

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY **Benton County Regional Solid Waste Management District**
 DIVISION **N/A**
 DIVISION DIRECTOR _____
 CONTACT PERSON **Wendy Bland, Director**
 ADDRESS **5702 Brookside Rd, Bentonville, AR 72713**
 PHONE NO. **(479) 795-0751** FAX NO. **N/A** E-MAIL **wendy@bentoncountyclecyles.org**
 NAME OF PRESENTER AT COMMITTEE MEETING **N/A**
 PRESENTER E-MAIL **N/A**

INSTRUCTIONS

- A. Please make copies of this form for future use.
 B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
 C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
 D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
 Administrative Rules Review Section
 Arkansas Legislative Council
 Bureau of Legislative Research
 One Capitol Mall, 5th Floor
 Little Rock, AR 72201

1. What is the short title of this rule? **Emergency Rule Amendment of the BCRSWMD**
 2. What is the subject of the proposed rule? **Amending the type and amount of District fees**
 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒
 If yes, please provide the federal rule, regulation, and/or statute citation. _____
 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
 Yes ☒ No ☐
 If yes, what is the effective date of the emergency rule? **January 1, 2020**
 When does the emergency rule expire? **April 30, 2020**
 Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes ☒ No ☐
 5. Is this a new rule? Yes ☐ No ☒ If yes, please provide a brief summary explaining the rule.

 Does this repeal an existing rule? Yes ☐ No ☒ If yes, a copy of the repealed rule is to be included with your completed questionnaire.

If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. **The rule makes an emergency amendment to the existing Rules of the Benton County Regional Solid Waste Management District. Substantive changes are related to decreasing the Waste Assessment Fee currently charged and adding a levy of a**

Solid Waste Service Fee to every residence and business in Benton County; procedures related to collection, reporting and payment of these two "Solid Waste Fees" are amended and or added.

Is this an amendment to an existing rule? Yes ☒ No ☐

If yes, please attach a mark-up showing the changes in the existing rule (**see attached labeled "Markup"**) and a summary of the substantive changes (**see attached labeled "Summary"**).

Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. **ACA 8-6-704(a)(6) provides authority to promulgate rules; ACA 8-6-714 provides authority to collect or levy fees included in revised rule**
7. What is the purpose of this proposed rule? Why is it necessary? **Due to inadequate funding available utilizing only Waste Assessment Fees and the on-going legal dispute regarding the collection and distribution of those fees, the Board of the Benton County Regional Solid Waste Management District has identified that a long-term funding structure change is needed in order to ensure the District's ability to maintain the statutorily mandated solid waste management services and supplemental services currently provided to the citizens of Benton County. The Board has elected to adopt a different funding structure as allowed in law which will provide adequate funding for provision of mandated services.**
8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). **www.bentoncountyrecycles.org/**
9. Will a public hearing be held on this proposed rule? Yes ☐ No ☒
If yes, please complete the following:
Date: _____
Time: _____
Place: _____
10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
Not applicable for Emergency Rule
11. What is the proposed effective date of this proposed rule? (Must provide a date.)
January 1, 2020
12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. **Not applicable for Emergency Rule**
13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). **(Required to wait on ALC review before filing emergency rule)**
14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

No comments on these rules are expected.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT/AGENCY Benton County Regional Solid Waste Management District

DIVISION N/A

PERSON COMPLETING THIS STATEMENT Wendy Bland, Executive Director

TELEPHONE NO. (479) 795-0751 FAX NO. N/A E-MAIL
wendy@bentoncountycycles.org

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Emergency Rule Amendment of the BCRSWMD

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes ☒ No ☐
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐
If an agency is proposing a more costly rule, please state the following:
(a) How the additional benefits of the more costly rule justify its additional cost;

(b) The reason for adoption of the more costly rule;

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

(d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
5. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue \$
Federal Funds \$
Cash Funds \$
Special Revenue \$
Other: \$
(Identify)

Total \$

Next Fiscal Year

General Revenue \$
Federal Funds \$
Cash Funds \$
Special Revenue \$
Other: \$
(Identify)

Total \$

- (b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue \$
Federal Funds \$

Next Fiscal Year

General Revenue \$
Federal Funds \$

Cash Funds \$ _____
Special Revenue \$ _____
Other: \$ _____
(Identify) _____

Cash Funds \$ _____
Special Revenue \$ _____
Other: \$ _____
(Identify) _____

Total \$ _____

Total \$ _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$No additional cost

\$No additional cost

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$No additional cost

\$No additional cost

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
- (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
- (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

**RULES AND REGULATIONS OF THE
BENTON COUNTY REGIONAL SOLID WASTE MANAGEMENT DISTRICT**

Cite as Benton County Reg. § ~~04.03~~05.00

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CHAPTER A: PRACTICES AND PROCEDURES

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Subchapter 1 General.

§ 1.01 Authority

§ 1.02 Restriction on Bonds

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§ 1.04 Definitions

§ 1.01 Authority

Ark. Code Ann. § 8-6-712 authorizes regional solid waste management boards to

(a)(1)(A) Require, by regulation or other legal means that solid waste generated or collected within the boundaries of the district be delivered to a particular project for disposal, treatment, or other handling.

(B) Provided, however, that nothing in this section shall be construed as impairing legal and proper contracts existing on March 26, 1991, under the Arkansas Constitution, or the notes or other evidences of indebtedness incurred pursuant to a revenue bond issued or reissued dependent upon a project involving a stated waste stream which is a contractual condition of said indebtedness;

(2) Prohibit, by regulation or other legal means, the collection of solid waste within the boundaries of the district by persons not properly licensed by the district;

(3)(A) Authorize that a city, county, or any person in an adjoining district may deliver solid waste to a designated landfill within the district for disposal, treatment, or other handling.

(B) Provided, however, that notice of all such authorizations shall be submitted to the Arkansas Department of ~~Energy and Environmental Quality~~ within thirty (30) days and shall be incorporated into the district needs assessment in its next regular update;

(4) Provide, by regulation or other legal means, that no person, other than as may be designated by the district, shall engage in the collection or utilization of solid waste within the district which would be competitive with the purposes or activities of the district; and

(5) Covenant in connection with the issuance of bonds, notes, or other evidence of indebtedness to adopt any regulation described in subdivisions (a)(1), (a)(2), and (a)(4) of this section and that any regulation so adopted shall remain in full force and effect and shall be enforced so long as any bonds, notes, or other evidences of indebtedness remain outstanding.

(b) The districts shall issue rules or regulations pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 *et seq.*, which are reasonably consistent with and in accordance with but no more restrictive than all applicable environmental protection performance standards adopted by state law or incorporated by reference from federal law.

(c)(1) Nothing in this section shall prohibit the disposal of solid waste generated by a private industry in a permitted landfill where the private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry or wastes of a similar kind or character.

(2) Nothing in this section shall prohibit the collection or disposal of solid waste by a municipality with an existing permitted landfill with a twenty-five-year capacity as of January 1, 1991, where the city bears the expense of operating and maintaining the landfill and the landfill complies with Environmental Protection Agency and department regulations.

(3) Nothing in this section shall prohibit a municipality or county from constructing or operating a facility or project to process and market recyclable materials for use as fuel.

(d) Furthermore, nothing in this subchapter shall prohibit the disposal of dead animal carcasses through means which are otherwise permitted by state law or regulation.

§ 1.02 Restriction on Bonds

Pursuant to ACA 8-6-713, unless approved by the regional solid waste management board, no municipality, county, improvement district, or sanitation authority within the regional solid waste management district shall:

- (1) Issue any bonds for solid waste management purposes; or
- (2) Pledge any revenues derived from solid waste management services for any bond issue.

The board shall not prohibit a municipality or county from issuing revenue bonds or using general obligation bonds when the purpose of such issuance or usage is the funding of a facility or project to process and market recycled materials for use as fuel.

The board shall not impair any existing bond issue or other financial obligation of a municipality, county, improvement district, or sanitation authority.

§ 1.03 Eminent Domain.

Pursuant to ACA 8-6-715, in the event that necessary lands needed for the accomplishment of the purposes authorized by this chapter cannot be acquired by negotiation, any district is authorized to acquire the needed lands by condemnation proceedings under the power of eminent domain.

The proceedings may be exercised in the manner now provided for taking private property for rights-of-way for railroads as set forth in §§ 18-15-1202 -- 18-15-1207.

As a part of the proceedings, the district shall file an environmental impact statement with the court. Nothing herein shall allow the district to appropriate by eminent domain any property upon which is located a permitted landfill, recycling facility, or incinerator or for which a permit for a landfill, recycling facility, or incinerator is pending.

§ 1.04 Definitions

Unless otherwise noted, all terms contained in these regulations are defined as set forth in any current version of any Pollution Control and Ecology Commission Regulations. Any changes made by the Commission shall be considered immediately engrossed within these regulations. Should a conflict in definition arise, the terms are defined by their plain meaning.

This section contains definitions for terms that may appear throughout these regulations. Additional definitions may appear as needed for specific chapters. Except where noted otherwise, the term 'may' is permissive and the term 'shall' is a directive or requirement. When used in the regulations:

Active life means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities, but not including the post closure care period.

Active portion means that part of a facility or unit that has received or is receiving wastes and has received only a six inch daily cover layer or a layer of approved alternative cover materials as required by Reg.22.413 (a) and (b). The active portion does not include areas that have received the intermediate cover layer described in Reg.22.413 (b) or that have been closed in accordance with the closure requirements of Reg.22.1301 of this regulation.

Administrative Procedure Act means the Arkansas Administrative Procedure Act codified at Ark. Code Ann. §§ 25-15-201 to 214, as amended from time to time.

ADEQ means the Arkansas Department of Energy and Environmental Quality.

Agent of the Grantee means any corporation, Profit or nonprofit, or any person rendering services to the grantee under the terms of this regulation and under the terms of a written agreement with the grantee for the stated purpose of implementing the grantee's solid waste programs.

Applicant means a District as defined in A.C.A. § 8-6-702, a local government, or a delegated authority or agent of such District or government that makes application for a grant pursuant to Commission Regulation 11.

Adjudicatory Action means an action taken by the District to assess a penalty; suspend, revoke or deny a license or permit, or other punitive action against another person, with the exception of the denial of a Certificate of Need.

Airport means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

Aquifer means a geological formation, group of formations, or portion of a formation capable of yielding significant quantities of ground water to wells or springs. Significant quantities of ground water shall be defined as an adequate amount of water to conduct all required analytical tests.

Areas susceptible to mass movement means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluxion, block sliding, and rock fall.

Beneficial Fill means materials for use in filling low areas, improving drainage or stabilizing slopes or embankments. However, placement of beneficial types of fill material into a prepared hole may not be considered 'beneficial,' but may constitute unpermitted disposal. Projects that incorporate the use of beneficial fill material shall generally be completed within less than 60 days.

Beneficial fill material includes asphalt, brick, concrete, ceramics, and uncontaminated soil or dirt. Additional materials may be considered by the Director on a case-by-case basis prior to initiation of fill activity. Nothing in this section is to preclude the use of recovered materials as cited in Reg.22.103 (i) and (j).

Bird hazard means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

Board means the Board of Directors of the Benton County Regional Solid Waste Management District.

Certificate of Need means a certificate issued by the Board to any person proposing to obtain a permit for a solid waste facility.

Certificate of Need Review means review of the application for a Certificate of Need.

Class 1 wastes means nonhazardous household, commercial, and industrial solid waste as defined herein; and small quantities of conditionally exempt hazardous wastes.

Class 3 wastes means nonhazardous commercial, industrial and special solid wastes that are permitted by the Department to be disposed of in a Class 3 landfill.

Class 4 wastes means nonhazardous, bulky, inert, non-putrescible solid wastes that do not degrade, or degrade very slowly and are permitted by the Department to be disposed of in a Class 4 landfill. Class 4 wastes include construction and demolition wastes, appliances, furniture, stumps, limbs and other bulky wastes that are not normally collected with other household, commercial or industrial waste.

Commercial solid waste means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household and industrial waste.

Commission means the Arkansas Pollution Control & Ecology Commission.

Compacted Cubic Yard of Waste means a volume equal to 3' x 3' x 3' of solid waste which has received any amount of mechanical compaction.

Composting means the deliberate aerobic, biological decomposition of yard waste or other solid waste, resulting in a stable humus-like product.

Construction of permitted facilities or Construction refers to activities for which regulatory design and construction standards are provided herein. Clearing and grubbing, ingress and egress roadways, storm water facilities, office and garage buildings, scales, electrical and water utilities, purchasing of rolling equipment, and site monitoring wells are not considered as construction of permitted landfill disposal facilities. However, the construction of the items listed above shall have no bearing on the approval or disapproval of an application, nor shall the construction activities relieve the applicant from meeting any design or construction requirements. The Initiation of Construction of permitted landfill disposal facilities does refer to the construction of clay liner system or composite liner system, leachate control and management systems.

The Initiation of Construction of other types of permitted solid waste management or processing facilities shall refer to any activities including and following the construction of footings or foundation.

Construction and Demolition (C&D) waste means any and all material and debris that might result from the construction or demolition of any building or other manmade structure including but not limited to single and multifamily dwellings, commercial buildings, road and highway construction and repair, remodeling and additions to existing structures and roofing. Materials may include (but are not limited to) dimensional lumber, roofing materials, bricks, concrete blocks, siding, gypsum (drywall), masonry, metal, cardboard, concrete with and without rebar, fill materials (including earth, gravel and stone), glass, and any other material that may be used in any construction project or may be salvaged from any demolition project.

Construction and Demolition Recycling Facility (C&DRF) means a facility that provides for the extraction from mixed construction and demolition waste of recoverable materials.

Construction Quality Assurance refers to the means and actions used to assure conformity of the liner and cover system component production and installation to the approved Construction Quality Assurance Plan.

Construction Quality Control means those actions taken by manufacturers, fabricators, and/or installers to ensure that materials and workmanship meet the requirements of the approved Construction Quality Assurance Plan.

Contaminated soils means those soils that have been physically, chemically, or biologically altered from their natural state. As used in this regulation, a soil is contaminated if it has come into contact and/or mixed with some other substance such that the soil or substance and soil mixture is a threat to human health or the environment, and requires remediation, treatment, or disposal in accordance with these regulations to mitigate such threats.

Department means the Department of Energy and Environmental Quality of the State of Arkansas, or its successor, including the Director and Department Staff.

Design Narrative means that portion of the narrative that describes the design of the solid waste management facility.

Destruction or adverse modification means a direct or indirect alteration of critical habitat that appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

Director means the Director of the Arkansas Department of Energy and Environmental Quality or the Director's designee.

Disease vectors means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

Displacement means the relative movement of any two sides of a fault measured in any direction.

Disposal means abandoning, depositing, releasing, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water.

Disposal site or Disposal facility means any place at which solid waste is dumped, abandoned, or accepted or disposed of for final disposition by incineration, landfilling or any other method. The operations of wastewater treatment facilities permitted under the National Pollutant Discharge Elimination System (NPDES), Underground Injection Control (UIC) program and hazardous waste management facilities permitted under the Arkansas Hazardous Waste Management Act (A.C.A. ' 8-7-201 et seq.) shall not be deemed to be disposal sites or facilities for the purposes of this Regulation.

Directors means the members of the Board of Directors of the Benton County Regional Solid Waste Management District.

District means the Benton County Regional Solid Waste Management District, which includes all of Benton County and the municipalities within the county.

Endangered or threatened species means any species listed as such pursuant to Section 4 of the Endangered Species Act.

Executive Director means the Director of the Benton County Regional Solid Management Waste District.

Existing municipal solid waste landfill unit means any municipal solid waste landfill unit that is receiving solid waste as of the appropriate compliance dates specified in Reg.22.103 (f). Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.

Facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal, treatment or processing of solid waste.

Fault means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

Floodplain means the lowland and relatively flat areas adjoining inland and coastal waters, including flood prone areas of offshore islands, that are inundated by the 100-year flood.

Gas condensate means the liquid generated as a result of gas recovery processes at the landfill.

General Permit means a single common permit issued by the Department following public notice and comment for a class of solid waste processing facility owners and operators. Eligible owners and operators may construct and operate under the terms of the general permit without obtaining an individual permit.

Ground water or groundwater means water below the land surface in a zone of saturation.

Grant Decisions means final administrative decisions by the Director on all applications for grants pursuant to the Department's administration of grant programs represented under this regulation and the final decision of the Director on any disputes arising under any such grant.

Grant Round means a single grant cycle that the Department opens with the acceptance of new applications for funding and ends with the disbursement of grant awards from funds available for the grant cycle.

Grantee means the grant applicant awarded funding for a grant proposal.

Hauler means a person engaged in the collection or transportation of solid waste for disposal, transfer or storage. Hauler does not include a person transporting non-commercial waste to a permitted facility.

Hazardous waste means a hazardous waste as defined by Regulation Number 23 of the Pollution Control and Ecology Commission.

Hazardous waste generated by conditionally exempt small quantity generators means waste generated by persons meeting the criteria set forth at 40 CFR 261.5 as incorporated by reference in Regulation Number 23 of the Pollution Control and Ecology Commission, or such lesser volumes as are identified by state regulations that are in effect at the time of generation or storage of such waste.

Herbicide and pesticide container means a spent container that has contained (a) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests, (b) any substance or mixture of substances intended for use as a plant regulator, defoliant, desiccant, and (c) any substance or mixture of substances intended to be used as a spray adjuvant and not controlled by the Arkansas Hazardous Waste Management Act [A.C.A. ' 8-7-201 et seq.] and Regulation Number 23 of the Pollution Control and Ecology Commission.

Highly toxic pesticide container means a spent container that has contained any pesticide determined to be a highly toxic pesticide that under the authority of Section 25 (a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) the Arkansas Hazardous Waste Management Act (A.C.A. 8-7-201 et seq.) and Regulation Number 23 of the Pollution Control and Ecology Commission.

Holocene means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

Household waste means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

In-Kind Contribution means a contribution to a grant or fund project, which is not cash, but has value, such as real estate, goods or services, which is provided by the grantee or another contributor.

Incinerator ash means any tangible residue resulting from the incineration of solid waste.

Individual permit means a permit issued by the Director to a person as defined herein for the construction of a solid waste disposal or processing facility pursuant to the requirements of Regulation 22.

Industrial solid waste means solid waste generated as a result of manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of RCRA or as defined by Regulation Number 23, Sections 260.10 and 261.3, of the Pollution Control and Ecology Commission. Such waste may include, but is not limited to, waste resulting from the following manufacturing or industrial processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Infectious waste means laboratory wastes, including pathological specimens (i.e., all tissues, specimens of blood elements, excreta and secretions obtained from patients and laboratory animals) and disposal fomites (any substance which may harbor or transmit pathogenic organisms) attendant thereto. It also means surgical operating room pathologic specimens and disposal fomites attendant thereto and similar disposal materials from out-patient areas and emergency rooms, including equipment, instruments, utensils and fomites of a disposal nature from the rooms of patients who are suspected to have or have been diagnosed as having a communicable disease and must, therefore, be isolated, as required by public health agencies.

Interested persons means the applicant and any persons who submit public comments during the comment period either in writing or verbally at the public hearing.

Karst terrains means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock.

Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

Land application unit means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes or for treatment and disposal.

Landfill or landfill unit means a discrete area of land or an excavation that is permitted by ADEQ and receives solid waste for disposal, and that is not a land application unit, surface impoundment, injection well or waste pile, as those terms are defined under 40 CFR 257.2.

Landfill Gate means the entry point at a solid waste management landfill facility at which the waste is received from the landfill customer, the waste is weighed or measured, waste receipt fees are determined, and waste tickets are issued, except those landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry or wastes of a similar kind or character.

Lateral expansion means a horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit.

Leachate means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

Lithified earth material means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

Liquid waste means any waste material that is determined to contain "free liquids" as defined by Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Pub. No. SW-846).

