

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

Cite as Benton County Reg. § 01.01

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CHAPTER A: PRACTICES AND PROCEDURES

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Subchapter 1 General.
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§ 1.02 Definitions

§ 1.01 Authority

Ark. Code Ann. § 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 assure public notice and participation in any findings or rulings of the board and to administer the duties of the board.

§ 1.02 Definitions

For the purposes of these regulations, the following definitions shall apply:

(a) "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.

(b) "ADEQ" or "Department" means the Arkansas Department of Environmental Quality.

(c) "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.

(d) "Board" means the Board of Directors of the Benton County Regional Solid Waste Management District.

(e) "Class S Composting Facility" means a facility defined as requiring a Class S Composting Permit under ADEQ Regulation 22.

(f) "Commission" means the Arkansas Pollution Control & Ecology Commission.

(g) "Directors" means the members of the Board of Directors of the Benton County Regional Solid Waste Management District.

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

(i) "Director" means the Director of the Benton County Regional Solid Management Waste District.

(j) "Person" means any individual, partnership, corporation, association, or public or private organization of any character.

(k) "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.

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

(m) "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, semisolid, 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-products material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

(n) "Solid Waste Disposal Facility" means any Class I or II sanitary landfill as defined by the Arkansas Department of Environmental Quality.

(o) "Solid Waste Facility" means any facility which holds or should hold a facility permit issued by the Solid Waste Division of ADEQ.

(p) "Solid Waste Material Recovery Facility" means a facility defined as requiring a Solid Waste Material Recovery Facility permit by ADEQ Regulation 22.

(q) "Transfer Station" means a facility defined as requiring a Transfer Station permit by ADEQ Regulation 22.

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§ 2.01 Proposed Action

At any Board meeting, the Board may adopt proposed new rules or regulations; modifications to existing rules or regulations; or repeal of any existing rules or regulations.

§ 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 the following publications: The Morning News of Northwest Arkansas and the Benton County Daily Record.

(b) Notice will normally be published on Wednesdays. The notice shall state the substance of the proposed new rule, modification or rescission of an existing rule 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 also be mailed, via first class mail, to all persons who request advance notice, in writing, of any rulemaking by the District.

(d) Notice shall also be mailed, via first class mail, to ADEQ.

§ 2.03 Public Comment

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

§ 2.04 Public Hearing

(a) The District may, at its sole discretion, hold a public hearing to take oral comments from the public concerning any proposed action.

(b) Should a public hearing be held, notice of the hearing shall be made in the manner provided in § 2.02 no less than 10 days in advance of the hearing.

(c) Where regulations are required by law to be made on the record after opportunity for a hearing, the provisions of that law shall apply in place of these requirements.

§ 2.05 Final Action

(a) At any Board meeting following the close of the public comment period or any public hearing, the Board may act on the proposal by: adopting it as originally written; adopting a modified version; or, denying the proposal.

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

§ 2.06 Emergency Proceedings

Should the District find that imminent peril to the public health, safety or welfare requires adoption of a regulation upon fewer than 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 regulation. Any emergency regulation so adopted may be effective for no longer than 120 days.

§ 2.07 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 regulation adopted by it, and a statement of financial impact for the regulation.

§ 2.08 Effective Date

Each regulation adopted by the District shall be effective 10 days after filing unless a later date is specified by law or in the regulation itself. However, an emergency regulation may become effective immediately upon filing, or at a stated time less than 10 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. The District shall take appropriate measures to make emergency regulations known to the persons who may be affected by them.

§ 2.09 Certification of Regulations

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

§ 2.10 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.

§ 2.11 Substantial Compliance

Every Rulemaking Action by the District after the effective date of this Subchapter shall be effective if the Rulemaking Action substantially complies with this Subchapter.

§ 2.12 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.

§ 2.13 Severability

If any provision of any District Rule 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.

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§3.01 Assessment of Penalty

The 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. Twenty four (24) hours shall be granted to correct or remediate any complaint or violation.

§3.02 Form

(a) Penalties shall be assessed by a written Administrative Order, signed by the Director or their authorized designee, 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.

(c) The Director has the discretion to attach a Consent Agreement to an Administrative Order and to enter into Consent Agreements to settle any Administrative Order.

§3.03 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, who may waive any penalty for a first offense based on the person's prior record.

(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 District 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.

§3.04 Appeal to Board

(a) 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.

(b) 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.

(c) Both sides may appear in person or by counsel. The District shall present their

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.

(c) The hearing shall be conducted by the presiding Chair of the Board.

(d) Conduct of the hearing shall be informal. The Chair shall be entitled to use their discretion to allow, disallow or strike any evidence or testimony that they feel is irrelevant, unreliable or duplicative.

(e) 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 Chair shall make up the Administrative Record in that matter.

(f) 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.

§3.05 Final Agency Action

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

§3.06 Appeals to Circuit Court

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

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CHAPTER B: CERTIFICATES OF NEED

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Subchapter 6 Authority and Criteria.

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§ 6.02 Definitions

§ 6.03 Applicability

§ 6.04 Criteria for Review

§ 6.05 Continuing Effect

§ 6.01 Authority

Ark. Code Ann. § 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 assure public notice and participation in any findings or rulings of the board and to administer the duties of the board. Further, Ark. Code Ann. § 8-6-706(d)(7) authorizes Districts to adopt procedures for the issuance of Certificates of Need.

