite requests to consider alternative locations in the comments, ADEQ fails to do so, violating APCEC 22.204 and meaningful compliance with APCEC Reg. 8.211(A)(2).

38. The record is devoid of APCEC Reg. 22.204 analysis.

39. Mayor Russell and the City of Tontitown request the Commission deny the permit, or remand it to the Director for further analysis and justification of compliance with APCEC Reg. 22.204.

APCEC Reg. 8.209(A)(1)

40. Once the decision to hold a public hearing is made, APCEC Reg. 8.209(A)(1) requires “notice of the date, time and place of the hearing by first class mail to the applicant, to all persons who have filed a timely written request for a public hearing [and] to all person who have submitted public comments on the record.”

41. Here, ADEQ mailed notice of the public hearing to the interested parties after a date which would allow them to receive notice.

42. A late notice is not notice. ADEQ failed to provide the required notice to interested parties, including many citizens of Tontitown.

43. Mayor Russell and the City of Tontitown request the Commission deny the permit for failure to comply with public hearing notice requirements, or remand the permit to the Director to conduct a public hearing in conformance with stated requirements.

APCEC Reg.22.607 and 8.211(A)(2): Failure to Address or Consider Conditions Raised in Comments

44. Multiple commenters, including Mayor Russell and the City of Tontitown raise concerns about waste escaping the site, noxious fumes, and groundwater migration.

45. APCEC Reg. 22.607(g) requires litter control, including “other methods” if regular weekly cover does not suffice. Despite complaints and comments regarding litter, ADEQ relies on the existing litter control plan in the permit in its responsive comments. This response does not address the litter concern, as it is clear from the record the existing litter control plan is not effective. ADEQ fails to consider these comments or impose additional permit requirements to address litter control.

46. APCEC Reg. 22.607(n) states that the “owner or operator shall operate the landfill in a manner to avoid creating a public nuisance or health hazard. The Division may require any additional information or action deemed necessary to assure an environmentally safe operation at the facility.” The record is full of comments stating nuisance conditions regarding smell, gas, and debris escaping the site. ADEQ responds stating Class 4 landfills are not allowed to receive putrescible waste. Again, if no new conditions are imposed, conditions will only worsen with increased capacity while operating under existing requirements. ADEQ fails to properly consider these comments or impose additional permit requirements to address nuisance conditions.

47. Mayor Russell and the City of Tontitown requests the Commission deny the permit, or remand it to the Director to address operating conditions at the facility which result in litter and nuisance conditions.

APCEC Reg. 22.612: Air Quality Concerns

48. APCEC Reg. 22.612 Air Criteria requires compliance with the Clean Air Act, prohibits burning, and requires fire safety. Each of these issues, including firsthand accounts of gaseous smells causing headaches and dizziness near the site, applicant reports (and ADEQ investigations) of fires onsite, and additional complaints regarding smell, are present in the public comments. ADEQ fails to respond to these comments or impose additional permit requirements to address them.

49. Mayor Russell and the City of Tontitown requests the Commission deny the permit, or remand it to the Director to address air quality concerns to prevent the escape of gas and odor from the site, as well as address the frequency of fires and the prevention thereof at the facility.

APCEC Reg. 22.615 and 22.620: Dye Testing and Ground and Surface Water Pollution

Prohibitions

50. APCEC Reg. 22.615 prohibits a discharge of pollutants to waters of the United States from landfill sites.

51. APCEC Reg. 22.620 prohibits contamination of an underground water source beyond the solid waste boundary.

52. Dye tests of the proposed Class 4 expansion area at issue here show a hydrological connection to Wildcat Creek, as documents by the applicant's contractor in a dye study.

53. Multiple commenters note that Class 4 landfills require only clay liners, and that the likelihood of groundwater and surface contamination from this expansion is high.

54. ADEQ responds, stating clay liners meet minimum requirements, and that they will monitor Wildcat Creek.

55. Monitoring and clay liners will not prevent surface and groundwater pollution in the presence of a direct groundwater connection to Wildcat Creek.

56. ADEQ imposes no additional permit requirements (other than surface water monitoring, which is not preventative) to protect human health and Wildcat Creek despite clear evidence of a connection between Wildcat Creek and the site.

57. Mayor Russell and the City of Tontitown request the Commission deny the permit, or remand it to the Director for further consideration of permit requirements necessary to protect groundwater and Wildcat Creek.

IDENTIFICATION OF AVAILABLE EVIDENCE

58. Mayor Angie Russell and the City of Tontitown designate the administrative record compiled by ADEQ beginning with the permit application submitted by the applicant on July 6, 2021, through today.