Material Recycling Facility or MRF means a facility engaged solely in practices related to the management or diversion of source separated recoverable materials from the waste stream including storage, processing, marketing or reuse of recovered materials. Such term shall not include a solid waste recovery or handling facility provided; however, that any solid waste generated by such facility shall be subject to all applicable laws and regulations relating to such solid waste.

Maximum horizontal acceleration in lithified earth material means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

Medical waste means a waste from health care related facilities which if improperly treated, handled or disposed of may serve to transmit an infectious disease(s) and as further defined by A.C.A. 20-32-101 et seq.

Monofill means a separately permitted landfill or landfill unit specifically designed and operated for the sole disposal of incinerator ash, sludge, tires, or other wastes where only a single type of waste is placed in the landfill unit.

Municipal landfill means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR 257.2. A municipal solid waste landfill unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A municipal solid waste landfill unit may be a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit or a lateral expansion.

Municipality means a city of the first class or city of the second class or an incorporated town.

Narrative means the document or documents provided with the permit application that includes all written documentation required by the Department to evaluate the proposed design, construction, and operation of the solid waste management facility.

New municipal solid waste landfill unit means any municipal solid waste landfill unit that has not received waste prior to the compliance dates specified in Reg.22.103 (f).

One hundred (100) -year flood means a flood that has a 1-percent or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

Open dump means a site that has been used for the disposal of solid waste which is not a permitted Solid Waste Facility.

Open burning means the combustion of solid waste without:

- a) Control of combustion air to maintain adequate temperature for efficient combustion,
- b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and
- c) Control of the emission of the combustion products.

Operating Plan and Narrative means that portion of the narrative that describes the operating procedures of the solid waste management facility.

Operator means an individual or individuals charged with the responsibility of managing or operating a solid waste management facility or part of a facility, including the responsibility for assuring the operations of said facility is in accordance with the provisions of this regulation and other applicable regulations.

Owner means the person(s) who owns a solid waste management facility or part of a facility.

Permittee means any individual, corporation, company, firm, partnership, association, trust, local solid waste authority, institution, County, City, town or municipal authority or trust, venture or other legal entity holding a solid waste disposal permit, as provided in the Arkansas Solid Waste Management Act, A.C.A. § 8-6-201 et seq.

Person means any individual, corporation, company, firm, partnership, association, trust, state agency, government instrumentality or agency, institution, county, city, town or municipal authority or trust, venture or other legal entity, however organized.

Petroleum contaminated soils means those soils which have been physically, chemically or biologically altered by gasoline, diesel, and kerosene, heating oil, jet fuel or any other petroleum product.

Poor foundation conditions means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a landfill unit.

Potentiometric surface means the surface to which water in an aquifer would rise by hydrostatic pressure.

Practices means the act or method of managing of solid waste.

Process Waste means solid waste resulting from an industrial or manufacturing processing operation.

Private Industry Landfill means a solid waste management landfill facility, subject to permitting requirements under Regulation 22, where private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry.

Putrescible wastes means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for birds and other potential disease vectors.

Recovered Materials includes but is not limited to metal, paper, glass, plastic, textile, yard trimmings, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal.

Recycling or Recycling Activity means the systematic collection, sorting, decontaminating, and returning of waste materials to commerce as commodities for use or exchange by separating or diverting an item or items from the solid waste stream for the purpose of processing it or causing it to be processed into a material product, including compost, in order to provide for the final disposition of the material product in a manner other than landfilling or incineration.

Recyclable Materials Collection Center or Collection Center means a facility which receives or stores recyclable materials prior to transportation to material recovery facilities, markets for recycling, or disposal.

Recyclable Materials Collection System or Collection System means a type of recyclables collection which does not include the direct use of a recyclable materials collection system by the general public. Collection systems include curbside, house-to-house, and other such collection services provided to the general public, which directly receive and transport recyclable materials collection centers, material recovery facilities, or markets.

Regional Solid Waste Management Board means the Benton County Regional Solid Waste Management Board.

Regional Solid Waste Management District means the Benton County Regional Solid Waste Management District.

Rule means any District regulation or statement of general applicability and future effect that implements, interprets, or prescribes law or mandatory policy, or describes the organization, procedure or practice of the District.

Rulemaking Action shall include any action by the District to adopt, amend or repeal and District Rule.

Run-off means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

Safety means practices designed to reduce or prevent injury or damage to the public or to the environment.

Salvage means the approved, controlled removal of reusable material, but shall exclude food products and all other putrescible wastes.

Saturated zone means that part of the earth's crust in which all voids are filled with water.

Scavenging means the manual sorting and/or recovery of materials from the waste stream, either in the trucks, at the face of the fill, or in unconfined truck discharge areas by individuals not employed or associated with the landfill operation.

Seismic impact zone means an area with a two percent (2%) or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull will exceed 0.10g in fifty (50) years.

Sludge means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

Solid Waste means any garbage, or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-

solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

Solid Waste boundary means the outermost perimeter of the solid waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

Solid Waste Facility means any facility which holds or should hold a facility permit issued by the Solid Waste Division of ADEQ, including but not limited to: landfills of any type, transfer stations, material recovery facilities, waste tire facilities, etc.

Solid Waste Management means management activities including, but not limited to, the storage, collection, transfer, transportation, treatment, utilization, processing, and final disposal of solid waste including, but not limited to, the prevention, reduction, or recycling of wastes.

Solid waste management plan means a plan developed according to the provisions of the Solid Waste Management Act, A.C.A. 8-6-201 et seq., and guidelines of the Department, and which is subject to approval by the Department.

Solid waste management system means the entire process of storage, collection, transportation, processing, treatment, and disposal of solid waste, and includes equipment, facilities and operations designed for solid waste management activities, including recycling, source reduction, and the enforcement of solid waste management laws and ordinances.

Solid Waste Material Recovery Facility means a Solid Waste handling facility, subject to permitting requirements under Regulation 22, that provides for the extraction from mixed solid waste of recoverable materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials.

Solid waste recovery facility (WRF) means a solid waste handling facility that provides for the extraction from mixed solid waste of recoverable materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials. Due to the similarity of functions, WRF operations are required to meet all permitting requirements for transfer stations, including obtaining a certificate of need from the Regional Solid Waste Management District.

Solid waste processing facility means a composting facility, transfer station, solid waste recovery facility or other facility that handles or processes solid waste.

Source separated recovered materials means the recovered materials that have been separated from the solid waste stream at the point of generation or at a solid waste materials recovery facility. The term does not require that various types of recovered materials be separated from each other and recognizes de minimis solid waste, in accordance with industry standards and practices, may be included in the recovered materials.

Special materials means any materials that require special handling precautions and disposal procedures by the landfill owner or operator beyond the normal activities associated with landfill operations. Special materials includes those items listed in Chapter 7 of this Regulation and other process wastes and conditionally exempt small quantity generator wastes requiring special handling procedures.

State means the State of Arkansas.

Surface impoundment or Impoundment means a facility or part of a facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials (although it may be lined with human-made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

Structural components means landfill liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the unit that is necessary for protection of human health and the environment.

Taking of endangered species means harassing, harming, pursuing, hunting, wounding, killing, trapping, capturing, or collecting of an endangered species or attempting to engage in such conduct.

Tipping Fee means a charge made by any solid waste disposal, transfer, recycling or processing facility or a transporter to its customers for material received.

Ton means a short ton consisting of a net weight measure of two thousand pounds (2000 lbs.).

Transporter or Solid Waste Transporter or Hauler means any individual, corporation, company, firm, partnership, association, trust, local solid waste authority, institution, County, City, town, municipal authority or trust, venture or other legal entity transporting solid waste and licensed pursuant to the Regional Solid Waste Management Districts and Boards Act, A.C.A. § 8-6-701 et seq.

Transfer station means any facility used to manage the removal, segregation, processing, and transfer of solid waste from collection vehicles and containers, and from other private and commercial vehicles to greater capacity transport vehicles.

Type O Compost Material means source separated organic wastes, such as paper, food wastes, food processing wastes, or yard waste or municipal sewage sludge in combination with these wastes.

Type S Compost Material means mixed solid wastes such as household garbage, nonhazardous commercial wastes, or yard waste, source separated organic wastes, or sewage sludge in combination with these wastes.

Type Y Compost Material means yard waste and other vegetative materials such as grass clippings, leaves, and shredded or chipped brush, and tree prunings.

Unauthorized Waste means regulated hazardous wastes as defined in 40 CFR Part 261, polychlorinated biphenyls (PCB) wastes regulated under the Toxic Substances Control Act (TSCA) for disposal as defined in 40 CFR Part 761, and all other wastes which are not allowed for disposal due to the provisions of this regulation, specific permit conditions, or not allowed by Arkansas law.

Uncompacted Cubic Yard of Waste means a volume equal to a 3' x 3' x 3' of solid waste which has received no amount of mechanical compaction.

Underground drinking water source means an aquifer supplying drinking water for human consumption, or an aquifer in which the ground water contains less than 10,000 mg/l total dissolved solids.

Unstable area means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terranes.

Uppermost aquifer means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

Vector shall have the same meaning as "Disease vector".

Washout means the carrying away of solid waste by waters of the base flood.

Waste management unit boundary means a vertical surface located at the hydraulically down gradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

Waste pile or Pile means any non-containerized accumulation of solid, non-flowing, waste that is used for treatment or storage.

Water table means the surface of unconfined water at which pressure is atmospheric and is defined by the levels at which water stands in wells that penetrate the ground water surface.

Wetlands means those areas of land that are defined in 40 CFR 232.2(r).

Yard waste means grass clippings, leaves, and shrubbery trimmings.

Subchapter 2 Rulemaking.

§ 2.01 Proposed Action

§ 2.02 Notice of Proposed Action

§ 2.03 Public Comment

§ 2.04 Public Hearing

§ 2.05 Final Action

§ 2.06 Emergency Proceedings

§ 2.07 Petitions for Action

§ 2.08 Filing

§ 2.09 Effective Date

§ 2.10 Certification of Regulations

§ 2.11 Official Records

§ 2.12 Substantial Compliance

§ 2.13 Preemption by State or Federal Law

§ 2.14 Actions for Declaratory Judgment

§ 2.15 Severability

§ 2.01 Proposed Action

Pursuant to A.C.A. 25-15-204, The District shall afford all interested persons reasonable opportunity to submit written data, views, or arguments, orally or in writing prior to the adoption, amendment, or repeal of any District rule or regulation unless an emergency is determined to exist as discussed in Section 2.06 of these rules. .

§ 2.02 Notice of Proposed Action

(a) Notice of the proposed new rule or regulation, modification or repeal of an existing rule or regulation, shall be given to the public via publication in in a newspaper having a general circulation in the District and by posting on the District's website. The notice shall be published for three (3) consecutive days.

(b)The notice shall state the terms or substance of the intended action or a description of the subjects and issues involved and provide information on obtaining a copy of the proposal from the District. The notice shall inform the public of the time, place and manner in which they may present their comments.

(c) Notice shall be mailed, via first class mail, to ADEQ and to any person specified by law and to all persons who request advance notice, in writing, of any rulemaking by the District.

(d) The notice shall be published by the Secretary of State on the Internet for thirty (30) days in accordance with § 25-15-218.

§ 2.03Public Comment

The notice in § 2.02 shall solicit written comments from the public for a period of not less than thirty (30) days from the date of publication. The notice shall also provide the address where all comments should be sent.

§ 2.04 Public Hearing

Pursuant to ACA 14-14-108, the District shall hold a public hearing to take both oral and written testimony from the public for and against the proposed action. District staff shall give notice of the time, place,

and purpose of the public hearing at least ten **(10) days** prior to the day on which the hearing is to be held, in a newspaper having a general circulation in the District.

Petitions and letters received by the District Staff prior to the **hearing** shall be entered into the minutes of the **hearing** and considered as other testimony received at the **hearing**;

A summary or transcript of the testimony received during the public hearing will be submitted to the Board prior to their determination.

§ 2.05 Final Action

(a) At any Board meeting following the close of the public comment period and the public hearing, the Board may act on the proposal by: adopting it as originally written; adopting a modified version; or, denying the proposal. The District Board shall fully consider all written and oral submissions respecting the proposed rule before finalizing the language of the proposed rule and filing the proposed rule.

(b) The Board reserves the right to re-issue any proposal for public comment following significant modifications.

(c) Upon adoption of a rule, the District, if requested to do so by an interested person either prior to adoption or within thirty (30) days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement its reasons for overruling the considerations urged against its adoption.

§ 2.06 Emergency Proceedings

Should the District find that imminent peril to the public health, safety or welfare or compliance with federal or state laws or regulations requires adoption of a regulation upon fewer than thirty (30) days notice, and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to adopt an emergency rule or regulation. Any emergency regulation so adopted may be effective for no longer than one hundred twenty (120) days.

§ 2.07 Petitions for Action

The District shall accord any person the right to petition for the issuance, amendment, or repeal of any rule. Within thirty (30) days after submission of a petition, the District shall:

- (a) Deny the petition, stating in writing its reasons for the denial; or
- (b) Initiate rule-making proceedings.

§ 2.08 Filing

The District shall file with the Secretary of State, the Arkansas State Library and the Bureau of Legislative Research, a certified copy of each proposed rule and a statement of financial impact for the proposed rule. The scope of the financial impact statement shall be determined by the District but at a minimum shall include the estimated cost of complying with the rule and the estimated cost for the District to implement the rule. If the District has reason to believe that the development of a financial impact statement will be so speculative as to be cost prohibitive, the District shall submit a statement and explanation to that effect.

§ 2.09 Effective Date

Each final rule or regulation adopted by the District shall be effective thirty (30) days after filing with the Secretary of State unless a later date is specified by law or in the regulation itself. However, an emergency rule or regulation may become effective immediately upon filing, or at a stated time less than 30 days thereafter, if the District finds that this effective date is necessary because of imminent peril to the public health, safety or welfare. The District's finding and a brief statement of the reasons therefore shall be filed with the regulation.

Before the effective date of a final rule or immediately upon adoption of an emergency rule, the District shall take appropriate measures to make the revised rule known to the persons who may be affected by them. These measures will include publishing on the District's website the following: the final rule; copies of all written comments submitted to the District regarding the rule; a summary of all written and oral comments submitted to the District regarding the rule and the District's response to those comments; a summary of the financial impact of the rule; and the proposed effective date of the final rule.

§ 2.10 Certification of Regulations

A copy of any regulation adopted by the Board may be certified by signature of the Chairperson and Secretary of the Board, and by affixing the official seal of the District thereon.

§ 2.11 Official Records

The District shall maintain a certified copy of every regulation or rule adopted by the District. This copy shall be kept at the principal office of the District. A copy of each notice of rulemaking shall also be kept on file at the District.

§ 2.12 Substantial Compliance

Every Rulemaking Action by the District shall be effective if the Rulemaking Action substantially complies with this A.C.A. 25-15-204.

§ 2.13 Preemption by State or Federal Law

If any law of the State of Arkansas or the United States shall require a different method for Rulemaking Action in a particular situation, the provisions of this Subchapter shall be preempted to the extent necessary to comply with State or Federal law. Whenever possible, the provisions of this Subchapter shall be interpreted to be consistent with requirements of State and Federal law.

§ 2.14 Actions for Declaratory Judgments

The validity or applicability of a rule may be determined in an action for declaratory judgment if it is alleged that the rule, or its threatened application, injures or threatens to injure the plaintiff in his person, business, or property. The action may be brought in the circuit court of any county in which the plaintiff resides or does business or in Benton County Circuit Court. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

§ 2.15 Severability

If any provision of any District Rule or Regulation or the application thereof to any Person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of District Rules, which can be given effect without the invalid provision or application, and to this end the provisions of all District Rules shall be considered severable

Subchapter 3: Adjudications.

§3.01 Assessment of Penalty

§3.02 Exemptions

§3.03 Form

§3.04 Request for Appeal

§3.05 Appeal to Board

§3.06 Final Agency Action

§3.07 Appeals to Circuit Court

§3.01 Assessment of Penalty

Unless otherwise indicated within a subsequent chapter, the Executive Director, who shall keep a log of all complaints or violations, is granted the discretion and authority to assess monetary penalties for violations of District Regulations as well as to revoke, suspend or deny a license or permit to any person

for cause; after an attempt to resolve any violation of complaint informally. No less than twenty four (24) hours shall be granted to correct or remediate any complaint or violation.

§3.02 Exemptions

Compliance and enforcement actions related to any subsequent chapter for which a separate Compliance and Enforcement Subchapter exists shall be exempt from action under this subchapter and will be subject to enforcement only under the appropriate Subchapter.

§3.03 Form

- (a) Penalties shall be assessed by a written Administrative Order, signed by the Executive Director or Board Chairperson, and delivered to the person against whom the penalty is assessed; with the right to appeal and have a hearing as set out below.
- (b) Administrative Orders shall be delivered in person or by Certified Mail, return receipt requested, to the address of record at the District. The Administrative Order shall become effective ten (10) days after delivery or attempted delivery of the Administrative Order.
- (c) The Executive Director has the discretion to attach a Consent Agreement to an Administrative Order and to enter into Consent Agreements to settle any Administrative Order.

§3.04 Request for Appeal

- (a) Within thirty days of the receipt of any Administrative Order, the person against whom the Order was issued can request an appeal before the District Board.
- (b) The request for appeal must be in writing and received by the District office no later than close of business thirty days after the date of the Administrative Order. If the thirtieth day falls on a Saturday, Sunday or State Holiday, the request is due by close of business the following business day.
- (c) Requests for appeal may be delivered to the District in person or by Certified Mail, return receipt requested.
- (d) The Board may, at its sole discretion, waive any penalty for a first offense based on the person's prior record.

§3.05 Appeal to Board

- (1) Persons who timely file a request for appeal shall be entitled to be heard at the first regularly scheduled Board meeting following their request for appeal.
- (2) If a request for appeal is received within fourteen days prior to a scheduled Board meeting, the appeal will be heard at the next regularly scheduled Board meeting.
- (3) Any person who files a request for appeal shall have the right to be accompanied and advised by counsel according to ACA 25-15-213. Every party shall have the right to appear in person or by counsel. The District shall present its case first, followed by the appellant. Both sides may offer testimony and present evidence to be considered by the Board. Cross-examination shall be allowed as well as questioning by the Board.
- (4) The hearing shall be conducted by the presiding Chairperson of the Board.
- (5) Conduct of the hearing shall be informal. The Chairperson shall be entitled to use their discretion to allow, disallow or strike any evidence or testimony that they feel is irrelevant, unreliable or duplicative.
- (6) A court reporter shall be hired to develop a transcript of the hearing. This transcript, along with all evidence presented to and accepted by the Chairperson shall make up the Administrative Record in that matter.
- (7) At the close of the hearing, the Board shall enter a written order. Each party shall be responsible for drafting a written order to be submitted to the Board. Alternatively, the Board may draft an order at the close of the hearing.

§3.06 Final Agency Action

The written order adopted by the Board shall be the final agency action for the purpose of appeal to Circuit Court.

§3.07 Appeals to Circuit Court

The appellant may appeal the final agency action of the Board to Circuit Court in Benton County in Arkansas.

Subchapter 4 Reserved.

Subchapter 5 Reserved.

CHAPTER B: CERTIFICATES OF NEED

Subchapter 6 Authority and Applicability.

Subchapter 7 Procedures.

Subchapter 6 Authority and Applicability.

§ 6.01 Authority

§ 6.02 Applicability

§ 6.01 Authority

Ark. Code Ann. § 8-6-706 authorizes Districts to adopt procedures for the issuance of Certificates of Need.

§ 6.02 Applicability

As required by Commission Regulations, all applicants for a solid waste disposal or processing facility permit including but not limited to new solid waste landfill permit, new transfer station permit; new Solid waste recovery facility (WRF) permit, or for an expansion of the permitted capacity of an existing landfill, except for permits for Class 3N Noncommercial landfills, proposed to be located either wholly or partially within Benton County, must obtain a certificate of need from the District Board prior to applying for the permit from ADEQ.

Subchapter 7 Procedures for Obtaining a Certificate of Need.

§ 7.01 Notice of Intent

§ 7.02 Application

§ 7.03 Determination of Completeness

§ 7.04 Comment Period

§ 7.05 Public Hearing

§ 7.06 Application Evaluation

§ 7.07 Appeal of Decision

§ 7.08 Continuing Effect

§ 7.01 Notice of Intent

At least fifteen (15) days prior to submitting an application for a Certificate of Need, the applicant must notify the District, in writing, of its intent to submit such an application. The Notice of Intent shall include the following information:

- a) the name of the applicant;
- b) the applicant's address and telephone number;
- c) whether the applicant is seeking a new or modified solid waste facility permit and the classification of the permit sought;
- d) the site of the proposed facility;
- e) a description of the geo-political area to be served by the proposed facility, including population estimates by jurisdiction;

- f) for landfills, 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.

§ 7.02 Application

Persons requesting a Certificate of Need from the District must submit an application to the District. All applications for Certificates of Need shall include, at a minimum, the following information:

- a) the applicant's legal name, mailing address, email address and telephone number;
- b) the property owner's legal name, mailing address, email address and telephone number;
- c) the street address as denoted by the local 911 service, legal address and driving directions of the proposed facility;
- d) if the owner of the proposed facility is other than the applicant, a copy of the rental or purchase agreement for the proposed facility including the name of the person having legal ownership of the land where the proposed facility will be located, and a copy of the legal instrument giving Applicant the right to use the realty for solid waste disposal or processing including a current boundary survey of the property by a registered land surveyor.;
- e) the location of the proposed facility as shown on the applicable 7.5° USGS topographic map(s);
- f) the service areas which the proposed facility will serve;
- g) types, quantities, classifications and sources of waste proposed to be disposed of or processed at the site or facility;
- h) total waste capacity, projected utilization rate, and total life expectancy of the facility for landfills, the current permitted capacity for the appropriate landfill class within the district and the estimated increase in permitted capacity for the proposed facility or modification. Applicant must demonstrate that the proposed facility provides landfill disposal capacity needed within the District. In no event, shall the District's excess projected capacity for any class of landfill exceed thirty (30) years, including the proposed facility;
- i) for transfer stations, a map showing the location of the proposed facility and all existing transfer stations with a twelve-mile radius around each. Applicant must demonstrate that a sufficient transfer station capacity does not currently exist within the proposed service area. At the discretion of the District Board, a pending application for a permit modification to increase the permitted capacity of an existing transfer station, which has been submitted to ADEQ prior to the review of the application by the District Board, may be considered as existing capacity by the Board in determining whether a need for additional capacity exists
- j) for transfer stations, specify the facility to which waste from the transfer station will be transferred;
- k) a completed Disclosure Statement using forms provided by the ADEQ (Not required for governmental entities including federal, state, county, municipal, regional solid waste authorities);
- l) Documentation of each of the following:
 - (1) the proposed facility is consistent with the regional planning strategy adopted by the board in the regional needs assessment or the most recent regional solid waste management plan;
 - (2) the proposed facility does not conflict with existing comprehensive land -use plans of any local governmental entities;
 - (3) documentation from appropriate agencies regarding whether the selected site is in conformance with the airport safety, floodplain, wetlands separation distances and location restrictions, and protective of endangered species, historic archaeology, and flora and fauna. Those agencies include, but are not limited to, the Federal Aviation Administration, US Army Corps of Engineers, US Fish and Wildlife Services, Arkansas Game and Fish Commission, Arkansas Historic Preservation Program, Arkansas Natural Heritage Commission, and the Arkansas Department of Health;
 - (4) the proposed facility will not adversely affect the public use of any local, state, or federal facility, including, but not limited to, parks and wildlife management areas;
 - (5) the proposed facility does not conflict with the requirements of local, state or federal laws and regulations on the location of disposal facilities as outlined in this regulation.

- (6) if the proposed facility is located within the 100-year floodplain, that it will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or potentially result in washout of solid waste so as to pose a hazard to human health or the environment.
 - (7) the proposed facility is appropriately located given the District's needs and taking into consideration its road system
 - (8) If the proposed facility is a transfer station which intends to transfer waste outside of the district in which it is located; provide documentation that the district to which the waste will be transferred has been notified and that the regional board of that district has approved the receipt of the waste. This provision shall not apply if the waste is being transported for disposal outside the geographical limits of Arkansas.
- m) any other information deemed necessary to make a determination of need.

§ 7.03 Determination of Completeness

Within thirty (30) days of receipt of the initial application, the District will determine if the application is administratively complete and contains all required information, documents and submittals. Any additional information the District determines is necessary to make a decision on the need of the proposed facility will be requested within this time. If additional information is requested by the District, it will again determine completeness of the application within thirty (30) days of the receipt of the additional information.

§ 7.04 Comment Period

Once the District has determined that an application for a Certificate of Need is administratively complete, it will so notify the applicant.

A public notice regarding the application for a Certificate of Need shall be prepared by the District for **publication by the applicant**. The public notice shall include the following:

- 1) notice of the receipt of the application
- 2) the place, date, and time of the required public hearing. The place, date, and time for the public hearing shall be set by the District.
- 3) the manner in which citizens may submit written comments.

Publication of notices shall be in the Newspapers of Northwest Arkansas. The public notice must be published at least twenty (20) days prior to the date of the public hearing.

The date of publication of the notice shall mark the beginning of a thirty (30) calendar day comment period in which any interested party may submit written comments to the District regarding the application for the Certificate of Need.

§ 7.05 Public Hearing

During the comment period, the District will conduct one or more public hearings within the municipality or county where the proposed facility or modification is to be located.

§ 7.06 Application Evaluation

At the first regularly scheduled Board meeting following the close of the comment period, the Board will take up for consideration the application for a Certificate of Need. Those supporting the issuance of the Certificate of Need and those opposing the issuance of the Certificate of Need will be provided with a total of 10 minutes for each side to address the application. The Board may, at its discretion, table the decision on the application until a future Board meeting.

Once the Board has had sufficient time to thoroughly review all of the materials and comments related to the application for a Certificate of Need, the board shall issue or deny the Certificate of Need based upon an evaluation of:

- (1) The information provided by the applicant in the application for a certificate of need;
- (2) The requirements and considerations of any needs assessments prepared pursuant to Commission Regulations;
- (3) The location of the applicant's proposed facility based on the district's needs and its highway and road system;
- (4) The need for a landfill based upon the district's remaining capacity that is currently permitted for operation, but in no event shall the district's remaining permitted capacity exceed thirty (30) years unless the city or county government within whose jurisdiction the proposed landfill is located authorizes approval of the excess capacity through the adoption of a resolution. Along with the Certificate of Need for a landfill, the district shall provide to the Director an allocation of waste capacity for each permitted landfill within the district's jurisdiction in order to determine the design capacity of the proposed facility;
- (5) Any solid waste management system plans, promulgated and approved pursuant to A.C.A. § 8-6-211 and ' 8-6-212 to the extent these plans conform to an overall regional planning strategy;
- (6) A detailed history of the applicant's record and that of the property owners, stockholders and officers with respect to violations of environmental laws and regulations of the United States or any state or any political subdivision of any state. The Board may issue or deny the issuance of a Certificate of Need if it finds, based upon the disclosure statement and other investigation which it deems appropriate, that:
 - (a) the applicant has a history of noncompliance with environmental laws or regulations of this state or any jurisdiction;
 - (b) An applicant which owns or operates other facilities in the state is not in substantial compliance with environmental laws or regulations of this state; or
 - (c) A person with a history of noncompliance with environmental laws or regulations of this state or any jurisdiction is affiliated with the applicant to the extent of being capable of significantly influencing the practices or operations of the applicant which could have an effect on the environment.
- (7) All written and oral submissions, including public comments, respecting the proposed Certificate of Need.

Unless the Board has affirmatively issued or denied a Certificate of Need within one-hundred and twenty (120) days of the beginning of the comment period, the Certificate of Need will be deemed to have been denied.

The Board shall issue written findings when making a determination. The findings shall state the basis for issuing or denying the Certificate of Need. The findings will be sent to the following:

- (a) the applicant;
- (b) ADEQ; and
- (e) any interested persons who request such findings in writing from the District.

§ 7.07 Appeal of Decision

Any person with standing to a Certificate of Need determination shall have the right to appeal the issuance or denial of a Certificate of Need to the Director of ADEQ in accordance with ADEQ regulations governing such appeals. Persons with standing to appeal the determination shall be only the applicant or permittee and those persons who submitted written or oral public comments for the record during the comment period designated by the District

§ 7.08 Continuing Effect

- (a) Upon receipt of a Certificate of Need, the applicant has sixty (60) days in which to file a pre-application for a solid waste facility permit with ADEQ. If a pre-application is not filed within 60 days, the Certificate of Need shall expire.

- (b) Upon receipt of a Certificate of Need, the applicant has six (6) months in which to file a permit application for a solid waste facility permit with ADEQ. If a permit application is not filed within 6 months, the Certificate of Need shall expire.
- (c) Certificates of Need are issued to specific persons. Under no conditions or circumstances shall a Certificate of Need be transferred, assigned, or otherwise provided to any individual or organization other than as originally specified on the Certificate of Need.

CHAPTER C: WASTE TIRE PROGRAM

| | |
|---------------|----------------------------|
| Subchapter 8 | Authority |
| Subchapter 9 | Procedures |
| Subchapter 10 | Alternative End Uses |
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Subchapter 8 Authority and Purpose

| |
|---------------------|
| § 8.01 Intent |
| § 8.02 Authority |
| § 8.03 Definitions |
| § 8.04 Prohibitions |

§ 8.01 Intent

The purpose of this regulation is to protect the public health, welfare and the environment by providing for the regulation of waste tire collection, storage, transporting, processing and disposal and to encourage reducing, reusing, recycling and retreading of waste tires.

§ 8.02 Authority

Ark. Code Ann. § 8-9-403 et al and Commission Reg. 14.501(A) states that District Boards are responsible for the administration of the Waste Tire Program within their respective service areas.

§ 8.03 Definitions

Unless otherwise noted, all terms contained in these regulations are defined as set forth in any current version of any Pollution Control and Ecology Commission Regulations. Any changes made by the Commission shall be considered immediately engrossed within these regulations. Should a conflict in definition arise, the terms are defined by their plain meaning.

This section contains definitions for terms that appear in this subchapter. Except where noted otherwise, the term 'may' is permissive and the term 'shall' is a directive or requirement. When used in the regulations:

Abatement means the removal of waste tires from stock piles or other sites with accumulations of whole or shredded scrap tires.

Automobile Tire means any motor vehicle tire with a load rating of "F" or lower.

Baling means a method of volume reduction whereby tires are compressed into bales.

Civil Engineering Application means the use of waste tires in lieu of or in addition to natural occurring materials (such as rock, sand, dirt, gravel) in construction. This definition does not include land reclamation.

Compacted and Baled Tires means tires that have been mechanically compressed and tied with interlocking wrappings that have been approved by the Department.

Disclosure Statement means a written statement regarding business and legal activities as defined in A.C.A. 8-1-106 et seq.

Distribution Cycle means a single quarterly funding cycle that the Department opens with the acceptance of District quarterly reports which detail monies received and expended, tires collected, and other program related information as determined by the Department; and ends with the distribution of grant monies from funds available for the distribution cycle.

Fee Paid Tire means waste tire in which a state waste tire fee has been collected, reported, and paid on the replacement tire sold at retail.

Grant Decisions means final administrative decisions by the Director on all applications for grants pursuant to the Department's administration of the Waste Tire Program created under A.C.A. ' 8-9-401 et seq. and the final decision of the Director on any disputes arising under any such grant.

Grant Round means a two-year grant cycle that the Department opens with the acceptance of new applications for funding and ends with eligibility approval to Districts to participate in quarterly distribution cycles during the given two-year period.

Load Rating means the system of trade designations that identifies the weight carrying capacity range of a tire.

Manufacture Reject Tire means a tire rendered defective in the manufacturing process.

Motor Vehicle means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated primarily on the roads of the State of Arkansas:

(a) used to transport persons or property, and

(b) propelled by power other than muscular power.

Non-Fee Paid Tire means waste tire in which no state waste tire fee has been collected, reported, and paid on a replacement tire sold at retail.

Operator means any person who performs any operation at a permitted waste tire processing or disposal facility requiring individual judgment which may directly affect the proper operation of the facility. Operator shall not be deemed to include any official solely exercising general administrative supervision.

Permit means a written consent issued by the Department authorizing a person or business to construct, operate, and/or maintain a waste tire processing facility, a waste tire disposal facility or a waste tire collection center.

Permitted Site means any site used for collection, storage, processing, or disposal of waste tires which has a current valid operating permit issued by the Department.

Person means any individual, corporation, company, firm, partnership, association trust, state agency, government instrumentality or agency, institution, county city, town or municipal authority or trust, venture or other legal entity, however organized.

Processed Tire means tires and commingled tire parts and pieces that have been cut, shredded, or otherwise altered so that they are no longer whole and/or no longer identifiable.

Quantity means the weight, volume, or actual number of tires. For purposes of this rule, assume that there are one hundred (100) automobile tires per ton, twenty (20) truck tires per ton, and ten (10) tires per cubic yard.

Recycling means the systematic collecting, sorting, decontaminating and returning of waste materials to commerce as commodities for use or exchange.

Registered Professional Engineer means professional engineer registered in the State of Arkansas.

Registered Used Tire Dealer means a tire retailer who is registered with the Arkansas Department of Finance and Administration as a Waste Tire Fee Collecting Agent and who sells both new and used tires.

Residuals means any liquids, sludges, metals, fabric or by-products resulting from the processing or storage of tires. Residuals do not include processed tires held for recycling provided the conditions of Commission Regulation 14, Chapter 13 are met.

Specialty Tire means any tire not specifically covered by any other definition in this section including without limitation traction engines, road rollers, vehicles that run only on a track, bicycles, and farm tractors and trailers.

Tire means a continuous solid or pneumatic rubber covering that is used for encircling the wheel of a motor vehicle.

Tire Derived Fuel (TDF) means fuel derived from whole tires or processed tires.

Tire Manufacturer means a manufacturing operation engaged in the final assembly of the basic components of a tire.

Tire Recycling means any process by which waste tires, processed tires, compressed and baled tires, or residuals are reused or returned to use in the form of products or raw materials.

Truck Tire means any motor vehicle tire with a rim size greater than nineteen inches (19") and a load rating of "F" or higher including without limitation wide-base or extra-wide single tire.

Used Tire means a tire that is repairable or retreadable for its original intended purpose but shall not include a tire being held for ninety (90) days or less for the purpose of retreading or repairing the tire.

Waste Tire means a whole tire that is no longer repairable or retreadable or no longer suitable for its original intended purpose because of wear, damage, or defect.

Waste Tire Collection Center means a site where used or waste tires are collected from the public prior to being offered for recycling or disposal and where fewer than three thousand (3,000) loosely stored tires are kept on the site on any given day or up to a maximum of ten thousand (10,000) tires which have been compacted and baled.

Waste Tire Generator means any person who generates by removing from rim for disposal or stores waste tires on property owned or leased by that person.

Waste Tire Management Facility means a facility involved in the collection, storage, recycling, processing and/or disposal of waste tires.

Waste Tire Monofill means a separately permitted landfill or landfill unit specifically designed and rated for the sole disposal of waste tires, and where the area has been prepared in such a manner that the tires can be recovered at a later date.

Waste Tire Originating from a Tire Manufacturer means those new tires which originate from a tire assembly process and are determined by the tire manufacturer to be either defective or unfit for use on a motor vehicle.

Waste Tire Processing Facility means a site where equipment is used to cut, chip, grind, or otherwise alter used or waste tires.

Waste Tire Site means a site at which one thousand (1,000) or more unpermitted used or waste tires are accumulated, whether loosely stored or compacted and baled, or a combination thereof.

Waste Tire Transporter means a person who collects and transports from one place to another, twenty-five (25) or more whole, used or waste tires, processed tires, or tire residuals for storage, processing, recycling, reuse, resale, or energy recovery.

Wide-base Tire or Extra-wide Single Tire means a tire approximately four hundred fifty-five millimeters (455 mm) wide that is used on a motor vehicle in which the front axle load exceeds the load capacity of a truck tire.

§ 8.04 Prohibitions

- (a) A person shall not transport, transfer, store, collect, recycle, or otherwise manage processed, used, or waste tires in any manner that may:
- (i) Create a nuisance;
 - (ii) Breed or harbor mosquitoes, snakes, insects, rodents, and/or other vectors;
 - (iii) Cause a discharge of any constituents derived from waste tires into the air or waters unless otherwise permitted by the District; or
 - (iv) Create other hazards to the public health, safety, or environment as may be determined by the District.
- (b) A person shall not dispose of tires or portions of tires in the District, unless such tires are disposed of for processing, or are collected for processing, at a permitted waste tire processing facility, at a waste tire collection center, or at a permitted solid waste facility authorized to accept waste tires.
- (c) A person shall not cause or permit the open burning of tires in the District.
- (d) A person shall not maintain a waste tire site. The owner or operator of any waste tire site shall, provide notification to the Department and the District on a Form TP 1. Individuals responsible for creating illegal waste tire piles or responsible for allowing the stockpiling of waste tires shall be responsible for properly removing and disposing of the waste tires in a manner approved by the District. The owner or operator of any waste tire site shall submit a written plan to the Department for review and approval that specifies a method and time schedule for the removal, disposal, or recycling of the tires. The owner or operator shall implement the approved plan according to the approved schedule.

Subchapter 9 Procedures

§ 9.01 Tire Retailers

§ 9.02 Waste Tire Facilities

§ 9.03 Exemptions

§ 9.04 Waste Tire Collection Centers

§ 9.05 Waste Tire Transporters

§ 9.06 Disposal Fees

§ 9.01 Tire Retailers

- a. State Law imposes a fee upon the sale of each new motor vehicle tire sold at retail. The fees shall be charged by the tire retailer to the person who purchases a motor vehicle tire for use on a motor vehicle and not for resale. Such fee shall be added to the total cost to the purchaser at retail after all applicable sales taxes on the tires have been computed and shall be separately stated on the invoice or bill of sale. The applicable fees shall be paid monthly to the Director of the Department of Finance and Administration.
- b. Each tire retailer engaged in the sale of tires in Benton County shall file a return with the Arkansas Department of Finance and Administration, and provide a copy of the return to the District, on or before the twentieth (20th) of each month, showing the total fees collected for both automobile and truck tires during the preceding calendar month.
- c. The tire retailer shall ensure that any used or waste tires collected through the tire retailer's business are transported by a licensed waste tire transporter to a permitted waste tire collection

center, solid waste management facility, waste tire processing facility, or to a registered used tire dealer within Benton County. This requirement shall also include proper stacking or placement of the tires in collection containers.

§ 9.02 Waste Tire Facilities

All applicants for a new solid waste facility permit including a waste tire facility permit, or for a modification or expansion of an existing permit, must obtain a certificate of need from the District prior to applying for the permit from ADEQ as outlined in Chapter B. All waste tire facilities are required to comply fully with all regulations established by the Commission which relate to tires.

§ 9.03 Exemptions

- (a) A permit is not required for a tire retreading business, where fewer than one thousand (1,000) waste tires are kept on the business premises.
- (b) A permit is not required for a single facility that, in the ordinary course of business, removes tires from motor vehicles, if fewer than one thousand (1,000) waste tires are kept on-site.
- (c) A permit is not required for a site designated by the District, serving as a waste tire collection center, where fewer than one thousand (1,000) tires are kept on the premises.
- (d) A person who leases or owns real property may use one thousand (1,000) or less waste tires for soil erosion control and drainage purposes, construction and building material, civil engineering applications or to secure covers over silage, hay, straw or agricultural products after obtaining authorization for such use from both the Department and the District in which the project will be located. Authorization by the Department may include requirements, of the property owner, to:
 - (i) adequately prevent the tires from becoming a health, safety, and/or fire hazard; and
 - (ii) to secure the tires in the event of flooding or other occurrence so that the tires will remain in place; and to take any other measures deemed necessary by the Department. If more than one thousand (1,000) tires are located on the property, then the Department may require the owner or leaser to meet the general permitting requirements in this regulation. Authorization from the Department and the District in which the project will be located may include alternative end use requirements outlined in this regulation.