59. This record includes public comments submitted in written and oral form by Mayor Angie Russell, citizens of Tontitown, and others in both written and oral format.

60. The record also includes resolutions passed by the City of Tontitown opposing landfill expansion and withdrawing their support.

61. ADEQ responsiveness summary, issued March 17, 2023, is also pertinent evidence to the claims asserted here.

62. Evidence also exists in the record for this permit pertaining to fires, inspections, offsite trash and debris, and noncompliance matters which Mayor Russell and the City of Tontitown may seek to reference as evidence.

63. This identification of evidence is not exhaustive, but rather a guide to the facts and record relied on in this appeal.

REQUEST FOR RELIEF

64. Mayor Angie Russell and the City of Tontitown requests:


a. Commission review and an adjudicatory hearing on the decision granting expansion of the landfill through Permit No 0290-S4-R2;

b. That the Administrative Hearing Officer conduct a preliminary hearing;

c. That this matter be submitted to the Commission for final Commission action as soon as possible, but no more than 120 days following the preliminary hearing as provided by Ark. Code Ann. § 8-4-205(c)(5) and APCEC Regulation 8.614(A);

- d. That the Commission deny the permit, or remand the permit to the Director of the ADEQ for denial, further analysis, or additional public comment in accordance with the issues raised herein; and
- e. For all other legal, equitable and appropriate relief.

Respectfully submitted,

By: 

Ross Noland (AR Bar # 06334)
Noland Law Firm P.A.
P.O. Box 251402
Little Rock, AR 72225
ross@nolandfirm.com
501-541-7374

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the date set forth below, I did serve a copy of the above and foregoing Request for Hearing on the following individuals by certified mail, return receipt requested, pursuant to APCEC Reg. 8.601 and 8.603:

Director
Division of Environmental Quality
Department of Energy and Environment
5301 Northshore Dr.
North Little Rock, AR 72118

Eco-Vista, LLC
2210 Waste Management Drive
Springdale, AR 72762

Eco-Vista, LLC
d/b/a Waste Management-Tontitown Landfill
c/o Corporation System
124 W. Capitol Avenue, Suite 1900
Little Rock, AR 72201

Dated: April 17, 2023



Ross Noland

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 Sylvester 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

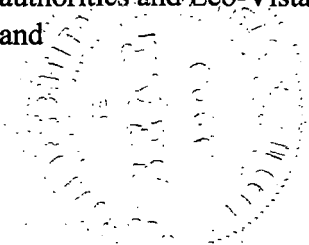
WHEREAS, on October 6, 2020, the Tontitown City Council adopted Ordinance No. 2020-10-900 to rezone approximately 417.1 Acres of the Landfill property from R-MH and R-1 zoning districts to EU-L, Exclusive Use-Landfill; and

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



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:

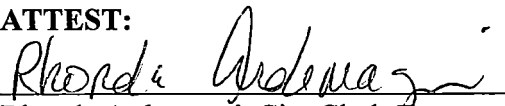
Section 1. It is hereby the express desire of the Tontitown City Council, for the reasons set forth above and to the extent possible, that the final approval of the Landfill expansion be denied, or in the alternative delayed until such issues which are negatively affecting the health, safety and welfare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

Washington County, AR

I certify this instrument was filed on

11/03/2022 12:42:48 PM

and recorded in Real Estate

File Number 2022-00036021

Kyle Sylvester - Circuit Clerk

by 

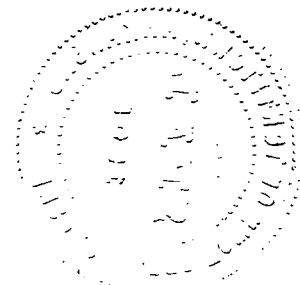


EXHIBIT 2



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
 Kyle Sylvester Circuit Clerk

RESOLUTION NO. 2023-01-1027R

File **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

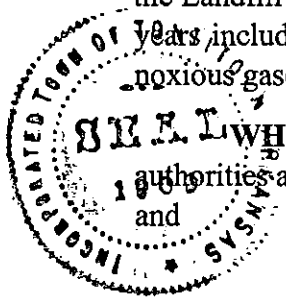
WHEREAS, on October 6, 2020, the Tontitown City Council adopted Ordinance No. 2020-10-900 to rezone approximately 417.1 Acres of the Landfill property from R-MH and R-1 zoning districts to EU-L, Exclusive Use-Landfill; and

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;



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 