§ 9.04 Waste Tire Collection Centers

- (a) The District shall establish waste tire collection centers within Benton County. The number of waste tire collection centers established shall be outlined in the Solid Waste Management Board's Waste Tire Management Plan. Collection centers shall be located at sites that ensure a maximum travel distance to the site is less than sixty (60) miles from any boundary within the District. Storage capacity of sites must ensure that the needs of the public and tire retailers in the District's service area are met sufficiently.
- (b) Waste tire collection centers shall meet the requirements contained in Commission Regulation 14 for waste tire collection centers.
- (c) The owner or operator of a waste tire collection center shall record and maintain for one (1) year information regarding their activities, which shall be used to complete Form TP 8 (Waste Tire Collection Center Annual Report) due by March 1 annually to the Department. Records shall be maintained on-site and available for inspection by District personnel during normal business hours.
- (d) A permitted waste tire collection center may collect a maximum of three thousand (3,000) loose tires or a maximum of ten thousand (10,000) compacted and baled tires at the site. Storage shall be in accordance with waste tire storage requirements described in Regulation 14. A permit will not be required for a waste tire collection center which collects and stores less than 1,000 tires at any time.
- (e) Access to the facility must be controlled at all times in accordance with the Storage Requirements.

§ 9.05 Waste Tire Transporters

- (a) A person shall not transport more than twenty-four (24) tires without a waste tire transporter license.

- (b) A person shall not contract with a waste tire transporter for the transportation of waste, used and/or processing tires unless the transporter has a current transporter license issued by the Department or is exempt from license requirements.
- (c) No collection center or waste tire facility shall accept more than twenty-four (24) tires from a person who does not possess a valid waste tire transporter license. A waiver may be granted at the District's discretion to a person who:
 - (i) Has applied to ADEQ for the license and can provide documentation to that effect;
 - (ii) Is involved in the remediation of an illegal waste tire site.

§ 9.06 Disposal Fees.

- (a) An individual resident of the District shall not be charged a fee for discarding four (4) or fewer automobile tires not on rims at a waste tire collection center per month or more often at the discretion of the District.
- (b) A retail seller (dealer) of tires shall not be charged a fee for discarding, at a waste tire collection center, a number of automobile and truck tires equal to the number of tires for which the retail seller has collected and paid the waste tire fee levied by Arkansas Code A.C.A. ' 8-9-404 et seq. A retail seller shall be awarded one (1) tire disposal credit for each waste tire fee paid in to DFA. Retail sellers are required to provide documentation to the District no later than the 20th of each month of the waste tire fee payment submitted to DFA for the previous calendar month's tire sales. The District shall maintain a record of the number of tires for which the waste tire fee was submitted and the number of waste tires disposed and the number of remaining tire credits available to the retail seller (dealer).
- (c) Any state or other governmental entity within this state that is required to purchase tires on state contract may dispose of an equal number of waste automobile and truck tires equal to the number of tires for which they have paid the waste tire fee levied by A.C.A. § 8-9-404 et seq., provided that they can show proof that said fee was paid to a retail seller of tires registered with the Arkansas Department of Finance and Administration to collect and pay the waste tire fee levied. Such state or other governmental entity may dispose of said waste tires in a District other than the District in which the waste tires were purchased at retail without being charged any additional fee.
- (d) A waste tire collection center shall collect an equitable fee, to be established by the District, on all non-fee paid automobile and truck tires. The fee shall be posted for the public. Any fees charged for said tires must not be in excess of the costs of properly removing and disposing of such tires. All fees collected on non-fee paid tires must be submitted to the District at the time the collection center delivers or ships the waste tires for which the fee was collected to the District.
- (e) If a waste tire collection center accepts large specialty tires, the District shall establish fees for accepting such tires in amounts sufficient to cover the increased disposal costs associated with these types of tires. Any fees charged for said tires must not be in excess of the costs of properly removing and disposing of such tires. All fees collected on large specialty tires must be submitted to the District at the time the collection center delivers or ships the waste tires for which the fee was collected to the District.

Subchapter 10 Alternative End Uses

§ 10.01 Project Approval.

§ 10.02 Project Proposal Requirements.

§ 10.03 Review Considerations.

§ 10.04 Additional Safeguards.

§ 10.05 Posting of Financial Assurance.

§ 10.06 Exemptions

§ 10.01 Project Approval.

Proposed alternative end use projects shall require approval by both the District and the Department. The District shall be responsible for the initial review and approval of specific sites and corresponding construction specification and details. Upon approval by the District, the District shall submit a complete

copy of the proposed project to the Department for the second level of review. The Department's review will include, at a minimum, environmental protection, technical adequacy, regulatory compliance, and grant funding eligibility, if applicable.

§ 10.02 Project Proposal Requirements.

The District, at its discretion, may require the proposal to be prepared by a professional engineer, registered in the State of Arkansas. The proposal shall include the following information unless otherwise specified by the District in writing:

- (A) Legal description, address and directions to the proposed site;
- (B) A map or aerial photograph indicating land use within a one-fourth (1/4) mile radius of the proposed site which shall be of adequate scale to show all residences, structures, surface waters, public and private water supply sources, access roads, historic sites, and other existing man-made features relating to the site;
- (C) Maps indicating the existence of any regulated wetlands or flood plains on or adjacent to the site;
- (D) A site plan map that delineates survey boundary locations, the location of existing or proposed access roads, existing buildings and improvements including any staging and storage areas for incoming waste tires, general site topography, and existing and proposed drainage characteristics including any run-on/run-off control systems;
- (E) A list of the waste tire generator(s) including both name, location and mailing address;
- (F) Concurrence of the landowner indicating acceptance and responsibility of the waste tires or residuals, and an agreement to indemnify the District and the Department from any future liability resulting from the waste tire alternative end use project;
- (G) Statement(s) from any local regulatory body having jurisdiction over the project, including planning, building, code enforcement and/or drainage departments that the project complies with applicable regulations;
- (H) Any applicable environmental permits;
- (I) Project specifications and details including a description of the proposed application, the quantity of waste tires anticipated to be used in the project, construction methods and materials, construction drawings and details and a project schedule. Additionally, the reason for using tire chips in place of other materials must be substantiated; an explanation shall be provided demonstrating how the engineering properties of these materials will be beneficial to the project;
- (J) An explanation of how the project will comply with applicable sections of Commission Regulation 14, including storage requirements, fire safety requirements, and waste tire processing requirements.

§ 10.03 Review Considerations.

The following conditions shall be considered by the District in determining the appropriateness of proposed waste tire end use applications:

- (A) The level of engineering/technical detail provided as compared to the complexity of the project. Relatively simple uses of the waste tires such as for erosion control may require only a minimum amount of pre-project planning and construction drawing detail. Projects that will use waste tires in a manner that their failure could endanger life or damage property, shall require more engineering effort and detail; therefore, detailed construction drawings and specifications shall be provided that are signed and stamped by a registered professional engineer;
- (B) Availability (or lack) of more cost effective, efficient, or dependable materials that could be used instead of the waste tires. This factor recognizes that in most cases, cost, efficiency, and dependability are important factors in the selection of materials to incorporate into a project. When waste tires are superior to other materials in these respects, incorporating them into the project is a reasonable alternative – when they are not, the legitimacy of their use cannot be substantiated;
- (C) The probability of injury or damage should be balanced against the risk of failure; and
- (D) Where tires are proposed as a substitute for another material, the applicant shall demonstrate that the waste tires will perform in a manner similar to the material for which it is substituted. In addition, if waste tire bales are used as structural members, a demonstration must be submitted showing that the bales exhibit adequate properties to perform as structural members. The demonstration may include

previous projects where the baled tire performed satisfactorily under similar conditions, literature describing similar installations, or test data showing that the material meets required performance standards.

§ 10.04 Additional Safeguards.

The District reserves the right to grant conditional approval for an alternative end use project and impose additional operating and/or design requirements as needed to ensure technical adequacy and protection of the environment.

§ 10.05 Posting of Financial Assurance.

The District may, at its discretion, require posting of separate financial assurance for a given application.

§ 10.06 Exemptions

The following uses of waste tires may be exempted from the review and approval requirements of this Chapter as determined by the Department on a case-by-case basis. Approval for an exemption must be obtained prior to the initiation of any project listed below.

(A) A person who owns or leases real property may use five hundred (500) or less tires for soil erosion control, drainage improvements, or to secure covers over silage, hay, straw, or agricultural products.

(B) The use of shredded waste tires as leachate collection media under solid waste landfills in place of traditional aggregate if the proposed alternative end use is approved during the permitting process or subsequent modifications.

(C) The use of shredded waste tires in on-site waste water soil absorption systems in place of traditional aggregate if the shredded waste tires meet Arkansas Department of Health specifications and guidelines.

(D) The use of shredded waste tires, baled tires or crumb rubber in road or highway construction projects if alternative end use projects are conducted by, in association with, or under the guidance of the Arkansas Highway & Transportation Department or other roadway authority, as applicable.

(E) Suitable processed tire materials may be used in the construction of daily and intermediate cover systems for all landfills if the use is authorized by the Department; shown to not present a threat to human health and the environment; and shown to control disease, vectors, fires, odors, blowing litter, or scavenging.

Subchapter 11 Compliance and Enforcement

§ 11.01 Violations.

§ 11.02 Penalties.

§ 11.03 Enforcement.

§ 11.04 Inspection and Information Gathering.

§ 11.05 Severability.

§ 11.01 Violations.

It shall be a violation for any person to fail to comply fully with any provision of Chapter C.

§ 11.02 Penalties.

Any person who violates this Chapter shall be deemed guilty of a misdemeanor. Upon conviction, the person shall be subject to imprisonment for not more than thirty (30) days or a fine of not more than one thousand dollars (\$1,000), or both imprisonment and fine.

§ 11.03 Enforcement.

The Executive Director is authorized to seek the approval of the Board to institute legal and/or equitable action in the appropriate courts to enforce any violation of Chapter C.

§ 11.04 Inspection and Information Gathering.

Any Person shall, upon the request of any District designee, furnish information relating to any activity at the waste tire facility or business and permit such designee at all times to have access to, and to copy all records relating to such activity. Any District designated person shall be allowed access to all requested records during normal business hours.

§ 11.05 Severability.

If any provision of these regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to this end the provisions of these regulations are declared to be severable.

CHAPTER D: LICENSING AND REGULATION OF SOLID WASTE HAULERS

Subchapter 12 General

Subchapter 13 Licensing Procedures and Operating Requirements

Subchapter 14 Enforcement and Penalties

Subchapter 15 Waste Hauler Trust Fund

Subchapter 12 General

§12.01 Authority and Purpose

§12.02 Solid Waste Hauler.

§12.03 Scope and Applicability

§12.04 Exemptions

§ 12.01 Authority and Purpose

Pursuant to Ark. Code Ann. § 8-6-721, and Commission Regulation 22, the Board is charged with the responsibility of licensing Solid Waste Haulers within the District. The Regional Solid Waste Management Boards may impose more stringent standards than the minimum standards established by the Commission. The purpose of this licensing program is to protect the public health, safety and welfare by regulating and monitoring the collection, transportation and disposal of Solid Waste within the District.

§12.02 Solid Waste Hauler

As used in this Chapter, "Solid Waste Hauler" means any person engaged in the collection of Solid Waste within the District, and any Person engaged in the transportation of Solid Waste for disposal or storage within the District. "Solid Waste Hauler" does not include an individual transporting his own household waste to a permitted facility.

§12.03 Scope and Applicability

Pursuant to Ark. Code Ann. § 8-6-712, no person, other than as may be designated by the district, shall engage in the collection or utilization of solid waste within the district which would be competitive with the purposes or activities of the district.

The collection of solid waste within the boundaries of the district by any person not properly licensed by the District shall be prohibited.

A person who engages in hauling solid waste within Benton County must obtain a license from the District if:

- (1) the person is engaged in the collection of solid waste within the district; or
- (2) is engaged in the transportation of solid waste for disposal or storage in the district.

Unless otherwise indicated, the provisions of this Chapter apply equally to Type I and Type II Haulers as defined in Commission Regulation 22.203(d), and to other hauler designations that may be added by the Commission, from time to time.

§12.04 Exemptions

Persons exempt from licensing shall comply with all other applicable standards required under this section or by District rules adopted pursuant to this section. For purpose of this section, a license shall not be required for:

- (1) An individual hauling only their own household waste to a permitted facility;
- (2) The transport of solid waste from an industrial facility to its own Class 3N landfill; or for
- (3) A Solid Waste Management District engaged in the hauling of solid waste within its own district.

Subchapter 13 Licensing Procedures and Operating Requirements

§13.01 License Eligibility

§13.02 Hauler Classifications

§13.03 Financial Responsibility

§13.04 License Term

§13.05 Issuance of License

§13.06 Authority of Executive Director

§13.07 Annual Fees

§13.08 Operating Requirements

§13.01 License Eligibility

A license shall be issued only to a person, partnership, corporation, association, the State of Arkansas, a political subdivision of the state, an improvement district, a sanitation authority, or another regional solid waste management district.

The District may engage in the hauling of solid waste within the District without licensure but shall comply with all applicable standards required under this section.

In order to be eligible for issuance of a Solid Waste Hauler's License by the Board, a Solid Waste Hauler must:

- (1) Hold the appropriate driver's license as defined by Arkansas law;
- (2) Annually register its operation with the Board providing:
 - (i) name, address and telephone number of registrant;
 - (ii) description of vehicle(s) to be registered including make, model and year of vehicle, vehicle ID number, license plate number, and name of vehicle owner; and
 - (iii) description of the nature of wastes and size of loads; and the location of disposal of waste;
- (3) Establish and maintain financial responsibility acceptable to the Board;
- (4) Disclose all violations of Federal, State, Local, or District laws, rules, or regulations regarding the collection, transportation or disposal of Solid Waste, within the preceding twelve (12) months; and
- (5) Provide proof of correction of any violations of Federal, State, Local or District Laws regarding the collection, transportation or disposal of Solid Waste.

§13.02 Hauler Classifications

The Arkansas Pollution Control and Ecology Commission has established classifications of haulers, which are to be used by districts in licensing haulers. The classifications are based on the nature and size of the loads transported.

The following classification of haulers shall apply:

- (1) A Type I hauler hauls all categories of nonhazardous solid waste as identified in Regulation 22 with the exception of waste tires;
- (2) A Type II hauler hauls only process waste and special materials as identified in Regulation 22, with the exception of waste tires

§13.03 Financial Responsibility

Any hauler applying for a license must establish financial responsibility to the Board. Proof of liability insurance, issued in the name of the hauling company, will be required. Proof of liability insurance which provides the name of the Solid Waste Hauler, business location address, vehicles covered by the policy and the limits of coverage will be considered adequate financial responsibility. Proof of insurance must be sent by fax or mail directly from the insurer to the District.

§13.04 License Term

A Solid Waste Hauler's License shall be issued for a maximum of period of one (1) year, and shall be effective through December 31 of the current year, regardless of the date of issuance.

Applications for a license shall be mailed out by the District to each hauler and post marked no later than November 1st. If said applications are not mailed out by November 1st then the deadline to submit such shall be extended accordingly. Application packets shall be returned to the District no later than December 15th of each year except as stated above.

§13.05 Issuance of License

(a) All persons engaged in the business of collection or transportation of solid wastes within the District must register such business with the District by December 15 each year for the next calendar year's license. Applicants for a Solid Waste Hauler's license must provide the following information:

- (1) Business' legal name, mailing address, facility address, telephone number and email address of primary contact;
- (2) Name of principal owners and officers;
- (3) Number of residential and commercial accounts served as of December 1;
- (4) Names and driver's license numbers of employees providing hauling services;
- (5) Identify the areas served on county road maps;
- (6) In addition, each vehicle used in the collection and/or transportation of solid wastes must be registered and the following information supplied: A description of each vehicle to be registered, including Make, model and year of vehicle, VIN, Current motor vehicle license number, name of vehicle owner, vehicle capacity.

(b) The District shall issue a license to any eligible Solid Waste Hauler who has demonstrated full compliance with this Chapter by submitting the following to the District:

- (1) documentation that the applicant meets all of the Licensing Standards set forth in Subchapter 13 of this Chapter;
- (2) a completed application on a form prescribed by the Board;
- (3) a Certificate of Insurance demonstrating Financial Responsibility (as defined in § 13.02 of this Chapter) issued in the hauling company's name and provided directly to the District by the insurer;
- (4) the required Annual Fee and any required late fee;
- (5) a signed authorization allowing the District staff to obtain any and all records, from any solid waste facility which may receive waste from the hauler, related to volume and type of waste disposed by the hauler at the facility during any period of time in which the hauler was operating as a waste hauler in Benton County and assuring that hauler will provide whatever assistance may be needed to facilitate the release of these records.

(c) Licenses are non-transferable and Annual Fees are non-refundable. If a licensed hauler replaces a registered vehicle with another vehicle during the year, the District shall be notified and the vehicle information shall be provided for both vehicles. The hauler shall remove the registration sticker from the disposed vehicle. A new registration sticker shall be required for the new vehicle. If the hauler provides the old sticker to the District, a new one will be issued at one half the original cost for the new vehicle.

(d) A solid waste hauler's license issued by the District does not supersede any local government's issuance of an exclusive franchise for hauling within its boundaries.

§13.06 Authority of Executive Director

The Board delegates to the Executive Director the authority to issue a license to any Solid Waste Hauler who has demonstrated compliance with all requirements and procedures in this Chapter, and whose file is administratively complete, without further action by the Board.

§13.07 Annual Fees

Pursuant to Commission Regulation 22.202, the District may set a reasonable licensing fee for each type of hauler and may establish licensing requirements based on size of the haulers' transport vehicle(s)

Fees shall be assessed as follows:

- (a) A minimum fee of \$100.00 is required and will license up to two (2) vehicles.
- (b) An additional fee of \$50.00 per vehicle per year will be assessed for the third and all subsequent vehicles up to a maximum fee of \$1,000.00 annually.
- (c) Fees for new licenses or additional units will be pro-rated based on the number of full months remaining in the calendar year.

Haulers licensing after the deadline imposed herein shall be assessed a penalty measured from fourteen (14) days after the due date as follows:

- (a) One (1) to sixty (60) days late – twenty-five percent (25%) of the license fee.
- (b) Sixty-one (61) to ninety (90) days late – fifty percent (50%) of the license fee.
- (c) Ninety-one (91) days and later – one hundred percent (100%) of the license fee.

Any licensed Solid Waste Hauler who adds an additional vehicle during the calendar year shall have thirty (30) days to register the additional vehicle and pay the additional fee required, if any.

§13.08 Operating Requirements

All collection systems and collection equipment used by Solid Waste Haulers shall meet the conditions outlined below. Failure to comply with these conditions may result in the denial, suspension or revocation of a Solid Waste Hauler's License.

- (a) Solid Waste shall be collected and transported so as to prevent public health hazards, environmental hazards, safety hazards, and nuisances, and shall be kept in a sanitary condition.
- (b) Collection and transportation equipment shall be designed and constructed so as to be leak proof. The Solid Waste shall be suitably enclosed or covered so as to prevent roadside littering, attraction of vectors or creation of other nuisances. This means that vehicles must have either: enclosed waste storage areas; or for vehicles with open waste storage areas, such as caged pickups, they must be tarped when traveling in excess of 35 miles per hour. The District shall have the right to inspect and approve or disapprove all vehicles used for Solid Waste collection or transportation within the District.
- (c) Collection and transportation vehicles shall be kept in a sanitary condition.
- (d) Every unit of collection equipment, container or vehicle utilized by any Solid Waste Hauler such as dumpsters, roll off containers, collection bins and collection vehicles must display both the business name and phone number in letters no less than 4 inches high on at least two sides of the unit.
- (e) All Solid Waste collected shall be transported only to a Solid Waste Facility that holds all permits and licenses required by appropriate Federal, State, Local, and District laws, rules, and regulations. Recyclable materials may be delivered to either a Solid Waste Facility or a Recyclable Materials Collection Center. Open burning of solid waste by any person, except as exempted in Commission Regulation 18 603, is prohibited.
- (f) Prior to changing the receiving facility for any solid waste from the facility indicated in the licensing application, the Solid Waste Hauler must provide written notification to the District of their intent to change facilities and include the name and location of the proposed new facility. Once District staff has received and acknowledged notification, the Hauler may begin delivering waste to the new facility.
- (g) All Solid Waste Haulers shall abide by all Federal, State, Local, and District laws, rules, and regulations regarding the collection, transportation and disposal of Solid Waste.
- (h) All Solid Waste Haulers within the District shall at all times maintain proof of a current District Solid Waste Hauler's license within each vehicle hauling solid waste within the District. A current license decal issued by the District, when placed on the driver's side of the windshield, shall be considered adequate

proof. Haulers who license more than twenty (20) vehicles, will receive a Fleet License certificate and may meet this requirement by placing a copy of the Fleet License in each vehicle

(i) All residential waste haulers shall be required to utilize a Pay-As-You-Throw or variable-rate pricing structure which delivers a direct economic incentive to the resident recycle more and to generate less waste. Residents shall be charged for the collection of waste based on the amount they throw away with incrementally increased cost for excess waste. Municipalities shall be required to include a Pay-As-You-Throw or variable-rate pricing structure in all solid waste contracts which become eligible for renewal or negotiation.

(j) Service shall be provided to residential locations within an incorporated municipality at a minimum once per week. Service shall be provided to residential locations outside an incorporated municipality at a minimum once per month. Haulers may alter their normal service schedule during state or national holiday weeks or as a result of inclement weather conditions so long as they provide service to all customers within seven days of the missed collection. Customers should be provided a minimum of two weeks' notice of any known change in collection schedule. If a hauler fails to provide service for more than two weeks of any month for any reason other than inclement weather conditions, they shall be required to reduce the customers' next service invoice by an amount equal to that portion of the month for which a customer did not receive service.

(k) Haulers are responsible for immediately cleaning up any spills and/or loose trash caused by the hauler.

(l) The District shall establish geographical service areas or zones based on areas of similar population and road miles. Haulers may provide service in any service zone they wish. When licensing, haulers will be required to indicate in which zones they wish to provide service. A hauler who indicates that they provide service in a zone must provide service to any customer within that zone that requests it, unless that hauler can show good cause why they will not provide service to that customer. Good cause may be a history of failing to pay solid waste collection bills to any hauler or other dispute between the customer and hauler. The location of the customer will not be considered good cause.

(m) Pursuant to A.C.A. § 8-6-606(b), each solid waste hauler who at any time collects waste generated and transported within the state but disposed of outside the state shall be assessed a fee by ADEQ as follows:

(1).for all solid waste generated and transported within the state but to be disposed of outside the state, there is imposed on each such solid waste transporter a solid waste transportation fee of twenty-five cents (25¢) for each uncompacted cubic yard of solid waste and forty-five cents (45¢) for each compacted cubic yard of solid waste transported.

(2) If a solid waste transporter chooses to operate on a weight basis, the solid waste transporter fee shall be one dollar and fifty cents (\$1.50) for each ton of solid waste transported in the state.

These fees are payable directly to ADEQ as outlined in Commission Regulation 22.

Subchapter 14 Enforcement and Penalties

§14.01 Suspension or Revocation of License

§14.02 Right to Hearing on Suspension or Revocation

§14.03 Operation without a License - Misdemeanor

§14.04 Civil and Administrative Penalties

§14.05 Right to Hearing on Civil Penalties

§ 14.06 Revocation and Suspension

§14.01 Suspension or Revocation of License

Any Solid Waste Hauler License may be suspended or revoked by the District if the Hauler is in violation of Federal, State, Local, or District laws, rules, or regulations related to the collection, transportation, or disposal of Solid Waste, or any other law related to health, safety, or the environment.

The District may revoke or suspend a hauler's license under the following conditions.

- (a) The District may suspend a hauler's license for six months if they are assessed penalties totaling five points within a twelve month period.
- (b) The District may suspend a hauler's license for twelve months if they are assessed penalties totaling ten points within a twelve month period.
- (c) The District may permanently revoke a hauler's license if they are assessed penalties totaling fifteen points within a twelve month period.
- (d) The District may permanently revoke a hauler's license if they are suspended for more than twelve months in any thirty-six month period.

§14.02 Right to Hearing on Suspension or Revocation

- (a) When the Executive Director determines that a Solid Waste Hauler License is subject to suspension or revocation, the Executive Director shall so notify the licensee in writing, setting forth the basis for such proposed suspension or revocation.
- (b) Upon receipt of notice of suspension or revocation, a licensee may object and request a hearing before the Board by delivering such request in writing to the District within ten (10) days, setting forth the reasons why the licensee disagrees with the proposed suspension or revocation.
- (c) If the District receives a request for a hearing on a proposed suspension or revocation as provided in this Subchapter, the Board shall set a hearing date within thirty (30) days of receipt of the request. The licensee shall be allowed a reasonable opportunity to present documents and oral testimony in support of its position. The Executive Director shall present to the Board the reasons for the proposed suspension or revocation. Upon receipt and consideration of evidence and testimony at the hearing, the Board members present shall vote on the proposed suspension or revocation, and a majority vote of those Board members present shall be final. A court reporter shall be present to record the proceedings. Hearings shall otherwise be conducted in accordance with the Administrative Procedure Act.
- (d) The decision of the Board at the close of any hearing shall be effective immediately upon issuance of a written decision by the Board. In the event no request for a hearing is received by the District within the time prescribed by this Rule, the proposed suspension or revocation shall become final on the day following the date on which a hearing request is due.

§14.03 Operation without a License - Misdemeanor

Any person who engages in the business of collecting solid waste within the District without a valid license from the District shall be deemed guilty of a misdemeanor pursuant to Ark. Code Ann. § 8-6-722. Upon conviction, the Person shall be subject to imprisonment for not more than thirty (30) days or a fine of not more than One Thousand Dollars (\$1,000), or both imprisonment and fine.

§14.04 Civil and Administrative Penalties

Pursuant to ACA 8-6-722, any person who violates this Chapter shall be deemed guilty of a misdemeanor. Upon conviction, the person shall be subject to imprisonment for not more than thirty

(30) days or a fine of not more than one thousand dollars (\$1,000), or both imprisonment and fine.

Failure to register may subject the hauler to administrative penalties of not more than five hundred dollars (\$500.00) and two (2) points for the first offense and not more than one thousand dollars (\$1,000.00) and (4) four points for subsequent offenses. Each day or part of any day during which a violation is continued or repeated shall constitute a separate offense.

Failure to collect trash in a sanitary manner, failure to provide services paid for without good cause, failure to provide service when requested without good cause or failing to properly dispose of wastes collected may subject the hauler to administrative penalties of not more than two hundred and fifty dollars (\$250.00) and one point for the first offense and not more than five hundred dollars (\$500.00) and two (2) points for subsequent offenses. Each day or part of any day during which a violation is continued or repeated shall constitute a separate offense.

Failure to display the registration sticker, failure to notify the District of additional trucks, failure to display the haulers name and telephone number on the sides of vehicles, or other administrative violations may subject the hauler to administrative penalties of not more than one hundred dollars (\$100.00) and one point for the first offense and not more than two hundred and fifty dollars (\$250.00) and two (2) points for subsequent offenses. Each day or part of any day during which a violation is continued or repeated shall constitute a separate offense.

To be considered a subsequent offense, the repeat offense must occur within thirty-six months of the earlier offense

§14.05 Right to Hearing on Civil Penalties

- 1) When the Board determines that a Person is subject to civil penalties pursuant to this Section, the Board shall so notify the Person in writing, setting forth the alleged violation and the amount of proposed civil penalty.
- 2) Upon receipt of a notice of violation and penalty from the Board, a Person may object and request a hearing before the Board by delivering such request in writing to the District within twenty (20) days, setting forth the reasons why the Person disagrees with the notice of violation and proposed civil penalty.
- 3) If the District receives a request for a hearing on a notice of violation and proposed penalty as provided in this Section, the Board shall set a hearing date within thirty (30) days of receipt of the request. The Person shall be allowed a reasonable opportunity to present documents and oral testimony in support of its position. The Executive Director shall present to the Board the basis for the notice of violation and the proposed civil penalty. Upon receipt and consideration of evidence and testimony at the hearing, the Board Members present shall vote on the proposed violation and civil penalty, and a majority vote of those Board Members present shall be final. A court reporter shall be present to record the proceedings. Hearings shall otherwise be conducted in accordance with the Administrative Procedure Act.
- 4) The decision of the Board at the close of any hearing shall be effective immediately upon issuance of a written decision by the Board, and payment of the civil penalty shall be due within thirty (30) days of the decision date. In the event no request for a hearing is received by the District within the time prescribed by this Section, the proposed violation and civil penalty shall become final on the day following the date on which a hearing request is due, and payment shall be due within thirty (30) days.

Subchapter 15 Waste Hauler Trust Fund

There shall be established on the books of the District a fund to be known as the Waste Hauler Trust Fund. Monies deposited in this fund shall be kept in a separate depository account.

- (a) All fees collected by the District as Waste Haulers Licensing fees shall be deposited into the Waste Hauler Trust Fund.
- (b) Deposits shall be made until the Waste Hauler Trust Fund reaches \$10,000.00. After that, all Waste Haulers Licensing fees shall be deposited into the District's general funds. If the Waste Hauler Trust Fund balance drops below \$10,000.00, deposits will resume until the fund reaches \$10,000.00 again.
- (c) Money deposited into the Waste Hauler Trust Fund shall be used exclusively to provide service by another hauler, for a period of thirty (30) days, to any area in which a hauler has abandoned such area of service in which customers have pre-paid said hauler; the balance, if any, to be refunded to the customer. Accumulated interest may be used to promote awareness of rural trash hauling services. In the event it is determined that said fund is no longer needed, in whole or in part then said fund shall, with interest, (unless expended as authorized herein) be returned to the District's general funds.
- (d) In order to qualify for service using Fund proceeds, the customer must demonstrate proof of payment. Service will only be provided for the length of time paid for but not received.
- (e) Any hauler who fails to provide service to a customer who then qualifies for reimbursement under these provisions shall be permanently barred from further waste hauling within the District.

CHAPTER E: SOLID WASTE FACILITIES

Subchapter 16 General.

Subchapter 17 Location Restrictions.

Subchapter 18 Operation and Maintenance.

Subchapter 19 Design Standards.

Subchapter 20 Financial Requirements.

Subchapter 21 Compliance and Enforcement.

Subchapter 22 Reserved.

Subchapter 23 Reserved.

Subchapter 24 Reserved.

Subchapter 25 Reserved.

Subchapter 16 General.

§16.01 Authority

§16.02 Purpose

§16.03 Applicability

§16.01 Authority

ACA § 8-6-704(6) authorizes regional solid waste management boards to adopt such rules or regulations pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 *et seq.*, as are reasonably necessary to administer the duties of the board. Further, Act 1280 of 1993, Section 5 states that: "Regional Solid Waste Management Boards may adopt more restrictive standards for the location, design, construction, and maintenance of solid waste disposal sites and facilities than the state or federal government."

§16.02 Purpose

Northwest Arkansas is facing a critical shortage of solid waste disposal capacity due to the difficulties in siting landfill facilities at the local level. In order to protect the fragile environment of Northwest Arkansas, yet provide for adequate solid waste disposal capacity, the Benton County Regional Solid Waste Management District has adopted these regulations.

§16.03 Applicability

Unless otherwise specified, these regulations found in Chapter E, Solid Waste Facilities, shall apply to every solid waste facility; located either wholly or partially within Benton County; which is operated after the effective date of these regulations.

Subchapter 17 Location Restrictions.

§17.01 Regional Standards

§17.02 Watershed Buffers

§17.03 Measurement of Distances

§ 17.01 Regional Standards

Pursuant to ACA 8-6-724, Regional solid waste management boards may adopt more restrictive standards for the location, design, construction, and maintenance of solid waste disposal sites and facilities than the state or federal governments, provided such standards are based upon generally accepted scientific knowledge or engineering practices and are consistent with the purposes of that ACA

subchapter. Due to the extremely fragile Karst topography underlying the entire District, the District board has elected to adopt more restrictive standards as described in subsequent subchapters.

§ 17.02 Watershed Buffers

(a) No Solid Waste Facility shall be located within two (2) miles of the following surface water bodies: Beaver Lake; Lake Francis; Osage Creek; Illinois River; White River; and War Eagle Creek.

(b) The water bodies listed in § 17.02(a) shall be defined as those streams as marked and shown on the latest USGS 7.5 minute topographic maps and the lake boundaries existing during normal pool elevation.

§ 17.03 Measurement of Distances

All distances as put forth in Section 17.02 shall be measured by drawing a buffer of the appropriate distance radially around the permitted boundary of the facility, on the latest USGS 7.5 minute topographic map. Should any portion of the extended perimeter contact any water body listed in Section 17.02, the facility will be in violation of these regulations.

Subchapter 18 Operation and Maintenance.

§ 18.01 Enforcement Officer.

§ 18.02 Leachate Collection Reporting.

§ 18.03 Groundwater Monitoring.

§ 18.04 Other Reporting.

§ 18.05 Landfill Personnel

§ 18.01 Enforcement Officer.

(a) The District is empowered to employ, or otherwise make available from another agency, an enforcement officer, who shall have access to any open or closed solid waste facility within the District during normal operating hours.

(b) The Enforcement Officer shall be provided access to all parts of a facility and all records kept at the facility or at off-site offices. The findings of the Enforcement Officer will be used for District purposes. In addition, a copy of the findings will be provided to ADEQ and to the facility.

§ 18.02 Leachate Collection Reporting.

Every Solid Waste Facility required to report the performance of its leachate collection system to the ADEQ, shall also provide a copy of reports monthly to the District. Such reports shall contain at a minimum the amount of leachate collected, any test results from testing the leachate and the final disposition of all leachate generated.

§ 18.03 Groundwater Monitoring.

(a) Every Solid Waste Facility required to sample and test groundwater monitoring wells shall test every such well at least quarterly and incorporate the results of such tests into the statistical analysis required by the ADEQ and/or the U.S. EPA.

(b) Every Solid Waste Facility shall sample and test all wells identified in the well inventory required by ADEQ Solid Waste Management Code Section XII, B, 2, before beginning construction of the Facility. Samples shall be tested for all constituents required under 40 C.F.R. Part 258, Appendix I. Copies of all test results shall be provided to the well owner and the District. The District shall maintain copies of the test results at its offices.

(c) The requirements of this Section shall not apply to landfills in operation as of the effective date of these regulations.

§ 18.04 Other Reporting.

Copies of any engineering reports or operating reports required to be submitted to the ADEQ or the U.S. EPA shall also be contemporaneously submitted to the District.

§ 18.05 Facility Personnel

Every Solid Waste Facility operated within the District must employ the following personnel:

- (a) A Registered Professional Engineer must be responsible for the construction and operation of any landfill.
- (b) Solid Waste Facility managers/operators must hold an appropriate Master Level operator's license issued by the ADEQ.

Subchapter 19 Design Standards.

§ 19.01 Pre-Construction Design.

§ 19.02 Landfill Design.

§ 19.03 Stormwater Basin Design.

§ 19.04 Compliance

§ 19.01 Pre-Construction Design.

All landfills, located either partially or wholly within the District shall adhere to the following site characterization and design criteria:

Due to the unique land formations in Northwest Arkansas, the following information and studies are required to characterize any site proposed for a Class I or II landfill and must be submitted to the District:

- (1) Fracture Trace Analysis from aerial photographs of the proposed site.
- (2) Detailed surface geologic mapping of the site and the area within one mile of the boundary of the site.
The following information must be obtained:
 - (a) The stratigraphy of the study area.
 - (b) Structure of the study area.
 - i) Location of faults including orientation, displacement length and hydraulic characteristics.
 - ii) Fracture spacing and fracture orientation for each stratigraphic unit identified.
 - iii) Location of karst features including, but not limited to, sinkholes, springs, losing and disappearing stream segments, caves (must be mapped within the study area) and dolens.
- (3) Subsurface exploration must evaluate the following:
 - (a) Overburden.
 - i. Thickness and areal extent of each distinct textural horizon as defined by borings and test pits.
 - ii. Quality of soils (physical properties) must be determined for each stratigraphic or pedologic horizon including Atterburg limits (ASTM D 4318), Sieve analysis and grain size distribution curves (ASTM D 1140 and D 422), Standard penetration tests (ASTM D 1452), Remolded hydraulic conductivity test (ASTM D 5084), In-situ hydraulic conductivity test, Proctor density curves (ASTM D 1557) and Moisture contents (ASTM D 2216).
 - iii. Quantity of soils must be determined by borings and test pits. Borings shall be at a minimum spacing of one per 5 acres. Trackhoe pits shall be at a minimum spacing of one per acre.
 - (b) Bedrock topography.

- i. Core drilling on at least one hole per 5 acres with analysis of fracture density, fracture orientation and sudden gains or losses of drilling fluid.
 - ii. Geophysical logs of borings including resistivity, conductivity, caliper, natural gamma, acoustic logs, video logs and temperature.
 - iii. Surface geophysical studies are required to evaluate areal changes in soil type, geologic structure, lithology, bedrock topography and prospect for large caverns. Geophysical surveys must be correlated with borings. The proposed geophysical study of the site must include two or more of the following methods: Ground Penetrating Radar; surface conductivity; resistivity; shallow seismic refraction; and, shallow seismic reflection.
- (c) Hydrogeology.
- i. Potentiometric surface of the aquifer.
 - ii. Preferred contaminant transport pathways determined by dye traces.
 - iii. Aquifer properties using the following methods: Nested wells to determine vertical hydraulic gradients within the upper aquifer; pump tests using appropriate methodology for the aquifer and using multiple observation wells; and a single well aquifer test.
 - iv. A recommended groundwater monitoring system consisting of wells and springs must be developed.
 - v. Determine water chemistry variability within the uppermost aquifer for the list of Detection Monitoring parameters. At least one year of data must be collected at quarterly intervals to demonstrate seasonal ambient water quality variability.
- (d) All individual studies must be integrated into a comprehensive geologic and hydrogeologic model of the site which is summarized in a written report. The facility ground water monitoring points must be located based upon the hydrogeologic model developed for the site. All maps and cross sections must be of a uniform scale (the same size as used in the design blueprints - typically 1" = 50' to 1" = 400') and must include the following: Geologic map of the site; boring locations; geophysical lines or data collection points; Potentiometric maps Dye study results; Isopach maps of overburden; Bedrock topography maps (contour interval of 2 feet); Geologic cross sections; and, Percent coarse component soils map.

§ 19.02 Landfill Design.

(a) Every Landfill operated within the District shall be designed and constructed with a double composite liner system which consists of, at a minimum, the following: upper and lower composite liners separated by a leachate detection and collection system. Each composite liner shall consist of a flexible membrane liner underlain by a compacted clay liner.

(b) Every Landfill constructed after the effective date of these regulations must employ a third party engineering firm to insure proper construction of each component of the containment structure and operation of the landfill. The permittee will pay all costs of this control.

§ 19.03 Stormwater Basin Design.

(Any Solid Waste Facility, located either partially or wholly within the District, which is required to maintain a stormwater retention basin by either ADEQ or federal standards, particularly 40 C.F.R. § 258.26, shall build any such stormwater retention basin or basins to retain all stormwater generated by a 24-hour, 100-year rainfall event.

§ 19.04 Compliance.

Any Solid Waste Facility may demonstrate compliance with §19.01 by submitting a certified statement, on a form provided by the District, signed by a professional geologist authorized to practice in the State of Arkansas. Any Solid Waste Facility may demonstrate compliance with §§ 19.02 and 19.03 by submitting a certified statement, on a form provided by the District, signed by a registered professional engineer authorized to practice in the State of Arkansas.

Subchapter 20 Reserved

Subchapter 21 Compliance and Enforcement.

§ 21.01 Violations.

§ 21.02 Penalties.

§ 21.03 Enforcement.

§ 21.04 Inspection and Information Gathering.

§ 21.05 Severability.

§ 21.01 Violations.

It shall be a violation for any owner or operator of a solid waste facility to fail to comply fully with any provision of Chapter E.

§ 21.02 Penalties.

A penalty of up to \$10,000.00 per violation per day of violation may be assessed against any person violating the provisions of Chapter E.

§ 21.03 Enforcement.

The Executive Director is authorized to seek the approval of the Board to institute legal and/or equitable action in the appropriate courts to enforce any violation of Chapter E.

§ 21.04 Inspection and Information Gathering.

Any Solid Waste Facility, either within the District or which receives waste generated within the District, shall, upon the request of any District designated person, furnish information relating to any activity at the facility and permit such person at all times to have access to, and to copy all records relating to such activity. Any District designated person shall be allowed to enter at any time all areas of the Facility and to inspect and obtain samples from any area of the Facility.

§ 21.05 Severability.

If any provision of these regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to this end the provisions of these regulations are declared to be severable.

Subchapter 22 Reserved.

Subchapter 23 Reserved.

Subchapter 24 Reserved.

Subchapter 25 Reserved.

CHAPTER F: SOLID WASTE ~~ASSESSMENT FEES~~

Subchapter 26 ~~Assessment~~ Solid Waste Fees.

Subchapter 27 Procedure.

Subchapter 28 Compliance and Enforcement.

Subchapter 26 ~~Assessment~~ Solid Waste Fees.

§26.01 Authority

§26.02 Applicable Waste

§26.03 Exemptions

§26.04 Fee Amounts

§26.01 Authority

WASTE ASSESSMENT FEE

Pursuant to ~~Act 209 of 2014~~ A.C.A. 8-6-714(a):-

~~-(1)(A) A regional solid waste management board~~ the Benton County Regional Solid Waste Management board may fix, charge, and collect rents, fees, and charges of no more than two dollars (\$2.00) per ton of solid waste related to the movement or disposal of solid waste within the regional solid waste management district, including without limitation fees and charges:

- (i) Related to the district's direct involvement with the district's disposal or treatment; or
- (ii) That supports the district's management of the solid waste needs of the district.

~~(4B)~~ The board may fix, charge, and collect fees or charges under subdivision (a)(1)(A)(ii) of this section ~~[of Act 209]~~ only if the board:

- (i) Employs or otherwise makes available from another agency an enforcement officer to:

- ~~(a)~~ Enforce all local ordinances, statutes, rules and regulations for which the district has been previously given enforcement authority regarding solid waste including the Illegal Dump Eradication and Corrective Action Program Environmental Compliance Resource Act, § 8-6-504 2001 et seq.; and

- b) Seek to prevent and to identify and eliminate illegal dump sites;

- (ii) Has a program for household hazardous waste collection and disposal; and

- (iii) Has a program for recycling that includes rural areas of the district and the recycling of bulky waste.

(2) The board may fix, charge, and collect fees or charges for solid waste generated:

(A) Within or without the district delivered to a landfill or transfer station within the district, regardless of whether the disposal facilities are owned or operated by the district; or

(B) Within the district but delivered to a location outside the district.

(3) The board may fix, charge, and collect penalties from entities that fail to timely remit rents, fees, and charges under this section.

(4) Solid waste generated within one (1) district and delivered to another district for disposal may be assessed a fee as follows:

- (A) Either the district in which the solid waste was generated or a district in which the same solid waste is transported, stored, managed, or disposed may assess the fee;

- ~~(B)~~ The fee may be assessed against the generator, transporter, or disposal facility; and

- ~~(C)~~ Each ton or cubic yard of waste may be assessed only one (1) fee.

The District Board makes available one or more enforcement officers, who provide the required services indicated above, through a partnership with Benton County Administration. The District board provides a program for household hazardous waste collection and disposal and a program for recycling

that includes rural areas of the district and the recycling of bulky waste. Therefore, the District Board has the authority to fix, charge, and collect rents, fees, and charges. The Board shall assess a fee, called the Waste Assessment Fee, on each ton of waste generated or collected within Benton County pursuant to this authority.

SERVICE FEE

Pursuant to A.C.A. 8-6-714(d), the board may levy a service fee on each residence or business for which the board makes solid waste collection or disposal services available.

The District Board makes solid waste collection and disposal services available to every residence and business within the boundaries of Benton County in the form of various recycling and solid waste programs. Therefore, the Board has the authority to levy a fee on every residence and business within the boundaries of Benton County. The Board shall levy a fee, called the Service Fee, on each residence and business within Benton County pursuant to this authority.

§26.02 Applicable Waste

~~Effective May 1, 2011, pursuant to Act 209 of 2011, there shall be assessed a fee, which shall be called the Waste Assessment Fee, to be paid to the District~~The Waste Assessment Fee and the Service Fee shall be paid to the District on all for solid waste generated:

- (a) Within or without the district delivered ~~to a landfill or~~ transfer station or other disposal facility within the District, regardless of whether the disposal facilities are owned or operated by the district; or
- (b) Within the district but delivered to a location outside the District.

The fees shall be applicable to all solid waste materials, as defined in Subsection §1.04 of this Rule, unless exempt under Subsection §26.03.

§26.03 Exemptions

The ~~waste assessment~~solid waste fees shall not apply to:

- 1) Solid waste generated by private industry if the private industry bears the expense of operating and maintaining the disposal facility for the solid waste (Class III waste); or
- 2) Non-municipal solid waste generated by private industry and shipped to another state for recycling, treatment, or disposal;
- 3) Solid waste recycled, used, or generated by steel mills or related facilities classified within Subsector 331 of the 2007 North American Industrial Classification System, as it existed on January 1, 2011;
- 4) R~~ecyclable~~ materials that are transported, processed, or marketed for recycling;
- 4)5) e~~o~~rganic materials that are delivered to a permitted composting facility;
- 6) ~~M~~aterials that are removed from solid waste and processed for recycling;
- 7) w~~W~~aste tires processed through a District's waste tire program; or
- 5)8) h~~H~~ousehold hazardous waste collected through a district's household hazardous waste program.

§26.04 Solid Waste Fee Amounts

- (a) The amount of the Waste Assessment f~~Fee~~ assessed shall be one cent (\$0.01) per ton of solid waste generated, collected or disposed.

The amount of the Service Fee ~~one dollar and fifty cents (\$1.50) per ton of solid waste generated.levied shall be:~~

- (a) One dollar and forty-nine cents (\$1.49) per ton of solid waste generated on each residence located within Benton County.
- (a)(b) One dollar and forty-nine cents (\$1.49) per ton of solid waste generated or collected through the operation on each business located within Benton County.
- ~~(b) However, if weight tickets are not available, the fee shall be calculated on a volume basis at twenty-five cents (25¢) per uncompacted cubic yard or forty-five cents (45¢) per compacted cubic yard.~~

Subchapter 27 Procedures

§27.01 Fee Collection

§27.02 ~~Payment of Estimation of Unreported Fees~~

§27.03 Quarterly Report Forms

§27.04 Record Keeping and Reporting

§27.05 Payment of Fees

§27.01 Fee Collection

(1) The Waste Assessment ~~F~~fee shall be assessed and collected as follows:

(a) DISPOSAL FACILITIES LOCATED WITHIN ARKANSAS BUT OUTSIDE OF BENTON

COUNTY: Fees for solid waste that is generated or collected within the Benton County District and transported outside of the District to a disposal facility located within the State of Arkansas ~~inside the boundaries of another Regional Solid Waste Management District shall~~ may be collected by the receiving disposal facility from the person or entity delivering the waste. If the receiving disposal facility does not agree, in writing, to collect the fees on behalf of the Benton County District, the waste hauler shall submit the fees directly to the District. If tThe receiving disposal facility ~~shall agrees, in writing, to collect the fees on behalf of the Benton County District, the facility shall:~~

i) ~~ensure that each customer to the facility is asked the County in which the waste was generated and accurately record the county of origin in the load records.~~

~~ii) accurately track the tonnage and/or volume of waste received from Benton County, and shall submit those fees to the Benton County District as follows:~~

~~ii) If an Interlocal Agreement between the Benton County District and the Receiving District has been established, the receiving disposal facility shall divide the fees collected on waste received from Benton County between the Benton County District and the Receiving District as outlined in the Interlocal Agreement between the two Districts and shall submit the Benton County District's portion of the fees to the Benton County District and submit the Receiving District's portion of the fees to the Receiving District.~~

~~iii) If no Interlocal Agreement exists between the Benton County District and the Receiving District, the receiving disposal facility shall divide the fees collected on waste received from Benton County evenly between the Benton County District and the Receiving District and shall submit the Benton County District's portion of the fees to the Benton County District and submit the Receiving District's portion of the fees to the Receiving District.~~

iii) If any load is received by the receiving disposal facility which contains waste which has been collected from both Benton County District and another Solid Waste District, the total tonnage and/or volume of those loads shall be accurately tracked and one-half of the tonnage and/or volume of these loads shall be recorded as having been received from the Benton County District. ~~Fees collected on this waste shall be submitted to the Benton County District as described above in (a)(i) and (a)(ii).~~

~~(a)(b)~~ DISPOSAL FACILITIES LOCATED OUTSIDE OF ARKANSAS: Fees for solid waste that is generated and/or collected within the District ~~but and~~ transported directly outside of the District, without first being delivered to a solid waste facility located within the District, for disposal in ~~to~~ another state shall be submitted to the Benton County District directly by the hauler that collected the waste. The hauler shall accurately track the tonnage and/or volume of waste collected within Benton County and shall submit those fees to the Benton County District.

(c) TRANSFER STATIONS WITHIN THE BENTON COUNTY DISTRICT: Fees for solid waste that is generated or collected within the District and delivered to a solid waste facility Transfer Station located within the District ~~prior to being transported to another state~~ shall be collected by the ~~receiving disposal facility~~ Transfer Station from the person or entity delivering the waste.

- i) ~~The receiving disposal facility~~Transfer Station shall accurately track the tonnage and/or volume of waste received ~~from Benton County and shall submit those fees to the Benton County District.~~
- ii) If the Transfer Station transports the waste outside of the District to a disposal facility located within the State of Arkansas, the Transfer Station may elect to submit the fees collected on the waste by the Transfer Station to the receiving disposal facility if the receiving disposal facility agrees, in writing, to collect the fees on behalf of the Benton County District as outlined in (1)(a) above. If the receiving disposal facility does not agree, in writing, to collect the fees on behalf of the Benton County District, the Transfer Station shall submit the fees directly to the District.
- iii) If the Transfer Station transports the waste outside of the District to a disposal facility located outside the State of Arkansas, the Transfer Station shall submit the fees directly to the District.

(2) The Service Fee shall be collected as follows:

- (a) For waste collected from a residence or business by a for-hire waste hauler, the waste hauler shall be responsible for collecting the fee from the residence or business. The fee shall be collected on each bill issued by the hauler to the residence or business.
 - i. If actual waste weights are not recorded at the times of collection, haulers may estimate waste generation amounts for each individual residence or business using the known collection container volume and statistical data from the United States Environmental Protection Agency or using historical data collected through the hauler's operations.
 - ii. The District shall have the right to review and approve or change the methodology used to estimate generation amounts for each residence or business.
 - iii. Any fees charged to a residence or business as a result of using estimation of fees which are discovered to be in excess of the actual fees paid to the District by the waste hauler (after comparison of actual fees collected versus fees submitted based on actual weights disposed) shall be submitted to the District as soon as the amount of excess is discovered.
- (b) For waste generated by a residence or business which is hauled to a disposal facility by anyone other than a for-hire waste hauler on behalf of the residence or business, the person or entity delivering the waste to the disposal facility shall be responsible:
 - i. for paying the fee at the time of delivery to a Transfer Station or other disposal facility located within Benton County;
 - ii. for paying the fee at the time of delivery to a disposal facility located outside of Benton County but within the State of Arkansas and which has agreed in writing to collect the fee on behalf of Benton County District;
 - iii. for paying the fee, according to the requirements of 27.02 Payment of Fees, directly to the Benton County District if hauled to a disposal facility located outside of Arkansas or hauled to a disposal facility inside Arkansas which has not agreed to collect the fee on behalf of the District.

(3) If a property owner fails to pay the service fee, pursuant to the requirements above, to either the hauler, the disposal facility or the District, the outstanding fees shall become a lien on the property.

~~(2) Fees shall be due and payable quarterly and shall be based upon solid waste amounts collected or transported during the previous calendar quarter and shall be calculated based upon actual and complete collection records pursuant to the provisions of this regulation.~~

~~(3) Fees for a newly permitted facility or fees for a new hauler shall begin at the onset of operation.~~

~~(4) Fees shall be paid to the District quarterly. For all wastes handled during the months of January—March, payment will be due by April 15th. For all wastes handled during the months of April—June, payment will be due by July 15th. For all wastes handled during the months of July—September,~~

~~payment will be due by October 15th. For all wastes handled during the months of October – December, payment will be due by January 15th.~~

§27.02 Payment of Fees

- ~~(1) All Waste Assessment Fees and Service Fees collected on behalf of and/or owed to the Benton County District shall be paid to the District quarterly.~~
- ~~(2) Fees shall be based upon solid waste amounts collected or transported during the previous calendar quarter and shall be calculated based upon actual and complete collection records pursuant to the provisions of this regulation. Fees for a newly permitted facility or fees for a new hauler shall begin at the onset of operation.~~
- ~~(3) Payment Dates:~~
 - ~~(a) For all wastes handled during the months of January – March, payment will be due by April 15th.~~
 - ~~(b) For all wastes handled during the months of April – June, payment will be due by July 15th.~~
 - ~~(c) For all wastes handled during the months of July – September, payment will be due by October 15th.~~
 - ~~(d) For all wastes handled during the months of October – December, payment will be due by January 15th.~~
- ~~(4) Waste Assessment Fees collected on all waste that is generated or collected within the Benton County District and transported outside of the District to a disposal facility located within the State of Arkansas shall be submitted to the Benton County District as follows.~~
 - ~~(a) If the receiving District has legally established by Board Rule the collection of a Waste Assessment Fee and:~~
 - i. ~~If an Interlocal Agreement between the Benton County District and the Receiving District has been established, the receiving disposal facility shall divide the fees collected on waste received from Benton County between the Benton County District and the Receiving District as outlined in the Interlocal Agreement between the two Districts and shall submit the Benton County District's portion of the fees to the Benton County District and submit the Receiving District's portion of the fees to the Receiving District.~~
 - ii. ~~If no Interlocal Agreement exists between the Benton County District and the Receiving District, the receiving disposal facility shall divide the fees collected on waste received from Benton County evenly between the Benton County District and the Receiving District and shall submit the Benton County District's portion of the fees to the Benton County District and submit the Receiving District's portion of the fees to the Receiving District.~~
 - ~~(b) If the receiving District has not legally established by Board Rule the collection of a Waste Assessment Fee, the receiving disposal facility shall pay all of the Waste Assessment fees to the Benton County District on waste received by the facility that was generated or collected within the Benton County District.~~

~~Estimation of Unreported Fees When the information on the quarterly report is incomplete, or when the quarterly report is not submitted by the due date, or when the District has determined that a solid waste facility or a hauler has misreported the amount of waste received or transported, the District may estimate the fee amounts due based on one or more of the following sources of information:~~

- ~~(a) (1) Projected waste amounts, as defined in a solid waste facility permit or a hauler license;~~
- ~~(b) (2) Waste amounts as determined by applying current service area population and per capita solid waste multipliers;~~
- ~~(c) (3) Waste amounts as determined by a District audit; or~~
- ~~(d) (4) Waste amounts as reflected in previously submitted quarterly reports or in a survey.~~
- ~~(e) (5) Waste amounts reflected by any other reasonable means, as determined by the District, to measure or weigh the solid waste.~~

§27.03 Quarterly Report Forms

- (1) Every waste hauler which collects or transports waste in Benton County shall be required to submit a quarterly report accurately documenting:
- (a) The total net weight of solid waste collected
 - (b) The total net weight delivered to each receiving disposal facility
 - (c) The total Solid Waste fees collected
- The hauler shall be responsible for submitting the fees on waste for which the applicable fees were not paid to a Transfer Station inside Benton County or to any disposal facility outside Benton County which agreed, in writing, to collect the fees on behalf of the District.
- (2) Every disposal facility which receives waste generated or collected in Benton County shall be required to submit a quarterly report accurately documenting the total net weight of solid waste received from Benton County and to submit all applicable fees.
- (a) Every transfer station shall be required to submit a quarterly report accurately documenting the total net weight of solid waste collected and the receiving disposal facility where the waste was delivered.
 - i. Transfer stations shall be responsible for submitting the fees directly to the District on waste for which the applicable fees **were not paid** to a disposal facility outside Benton County which agreed, in writing, to collect the fees on behalf of the District.
 - ii. Transfer Stations shall provide, upon request by District staff, documentation of each load of waste transported from the transfer station including the net weight and the receiving disposal facility of each load.
 - iii. Transfer stations shall provide, upon request by District staff, documentation of the total net weight of solid waste and the total fees collected from each customer.
 - (b) Every landfill located inside Arkansas which receives any waste generated or collected in Benton County and which has agreed to collect the fees on behalf of the District shall be required to submit a quarterly report accurately documenting the total net weight of solid waste received from Benton County
 - i. Landfills which have agreed to collect the fees on behalf of the District shall be responsible for submitting the fees directly to the District.
 - ii. Landfills shall provide, upon request by District staff, documentation of each load of waste received from Benton County including the net weight and the total fees collected from each customer.
 - (c) Every disposal facility located outside of Benton County which has not agreed to collect the fees on behalf of the District shall provide, upon request by District staff, documentation of each load of waste received from Benton County including the net weight and the total fees collected from each customer.
- (3) Fees shall be reported on ~~a forms~~ provided by the District. The District shall make available blank quarterly reporting forms for use in reporting ~~waste assessment~~ fees owed to the District. ~~A copy of ADEQ's Solid Waste Quarterly Report Form is acceptable in lieu of the District form.~~
- (4) Each solid waste facility and each hauler shall submit to the District on or before January 15, April 15, July 15, and October 15 of each year, a quarterly report which accurately states the total net weight of solid waste received at or transported to a solid waste facility during the previous quarter.
- (5) Quarterly reports shall relate the total net weight of solid waste generated within the District and transported out of the District to a disposal facility. Waste net weight reported on the quarterly report shall be reported in tons with the respective fee amounts calculated as set forth herein.
- (6) Estimation of Unreported Fees: When the information on the quarterly report is incomplete, or when the quarterly report is not submitted by the due date, or when the District has determined that a solid waste facility or a hauler has misreported the amount of waste received or transported, the District may estimate the fee amounts due based on one or more of the following sources of information:
- (a) Projected waste amounts, as defined in a solid waste facility permit or a hauler license;

- (b) Waste amounts as determined by applying current service area population and per capita solid waste multipliers;
- (c) Waste amounts as determined by a District audit; or
- (d) Waste amounts as reflected in previously submitted quarterly reports or in a survey.
- ~~(4) Waste amounts reflected by any other reasonable means, as determined by the District, to measure or weigh the solid waste.~~
- ~~(e)~~
- ~~(7) Not Allowed in Fees Calculation - For purposes of the assessment of fees, net weight or amounts calculations shall be determined on waste upon receipt at a solid waste facility either within the District or outside the District. This prohibits, at the least, reducing fees owed to the District based upon the following:~~
 - ~~(a) Calculating the net weight or amounts for fees after marketable or beneficially reusable materials have been removed from the waste stream;~~
 - ~~(b) Calculating the net weight or amounts for fees after the waste has been tipped and baled at a solid waste facility;~~
 - ~~(c) Calculating the net weight for fees after any non-exempt material, as defined in Subsection §26.03, have been removed from the waste stream.~~

§27.04 Record Keeping and Reporting

(1) Adequate Record Keeping

- (a) The owner, operator or any other responsible party of any permitted solid waste facility and each solid waste hauler or any other responsible party shall establish and maintain adequate records in order to facilitate the reporting process and to assure accurate waste net weight ~~or amounts~~ and fee determinations.
- (b) At a minimum, each facility or hauler shall have in place a waste ticket system, whereby a ticket is provided to the customer and the facility or hauler retains a ~~duplicate complete record~~ of the ticket.
- (c) These records shall be maintained on a daily basis, as the solid waste is received, and shall include, at a minimum, the customer name, the type or kind of RCRA subtitle D solid wastes including municipal waste, defined herein, received or transported, and the net weight ~~or amounts (compacted and uncompacted)~~ of the waste.

~~**Fee Determination**-Quarterly reports shall relate the total net weight or amounts of solid waste generated within the District and transported out of the District for disposal.~~

~~Waste net weight or amounts and fee amounts shall be determined utilizing one or more of the following methods, or another method that has received written approval by the District:~~

~~If the waste has received any amount of mechanical compaction, such as in the delivery vehicle, the waste amounts on the quarterly report shall be reported in compacted cubic yards with the respective fee amounts as calculated and as set forth herein;~~

~~If the waste has not received any amount of mechanical compaction, such as in the delivery vehicle, the waste amounts on the quarterly report shall be reported in uncompacted cubic yards with the respective fee amounts calculated as set forth herein; or~~

~~If the solid waste facility operates on a weight basis, the waste net weight reported on the quarterly report shall be reported in tons with the respective fee amounts calculated as set forth herein.~~

- (2) Each solid waste facility permittee or owner, operator or any other responsible party shall provide and maintain an adequate means of recording the amount of waste that is received by the facility, as required by Federal, State or Local law, regulation or under Commission Regulation 22. Such records shall be used by the facility to calculate disposal fees submitted quarterly to the District and shall be available to the District for inspection.
- (3) Each hauler shall provide and maintain an adequate means of recording the amount of waste that is collected from its customers and transported to a Solid Waste Facility out of District. At a minimum, the hauler retains a copy of each ticket or receipt received from the facility. The ticket received from

the facility shall be used by the hauler to calculate disposal fees to be submitted quarterly to the District. Such records shall be available to the District for inspection.

~~**Not Allowed in Fees Calculation** – For purposes of the assessment of fees, net weight or amounts calculations shall be determined on waste upon receipt at a solid waste facility either within the District or outside the District. This prohibits, at the least, the following:~~
~~Calculating the net weight or amounts for fees after marketable or beneficially reusable materials have been removed from the waste stream;~~
~~Calculating the net weight or amounts for fees after the waste has been tipped and baled at a solid waste facility;~~

~~**Quarterly Reporting Dates** – Each solid waste facility and each hauler shall submit to the District on or before January 15, April 15, July 15, and October 15 of each year, a quarterly report which accurately states the total net weight or amounts of solid waste received at or transported to a solid waste facility during the previous quarter.~~

~~**Determining Vehicle Capacity** – For record keeping and reporting purposes, under this regulation, commercial waste transportation vehicles and trailers, shall be presumed to be full to vehicle capacity upon being received at a solid waste facility gate, unless otherwise demonstrable.~~

- (4) Records Availability - Any records, reports, or information obtained under this regulation and any permits, permit applications, and related documentation shall be available to the District for inspection and copying during normal business hours, unless otherwise deemed necessary by the District, and any records obtained by the District shall be available to the public for inspection and copying during normal business hours.
- (5) Records Location - The facility owner, operator or any other responsible party shall maintain records at the facility and a hauler or any other responsible party shall maintain records at the quarterly reporting address, unless an alternative location is required and has been requested in writing and approved by the District.
- (6) Record Confidentiality - Upon a satisfactory showing to the Executive Director that the records, reports, permits, documentation, or information, or any part thereof, if made public, would divulge methods, processes, or customer lists entitled to protection as trade secrets, then the Executive Director shall consider, treat, and protect such records, reports, or information as confidential.
- (7) Restriction of Confidentiality - As necessary to carry out the provisions of this regulation, information afforded confidential treatment may be transmitted under a continuing restriction of confidentiality to other officers, employees, or authorized representatives of the District or the State of Arkansas, if the solid waste facility permittee, owner, operator or any other responsible party, or the hauler, or any other responsible party, to which the information pertains is informed at least two (2) weeks prior to the transmittal, and if the information has been acquired by the District under the provisions of this regulation.

§27.07 Report or Fee Adjustments

Upon written approval by the District, any adjustments to any previous quarterly report or fee payment, found upon review or as the result of an audit by the District, and any unpaid late payment charges may be reflected on the next quarterly report and fee payment.

§27.08 Termination of Fees

- (a) In the event a solid waste facility or a hauler permanently ceases receiving or transporting waste, the facility or hauler shall **immediately** submit a final quarterly report, along with final fee

payment, for the quarter during which the facility closed or the facility or hauler stopped operation and shall indicate on the report the final date upon which the landfill or hauler ceased receiving waste.

- (b) After operations have ceased, a solid waste facility or a hauler may seek a refund of any fee overpayment.

§27.09 Petitioning Board for Review of Fees

- (1) **Petition Filing** - Any solid waste facility permittee or hauler, who disagrees with the fee amount due, may file a petition for review with the Board within twenty (20) days following the payment or payment due date. The petition must contain:
- (a) ~~(1)~~ A statement of the fee amount the solid waste facility permittee or hauler admits is due and payable;
 - (b) ~~(2)~~ A statement of the fee amount the solid waste facility permittee or hauler contests; and
 - (c) ~~(3)~~ Documentation of the amount of solid waste received during the contested payment period including, but not limited to, daily gate or transporting receipts showing the geographic source of waste, the type or kind of waste, and the net weight ~~or amounts~~ of the waste.
- (2) **Petition Review** - The Board shall review the petition and make a final determination of the amount of the contested fee. Such notice shall contain:
- (a) ~~(1)~~ The name, business address, and permit or hauler billing identification number of the solid waste facility permittee or hauler; and
 - (b) ~~(2)~~ The Board's decision and date of decision.
- (3) **Late Fee Due and Payable** - If the a solid waste facility permittee or a hauler files a petition for review, the full amount of the contested fee and the adjustment the permittee or hauler admits is due and payable shall be paid by the date the petition for review is due. Any late payment charges shall also be due and payable by the date the petition for review is due.
- (4) **Procedures Stayed** - Upon the filing of a petition for review, the timely payment procedures and late payment charges contained in this regulation are automatically stayed for the amount of the fee which is contested. Payment of the full amount of the fee, as determined by the Board following a petition for review, shall be due within thirty (30) days of issuance of the Board's decision and late payment charges shall then begin to accrue on that amount.
- (5) **Petition Determination** - Notwithstanding the preceding, the filing of a petition for review, which is deemed by the Board to be frivolous and completely without merit, shall not operate as a stay of the timely payment procedures and late payment charges. If the Board determines that the petition for review is frivolous and completely without merit, the notice of the Board's decision shall so state.
- (6) **Subsequent Quarterly Fees** - Filing a petition for review of a fee does not affect the application of the timely payment procedures or late payment charges for any subsequent quarterly fee or adjustment.

§27.09 Appeals

Fees imposed under this regulation shall constitute a specific condition imposed on a solid waste facility permittee or on a hauler. Provided a solid waste facility permittee or a hauler disagrees with the final decision of the Board following a petition to review fees, the permittee or hauler may appeal the final action of the Board to the Circuit Court in Benton County in Arkansas.

Subchapter 28 Compliance and Enforcement

§ 28.01 Violations.

§ 28.02 Penalties.

§ 28.03 Enforcement.

§ 28.04 Audit

§ 28.05 Right of Entry and Access

§ 28.06 Severability.

§ 28.01 Violations.

It shall be a violation for any owner or operator of a solid waste facility or solid waste hauler or any residence or business to fail to comply fully with any provision of Chapter F.

§ 28.02 Penalties.

A ~~solid waste facility permittee or hauler person or entity in violation of this Chapter, including but not limited to~~ failing or refusing to submit reports or pay the fees required under the provisions of this regulation in a timely manner, shall be subject to late payment procedures and charges as established in this regulation.

~~Refusal to pay the required fees shall constitute grounds for legal action by the District, which may result in assessment of civil penalties or the revocation of a solid waste facility or hauler permit, or both.~~

~~The District shall have zero tolerance for failure to submit reports or to pay fees by the due dates established in this Rule. A late fee shall be added to all Waste Assessment fees which are paid after the deadline imposed herein. Each violation~~ shall be assessed a penalty measured from the first day after the due date. ~~An initial~~ late penalty of \$100.00 shall be assessed on the first day late for each report and/or payment due, and a ~~late penalty equal to \$5.00 or 5% of the total fees due, whichever is higher, shall be assessed~~ on each additional day for which reports or fees are late until all required reports and full payment of late fees and applicable Solid Waste Fees are ~~is~~ received by the District.

~~Any violation of this Chapter shall also constitute grounds for legal action by the District, which may result in one or more of the following: assessment of civil penalties, the revocation of a solid waste facility or hauler permit, a lien against the property or any actions allowed under Subchapter 3: Adjudications and any other actions legally available to the District.~~

§ 28.03 Enforcement.

The Executive Director is authorized to seek the approval of the Board to institute legal and/or equitable action in the appropriate courts to enforce any violation of Chapter F.

§ 28.04 Audit

At the discretion of the District, an audit of a solid waste facility permittee's or a hauler's records or the operation of the solid waste facility or hauler, or both, may be performed to assure compliance with this regulation. An audit by the District may include, but shall not be limited to, an unannounced on-site visit to monitor the operation and operating procedures or to review the collection, transport or disposal records of a solid waste facility or a hauler, or a requirement that additional records be submitted for review, or both.

§ 28.05 Right of Entry and Access

The District or any authorized employee or agent shall have right of entry during normal business hours, unless otherwise deemed necessary by the District, to any public or private property for the purpose of obtaining information or conducting investigations, examining or copying any books, papers, records, or memoranda pertaining to the operation of the facility or hauler necessary or appropriate for the purpose of this regulation.

§ 28.06 Severability.

If any provision of these regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to this end the provisions of these regulations are declared to be severable.

CHAPTER G: RECYCLING ACTIVITIES.

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|----------------------|------------------------------------|
| Subchapter 29 | General. |
| Subchapter 30 | Reporting Requirements. |
| Subchapter 31 | Compliance and Enforcement. |

| | |
|---|-----------------|
| Subchapter 29 | General. |
| § 29.01 Authority | |
| § 29.02 Applicability | |
| § 29.03 Recovered Materials | |
| § 29.04 Registration Requirement | |

§ 29.01 Authority

Pursuant to ACA 8-6-712(a)(4), no person, other than as may be designated by the District, shall engage in the collection or utilization of solid waste within the district which would be competitive with the purposes or activities of the District. Further, Commission Regulation 28 requires Boards to compile an annual summary of recyclable materials collected within the District.

§ 29.02 Applicability

This regulation shall apply to Recyclable Materials Collection Centers, Recyclable Materials Collection Systems and any person engaged in any type of recycling activity within the District such as systematic collection, sorting, decontaminating, and returning of waste materials to commerce as commodities for use or exchange by separating or diverting an item or items from the solid waste stream for the purpose of processing it or causing it to be processed into a material product, including compost, in order to provide for the final disposition of the material product in a manner other than landfilling or incineration.

§ 29.03 Recovered Materials

Recovered Materials include but are not limited to: metal, paper, glass, plastic, textile, yard trimmings, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal.

§ 29.04 Registration Requirement

Effective July 1, 2011, a person shall not engage in any type of recycling activity within the District without first registering the proposed activity with the District. There shall be no registration fee placed upon the proposed activity.

The applicant for the proposed activity must provide the following information, at minimum, on a registration form prescribed by the District:

- (a) the applicant's legal name, mailing address, email address and telephone number;
- (b) the street address as denoted by the local 911 service, legal address and driving directions of the proposed facility;
- (c) if the owner of the proposed facility is other than the applicant, include a copy of the rental or purchase agreement for the facility which contains the property owner's legal name, mailing address, email address and telephone number and a copy of the legal instrument giving Applicant the right to use the realty for a recycling activity;
- (d) the service areas which the proposed facility will serve;
- (e) a list of all recyclable or recovered materials to be diverted from the waste stream;
- (f) the size of the proposed or existing facility and capacity proposed;
- (g) a written operating plan which establishes methods for compliance with all applicable sections of Commission Regulation 22.

Subchapter 30 Reporting Requirements.

§ 30.01 Annual Reporting

§ 30.02 Survey Requirement

§ 30.03 Waste Minimization Report

§ 30.01 Annual Reporting

Pursuant to Commission Regulation 28, Chapter 7, an annual report shall be required from any person engaged in any type of recycling activity within the District, whether the activity is owned or operated by a public entity or by a private entity. Reports must be submitted to the District, using an approved electronic media on a format prescribed by the District, on or before July 15 of each year, for the time period of July 1 of the prior year through June 30 of the current year and documenting the following data:

- (a) Amounts of each material recycled by weight and volume;
- (b) Dates and hours of operation;
- (c) Attended hours of operation;
- (d) Educational materials provided or educational system used to promote the program;

§ 30.02 Survey Requirement

The District shall compile a summary of the information received from each recycling activity within the District and submit it to the Department on or before August 15 for the time period of July 1 of the prior year through June 30 of the current year.

§ 30.03 Waste Minimization Report

The District shall determine and include in the August 15 summary report to the Department, the percentage of the district's waste stream represented by the total amounts recycled during the previous calendar year. This data is required to document progress toward the State's recycling goals as provided in A.C.A. § 8-9-101

Subchapter 31 Compliance and Enforcement.

§ 31.01 Violations.

§ 31.02 Penalties.

§ 31.03 Enforcement.

§ 31.04 Severability.

§ 31.01 Violations.

It shall be a violation for any owner or operator of a solid waste facility or solid waste hauler to fail to comply fully with any provision of Chapter G.

§ 31.02 Penalties.

A penalty of up to \$500.00 per violation per day of violation may be assessed against any person violating the provisions of Chapter G.

§ 31.03 Enforcement.

The Executive Director is authorized to seek the approval of the Board to institute legal and/or equitable action in the appropriate courts to enforce any violation of Chapter G.

§ 31.04 Severability.

If any provision of these regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to this end the provisions of these regulations are declared to be severable.

CHAPTER H: RECYCLING GRANTS.

Subchapter 32 General.

Subchapter 33 Grant Procedures.

Subchapter 34 Project Selection.

Subchapter 35 Recordkeeping and Reporting

Subchapter 36 Appeals of Grant Decisions

Subchapter 32 General.

§ 32.01 Authority

§ 32.02 Applicability

§ 32.01 Authority

Pursuant to ACA 8-6-615(a)(1)(A) Funds collected under § 8-6-607 and deposited into the State Treasury to the credit of the Solid Waste Management and Recycling Fund, less up to twenty percent (20%) for administrative support for the Arkansas Department of Energy and Environment, shall be allocated annually to each of the approved regional solid waste management districts.

The Benton County Solid Waste District Board is responsible for the grant application process and acceptance of grant applications from within the District.

§ 32.02 Applicability

Beginning with the 2013 Grant round, this regulation shall apply to Recycling Grant Funds received pursuant to ACA 8-6-615 and shall apply to all grant applicants and grantees.

Grants approved under prior years shall be governed by applicable laws and regulations in place at the time of the grant approval.

Subchapter 33 Grant Procedures.

§ 33.01 Applicant Eligibility

§ 33.02 Eligible Activities, Projects and Programs

§ 33.03 Pre-Application Training Meeting

§ 33.04 Application Process

§ 33.05 Adequate Revenues

§ 33.06 Permits and Licenses

§ 33.07 Distribution of Grant Funds

§ 33.08 Modifications

§ 33.09 Project Deadlines

§ 33.10 Funds Forfeited

§ 33.11 Irregularities

§ 33.12 Earned Interest on Grant Awards

§ 33.13 Markets Sought

§ 33.14 Notice Published

§ 33.01 Applicant Eligibility

The following entities shall be eligible to apply for and to receive grants:

- (a) **Cities and Counties:** Duly incorporated cities and towns and County governments of the State of Arkansas.
- (b) **Solid Waste Authorities: Authorities** incorporated under A.C.A. '14-233-101 et seq.
- (c) **Regional Solid Waste Management Boards:** Boards formed pursuant to A.C.A. ' 8-6-701 et seq., which have entered into agreements pursuant to A.C.A. ' 8-6-701 et seq., and are empowered to administer a grant award pursuant to the requirements of A.C.A. ' 8-6-601 et seq.

- (d) **Subordinate Service Districts:** Subordinate Service Districts which are formed pursuant to A.C.A. ' 14-14-708 et seq., and are empowered to administer a grant award pursuant to the requirements of A.C.A. ' 8-6-601 et seq.
- (e) **Multi-County or Multi-Regional Projects,** provided that concurrent resolutions regarding the joint application have been adopted by participating Regional Solid Waste Management District Boards and that a joint application is signed by the Board Chairman for each Regional Solid Waste Management District.
- (f) **Partnerships between Public Entities and Private Recycling Interests:** Public entities identified herein partnered with private recycling interests to provide recycling services, provided that the public entity maintains ownership of facilities and equipment purchased with grant funds and that the public entity assumes responsibility for meeting the requirements of this regulation.

§ 33.02 Eligible Activities, Projects and Programs

The following activities, projects or programs in addition to other activities that support the objectives of increasing and improving recycling as a waste-management strategy, consistent with the intent of A.C.A. ' 8-6-601, et seq., are eligible for grant funding:

- (1) Solid Waste Planning – The District may utilize grant funds for planning studies which meet the solid waste planning requirements of A.C.A. ' 8-6-201 et seq., ' 8-6-1901 et seq., Regulation 22: Solid Waste Management, and the Minimum Requirements for Regional Solid Waste Management District Plans as set forth in the Statewide Solid Waste Management Plan. The funded planning study must include goals for the diversion of recyclable materials from disposal at landfills or incinerators and must set out methods for increasing recycling in the study area.
- (2) Recycling or Composting Equipment and Material Recovery Facilities (MRF's)-Recycling equipment and recycling facilities are eligible for funding. The facilities must meet the objectives of the District solid waste management plan for recycling facilities. Composting facilities and equipment are also eligible.
- (3) Solid Waste Education and Public Awareness Programs- Education and public awareness activities and materials are eligible if, in accordance with the legislative intent of ACA 8-6-601 et seq., they are part of a plan for introducing or promoting recycling, composting, or other solid waste management practices that divert wastes from landfills, encourage waste reduction and stimulate demand for products produced from recycled materials.
- (4) Transfer Stations-Waste transfer stations which accept three or more recyclable materials, as identified in Regulation 28, are eligible for funding.
- (5) Recycling Programs - Recycling activities that meet the intent and requirements of ACA 8-6-601 et seq. are eligible for funding.
- (6) Waste Reduction Activities – Other waste stream reduction activities that divert the flow of materials away from landfills to be put to beneficial use are eligible for funding.
- (7) Recycling System Activities – Activities that support and are an integral part of a recycling system, including without limitation, operation, construction, and logistical systems, are eligible for funding.
- (8) Other waste diversion activities as approved by the Board.

§ 33.03 Pre-Application Training Meeting

Prior to the application deadline each year, the District staff shall conduct a pre-application training meeting for all potential grant applicants. The meeting shall include training on the application process as well as instruction regarding the grant procedures and record keeping requirements. The meeting date shall be determined by the District director. Notice of the date and time of the meeting shall be provided to each eligible entity at least seven days in advance of the meeting.

Any potential grant applicant shall be required to have at least one employee of the applicant entity attend the mandatory pre-application meeting. Failure to attend the meeting shall result in the potential grantee being ineligible for that grant round.

§ 33.04 Application Process

Applicants shall fully complete a grant application form as developed by District staff each year. The application form shall include general information about the potential grantee entity, a thorough description of the proposed project and a detailed budget for the proposed project.

The Board shall establish a timeline each year for the annual grant process. Failure to submit an application by the deadline shall result in the grant application being ineligible for that grant round.

§ 33.05 Adequate Revenues

Each grantee shall show that adequate revenues are being collected to support the long-term operation and maintenance of a grant-funded project prior to the disbursement of any grant funds.

§ 33.06 Permits and Licenses

Each grantee shall possess or obtain all applicable federal, State, and local permits and licenses prior to disbursement of funds.

§ 33.07 Distribution of Grant Funds

After receipt of the annual allocation of grant funds from ADEQ, the District shall make distribution of grant funds to approved grant projects as scheduled in the grant application and subject to the grantee's compliance with all grant conditions. Funds shall not be disbursed by the Board prior to the start of the project.

Funds will be paid directly to the vendor on behalf of the Grantee for any eligible grant expenditures, including but not limited to products or services, ordered and authorized by the grantee. A grantee may alternatively choose to pay the vendor and then request reimbursement from the District for the amount of the expenditure. A copy of the invoice detailing the purchase and a copy of the Grantee's canceled check must be submitted to the District in order for the funds to be reimbursed to the Grantee.

Under no circumstance will a check for the grant funds be released to the Grantee without proper documentation of completed eligible purchases.

§ 33.08 Modifications

After the Board has approved a grant, any proposed modifications to a grant project will require written approval by the District Board prior to implementing any change to the project. Modifications include any use of the grant funds in a way which was not specifically identified in the approved grant application.

The grantee is required to submit adequate documentation of the proposed changes, on an approved Change Order Form, to the District staff. The Change Order form must bear the signature of someone within the Grantee's organization who has authorization to apply for and/or modify grants. The fully completed change order proposal will then be added to the agenda of the next regularly scheduled District Board Meeting. The Board will review the change order request and will either approve or reject the proposed change.

If the change order proposal is approved by the Board, the Chairman of the Board will affix his signature to the order and District Staff will notify the grantee of the approval. Implementation of any modifications to the approved grant project may only begin after the approved change order has been received from the District.

Modifications that alter the grant category or materially change the project must be public-noticed and will require a 30-day public comment period. The grantee will be solely responsible for the cost of publishing the required notice in a newspaper of general distribution within their community. District staff will assist the grantee with developing the language of the notice in order to ensure that all

requirements are met. The notice must state that all public comments will be mailed to the District Office. The District staff will be responsible for submitting copies of any comments received to the Board prior to the Board's review of the proposed change order.

§ 33.09 Project Deadlines

All grantees shall develop recycling programs, as outlined in the grant application, and expend all grant funds within three (3) years following the date that the grant allocation was received by the District office unless a written extension is granted by the Board.

§ 33.10 Funds Forfeited

Funds for any grant project not started within one calendar year from the date that the grant allocation was received by the District office will be forfeited unless an extension of time is granted by the Board. The grantee will be responsible for submitting a written request for an extension prior to the calendar year date and will allow sufficient time for the Board to review the matter at a regularly scheduled meeting. Forfeited funds may be used to fund the next prioritized project as approved by the Board.

If, within a three-year period beginning on the date that the grant allocation was received by the District office, the grantee does not meet the conditions of the grant as prescribed in these Rules, the Board may order the grantee to reimburse any disbursed grant funds. Grantees will be ineligible for further grant awards until reimbursement is made. Reimbursed monies may be used to fund the next prioritized project as approved by the Board.

§ 33.11 Irregularities

A grant may be terminated by the Board if the Board determines that the grantee is unable or unwilling to complete or meet the conditions of the grant as set forth in the grant application. If a grant is terminated, any grant funds previously disbursed shall be reimbursed by the grantee in accordance. Funds returned may be used to fund the next prioritized project as approved by the Board.

§ 33.12 Earned Interest on Grant Awards

Interest monies earned from the holding of grant funds by the District shall be used exclusively for recycling programs consistent with the District's Solid Waste Management Plan. It shall be the responsibility of the District to monitor the collection of earned interest and direct interest monies to a project supported by a grant award or to other recycling program(s) consistent with the District's Solid Waste Management Plan.

§ 33.13 Markets Sought

All grantees shall seek to market or reuse the materials diverted under the grant project for, at minimum, a period of three (3) years following the grant award.

§ 33.14 Notice Published

The District shall insert, in a newspaper of general circulation in Benton County, a notice describing the grant requests approved by the Board and soliciting written comments from the public. The comment period shall last for thirty (30) calendar days after the date of publication. The notice shall be published at least thirty (30) days prior to the disbursement of grant funds. Copies of all written comments will be submitted to the Board for review.

Subchapter 34 Project Selection.

§ 34.01 Application Review Process

§ 34.02 Project Selection Criteria

§ 34.03 Administrative Allocation

§ 34.04 Equipment and Facility Purchasing

§ 34.05 Equipment Usage

§ 34.06 Existing Equipment or Facilities

§ 34.01 Application Review Process

Applications from eligible entities which are received by the application deadline shall be eligible for consideration of funding. District staff shall review applications for completeness and shall provide a copy of the complete applications to the Board's Grant Committee, as assigned by the Chairman of the Board annually. Staff shall develop a recommendation of prioritized grant projects and present the recommendations to the Grant Committee for consideration.

The Grants Committee shall judge each grant application based on the criteria outlined in Section 34.02 and shall make recommendations for acceptance of the proposed projects based on this criteria ranking. The Board shall review the committee recommendations and approve funding of projects deemed to provide for the greatest benefit of the citizens of Benton County and that support the Board's objectives of increasing and improving recycling as a waste-management strategy.

§ 34.02 Project Selection Criteria

The Board shall prioritize and select grant projects from within District boundaries, such selection being in the sole discretion of the District. The Board shall review and prioritize each Recycling Grant Application based on the following criteria in descending order:

- (a) **Expansion of Recycling** – Priority will be given to those projects that seek to increase and/or expand the convenience and availability of recycling collection services and the types and volumes of materials collected using a regional approach to maximize efficiency.
- (b) **Utilization of project** - Priority will be given to those projects which provide for the greatest utilization of project funded by grant funds. Criteria will include: Ability for equipment to be used by multiple entities; number of days of use per year; population served by the project; etc.
- (c) **Financial Need**-Priority will be given to those projects for which existing revenues are insufficient to fund the proposed project. The applicant's ability to maintain the project and to provide in-kind contributions to the project will also be considered by the Committee.
- (d) **Prior Grant History**-Priority will be given to those eligible entities which have not received Recycling Grant funds during the previous two grant rounds.
- (e) **Diversion Rate** - Priority will be given to those projects which provide for the greatest percentage and/or volume of diversion of material from landfill disposal based on the waste generation estimates for the population served by the project.
- (f) **Public Awareness Plan**-Priority will be given to those projects which demonstrate a comprehensive public awareness plan to promote the proposed project.
- (g) **Compliance with Reporting**-Priority will be given to those entities which have complied fully with all reporting requirements on previous grants.

§ 34.03 Administrative Allocation

The District shall use an amount no greater than twenty-five percent (25%) of the annual allocation of grant funds for administrative purposes. For the purposes of the Recycling Grants Program, administrative expenses are expenses for the administration of the District's solid waste management plan and may include record keeping, periodic reporting requirements, budgeting, and other related activities. Examples of administrative expenses include the salaries and fringe benefits of the District Director and other staff supporting the administration of the plan (including accounting, payroll and human resources, information technology, legal, and procurement functions); the cost of supplies and equipment used for administrative functions or activities; rent, utilities, phone service, postage, and licenses associated with the administrative office of the District; and other expenditures approved by the Board.

§ 34.04 Equipment and Facility Purchasing

The District and each grantee shall conform to all State laws that are applicable to the purchase, use or sale of equipment and facilities secured with State funding including, but not limited to, State laws on commodity purchases and bids for construction by local governments.

§ 34.05 Equipment Usage

All facilities or equipment purchased with grant funds disbursed by the Board shall be used for the general purposes specified in the grant application. Equipment must be used a minimum of fifty percent (50%) of the time on recycling or grant funded activities. Facilities or equipment purchased with grant funds shall not be sold, traded, or transferred without written consent from the Board.

§ 34.06 Existing Equipment or Facilities

Grant assistance shall not be provided for the purpose of purchasing equipment or facilities if existing equipment and facilities efficiently and adequately serve the relevant area, unless the District determines that the equipment or facility is indispensable to the otherwise eligible project.

Subchapter 35 Recordkeeping and Reporting

§ 35.01 Record Keeping

§ 35.02 Documentation

§ 35.03 Recycling Activity Survey

§ 35.04 Progress Reports

§ 35.05 Right of Entry and Access

§ 35.01 Record Keeping

All grantees are required to maintain an orderly accounting system to document that grant expenditures are made in accordance with the project budget.

§ 35.02 Documentation

Grantees are required to submit to the District copies of all bids, paid invoices on equipment or services, and canceled checks pertinent to each grant funded project.

§ 35.03 Recycling Activity Survey

For a period of five (5) years from the date that the grant allocation was received by the District office, grantees shall provide the District with an annual Recycling Activity Survey report, as provided by ADEQ, summarizing:

- (a) Tonnage of materials collected by the grant recipient; and
- (b) Revenues produced by the sale of materials collected.

The reports shall be filed with the District office annually on or before July 31 and shall document recycling activities of the grantee for the period of July 1 of the previous year through June 30 of the current year.

§ 35.04 Progress Reports

Until all grant funds have been expended on a project, grantees shall provide the District with an annual Progress Report for each grant. The Progress Report shall be on a form developed by the District and shall include the amount of grant funds expended during the reporting period, the amount of grant funds remaining and a narrative describing the progress of the grant project.

The reports shall be filed with the District office annually on or before July 31 and shall document project progress for the period of July 1 of the previous year through June 30 of the current year.

§ 35.05 Right of Entry and Access

District personnel shall have the right of entry, during normal business hours, to the premises of a grant-funded facility, the right of access to view and inventory any grant-funded equipment and the right of access to all records pertaining to a grant-funded project or activity.

Subchapter 36 Appeals of Grant Decisions

§ 36.01 Requests for Appeal of Grant Decisions

§36.02 Appeal to Board

§ 36.01 Requests for Appeal of Grant Decisions

The following persons shall have the right to appeal any grant decisions made by the Board:

- a) A grant applicant;
- b) A grantee;
- c) Any person who submitted written comments on the contested matter within the comment period;
- d) A Regional Solid Waste Management District Board member; or
- e) Any other person entitled by law to contest the Board's decision.

The request for appeal must be in writing and received by the District office no later than close of business ten (10) days after the date of approval of grant projects by the Board. If the tenth day falls on a Saturday, Sunday or State Holiday, the request is due by close of business the following business day.

Requests for appeal may be delivered to the District in person or by Certified Mail, return receipt requested.

§36.02 Appeal to Board

Persons who timely file a request for appeal shall be entitled to be heard at the first regularly scheduled Board meeting following their request for appeal. If a request for appeal is received within fourteen days prior to a scheduled Board meeting, the appeal will be heard at the next regularly scheduled Board meeting.

The hearing shall be conducted by the presiding Chairperson of the Board. Conduct of the hearing shall be informal. The Chairperson shall be entitled to use their discretion to allow, disallow or strike any evidence or testimony that they feel is irrelevant, unreliable or duplicative.

The appellant shall have an opportunity to explain the reasoning for their appeal of the contested grant decision. Questioning of the appellant by the Board shall be allowed.

At the close of the hearing, the Board shall make a final decision on the contested grant.

These Emergency Rules and Regulation shall be effective from April January 1, 20142020 until April 30, 2020.

Approved by the Board on the 10th day of December 20142019.

ATTEST:

APPROVAL:

BOARD SECRETARY

BOARD CHAIRPERSON

DATE

DATE

Document History

Version § 01.01 adopted 01/06/2005

Version § 02.01 adopted 04/29/2011

Version § 03.01 adopted 11/19/2013

BCRSWMD RULES AND REGULATIONS

Emergency Rule Effective April 1, 2014January 1, 2020

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Version § 04.03 adopted 02/24/2014
Version § 05.00 adopted 12/10/2019



Benton County Solid Waste District

5702 Brookside Road
Bentonville AR 72712
(479) 795-0751

December 10, 2019

To: Arkansas Legislative Council
ATTN: Marty Garrity

RE: Emergency Rule of Benton County Regional Solid Waste Management District
Effective January 1, 2020

**Summary of Substantive Amendments included in
Emergency Change to Rules and Regulations**

Non-substantive changes including formatting and corrections were made throughout the document.

Throughout the document, also corrected name of ADEQ

Additions or amendments made to Chapter F of the BCRSWMD Rules and Regulations:

- **Amended** title of CHAPTER F to "CHAPTER F: Solid Waste Fees".
- **Amended** title of CHAPTER F, Subchapter 26 to "Subchapter 26: Fees."
- **Added** section under Authority 26.01 Waste Assessment that outlines the services provided which allow the District to charge the waste assessment fee.
- **Added** "Service Fee" under Authority 26.01 and reference to law which authorizes District Board to levy a service fee on each residence or business for which solid waste collection or disposal services are made available as well as outlines the services provided which allow the District to levy the service fee.
- **Amended** Subchapter 26:
 - The title to "Solid Waste Fee Amounts"
 - Reduced the "Waste Assessment Fee" from \$1.50 per ton to \$0.01 per ton
 - Added the "Service Fee" at \$1.49 per ton
 - Removed references to fees based upon cubic yardage rather than weights as all facilities in our area operate on weight basis
- **Amended** Subchapter 27:
 - The title to section 27.02 to Payment of Fees
 - Established and/or amended the procedures for payment of the fees.
 - Moved several sections to consolidate by topic
 - Added reference to estimated fees and payment of those fees
 - Add penalty for failure to file required reports or any violation of Chapter F

RESOLUTION NO.2019-24
“Emergency Change to Rules and Regulations”

A RESOLUTION ADOPTING AN EMERGENCY RULE OF THE
BENTON COUNTY REGIONAL SOLID WASTE MANAGEMENT DISTRICT

WHEREAS, Arkansas Code Annotated 8-7-704(a)(6) authorizes each Regional Solid Waste Management District Board to adopt rules under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as are reasonably necessary to assure public notice and participation in any findings or rulings of the regional solid waste management boards and to administer the duties of the regional solid waste management boards, and

WHEREAS, the Benton County Regional Solid Waste Management District Board properly adopted Rules and Regulations, pursuant to the Arkansas Administrative Procedure Act, § 25-15-201, which were last amended effective April 1, 2014; and

WHEREAS, the Benton County Regional Solid Waste Management District Board now finds it necessary to modify these Rules and Regulations to promulgate the rules and procedures for collection of Solid Waste Service Fees as authorized in A.C.A. 8-6-714(d) et seq. and to change the existing rules and procedures for collection of Waste Assessment Fees A.C.A. 8-6-714(a) et seq.; and

WHEREAS, the Benton County Regional Solid Waste Management District Board finds that imminent peril to public health, safety or welfare would result if the proposed changes are not adopted immediately due to the Board's financial inability to maintain critical and statutorily-mandated public solid waste management services which would result in illegal dumping of hazardous and universal wastes and municipal solid wastes; cause pollution of the land, air, and ground and surface waters of Benton County; cause injury to human and animal health; and damage to the environment; and

WHEREAS, the Benton County Regional Solid Waste Management District Board finds that prevention of these perils requires adoption of an emergency rule pursuant to A.C.A. 25-15-204(c) which authorizes the adoption of an emergency rule without prior notice or hearing provided that such rule may be effective no longer than one hundred twenty (120) days.

NOW, THEREFORE, be it resolved by Benton County Regional Solid Waste Management District Board:

SECTION 1: Effective January 1, 2020, the Board hereby adopts the attached Emergency Rule which promulgates the District's rules and procedures for collection of Solid Waste Service Fees as authorized in A.C.A. 8-6-714(d) et seq. and modifies the existing rules and procedures for collection of Waste Assessment Fees A.C.A. 8-6-714(a) et seq.

SECTION 2: The Board hereby instructs the District Director to prepare a proposed permanent revision of the Rules and Regulations of the Benton County Regional Solid Waste Management District which includes the rules and procedures established by the Emergency Rule as well as all other updates to the existing Rules and Regulations which are deemed necessary or desirable.

SECTION 3: The Board will consider the proposed changes for promulgation under the permanent provisions of the Administrative Procedure Act, and if approved, will proceed with the rulemaking process pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq. to replace the Emergency Rule with a permanent revision prior to the expiration of the Emergency Rule.

SO RESOLVED, this 10th day of December, 2019.

ATTEST:

APPROVAL:

BOARD SECRETARY

BOARD CHAIRPERSON

DATE

DATE



**STATE OF ARKANSAS
BUREAU OF
LEGISLATIVE RESEARCH**

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Tim Carlock, Assistant Director
for Information Technology
Matthew Miller, Assistant Director
for Legal Services
Estella Smith, Assistant Director
for Research Services

MEMORANDUM

TO: Members, ALC – Executive Subcommittee

CC: Marty Garrity, Director, Bureau of Legislative Research;
Jessica Sutton, Administrator, Administrative Rules Review Section, Legal Services Division

FROM: Lacey Johnson, Legislative Attorney, Administrative Rules Review Section, Legal Services Division

DATE: December 11, 2019

SUBJECT: Legal Authorization for the Benton County Regional Solid Waste Management District's Emergency Promulgation of a Rule Amending the Type and Amount of District Fees

Ark. Code Ann. § 8-6-714(a)(1)(A) gives regional solid waste management boards authority to “fix, charge, and collect rents, fees, and charges” that are “related to the movement or disposal of solid waste within the regional solid waste management district, including without limitation fees and charges: (i) [r]elated to the district’s direct involvement with the district’s disposal or treatment; or (ii) [t]hat support the district’s management of the solid waste needs of the district.” However, a board may only assess these fees and charges under Ark. Code Ann. § 8-6-714 (a)(1)(A)(ii) if it (1) employs an enforcement officer to enforce relevant local law and eliminate illegal dump sites; (2) “has a program for household hazardous waste collection and disposal;” and (3) has a recycling program that meets specified parameters. Ark. Code Ann. § 8-6-714(a)(1)(B). Fees may relate to solid waste that is either produced “[w]ithin or without the district delivered to a landfill or transfer station within the district” or is produced within a district but delivered outside the district, and they may not exceed \$2.00 per ton of solid waste. Ark. Code Ann. § 8-6-714(a)(2), (c)(1). Districts may assess, administer, and divide fees through interlocal agreements, but in the absence of an interlocal agreement “the fees shall be divided equally between the districts.” Ark Code Ann. § 8-6-714(c)(3).

Additionally, Ark. Code Ann. § 8-6-714(d) gives the boards authority to “levy a service fee on each residence or business” to which they provide solid waste services.

The regional solid waste management boards may adopt rules “as are reasonably necessary” to administer their duties. Ark. Code Ann. § 8-6-704(a)(6).