§ 6.02 Definitions

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

(b) "Certificate of Need Review" means review of the application for a Certificate of Need.

(c) "Interested persons" means the applicant and any persons who submit public comments during the review period either in writing or verbally at the public hearing.

(d) "Landfill" means a permitted landfill under the Arkansas Solid Waste Management Act, Arkansas Code § 8-6-201 *et seq.* As used herein, the term does not include, however, permitted landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or wastes of a similar kind or character.

(e) "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).

(f) "Solid Waste Facility" means a Landfill or Transfer Station as defined in this section.

(g) "Transfer Station" means any facility used to manage the removal, compaction and transfer of solid waste from collection vehicles and containers, and from other private and commercial vehicles to greater capacity transport vehicles.

§ 6.03 Applicability

The regulations in Chapter B shall apply to every solid waste facility proposed to be located either wholly or partially within the jurisdiction of the District or the expansion of any existing landfill within the jurisdiction of the District. These regulations shall apply to facilities that do not have a pre-application pending with ADEQ for a new permit or modification of an existing permit as of the effective date of these regulations. A certificate of need is not required for landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or wastes of a similar kind or character.

§ 6.04 Criteria for Review

When reviewing an application for a Certificate of Need, the District will consider the following criteria:

(a) whether the proposed facility is consistent with the regional planning strategy adopted by the board in the regional needs assessment or the regional solid waste management plan;

(b) whether the proposed facility conflicts with existing comprehensive land use plans of any local governmental entities;

(c) whether the proposed facility disturbs an archeological site as recognized by the Arkansas Archaeological Survey, or a rare and endangered species habitat as recognized by either the Arkansas State Game and Fish Commission or the United States Fish and Wildlife Service;

(d) whether the proposed facility will adversely affect the public use of any local, state or federal facility, including, but not limited to, parks and wildlife management areas;

(e) whether the proposed facility conflicts with the requirements of state or federal laws and regulations on the location of disposal facilities;

(f) if the proposed facility is located within the 100-year floodplain, whether it restricts the flow of the 100-year flood, reduces the temporary water storage capacity of the floodplain, or

could result in washout of solid waste so as to pose a hazard to human health or the environment;

(g) whether the proposed facility is appropriately located given the District's needs and taking into consideration its road system;

(h) for landfills, whether 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, whether a public transfer station is located within a twelve-mile radius of the proposed facility and whether sufficient transfer station capacity exists within the proposed service area;

(j) the detailed history of the applicant's record and that of the stockholders and officers with respect to violations of environmental laws and regulations of the United States or any state or political subdivision of any state;

(k) the service area to be served by the proposed facility; and,

(l) whether the applicant followed the procedures for obtaining a Certificate of Need in Subchapter 7.

§ 6.05 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 landfill 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 landfill 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.

Subchapter 7 Procedures for Obtaining a Certificate of Need.

§ 7.01 Notice of Intent

§ 7.02 Application

§ 7.03 Completeness Determination

§ 7.04 Review Period

§ 7.05 Public Hearing

§ 7.06 Determination

§ 7.07 Appeal of Decision

§ 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 name, address and telephone number;
- (b) the name of the person having legal ownership of the land where the proposed facility will be located and documentation of a right to develop such property as a solid waste facility from the legal owner;
- (c) the location of the proposed facility as shown on the applicable 7.5° USGS topographic map(s);
- (d) the size of the proposed facility and capacity proposed;
- (e) a description of the geo-political jurisdictions to be served, including population estimates by jurisdiction;

(f) documentation that the proposed solid waste facility or modification complies with all of the criteria for evaluation listed in Section 6.04.

(g) 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;

(h) for transfer stations, a map showing the location of the proposed facility and all existing transfer stations with a twelve-mile radius around each; and,

(i) any other information deemed necessary to make a determination of need.

§ 7.03 Completeness Determination

Within fourteen (14) days of receipt of the initial application, the District will make a completeness determination of the application. 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 make a completeness determination within fourteen (14) days of the receipt of the additional information.

§ 7.04 Review Period

Once the District has determined that an application for a Certificate of Need is complete, it will so notify the applicant and publish notice of the review period in papers as described in Section 2.02. The review period will begin on the date the completeness determination is made to the applicant or the date of publication of notice of the review period, whichever is later. The review period will run for thirty (30) days. During the review period, public comment will be taken.

§ 7.05 Public Hearing

During the review period, the District will conduct a public hearing within the county where the proposed facility or modification is to be located.

§ 7.06 Determination

(a) At the first scheduled Board meeting following the close of the review period, the Board will take up for consideration the application for a Certificate of Need. The Director shall present a recommendation to the Board. 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 Director's recommendation.

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

(c) 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:

- (1) the applicant;
- (2) ADEQ; and
- (3) any interested persons who request such findings in writing from the District.

§ 7.07 Appeal of Decision

Any interested person 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. Only interested persons shall have a right of appeal.

CHAPTER C: WASTE TIRE PROGRAM

Subchapter 8 Reserved

CHAPTER D: WASTE HAULER PROGRAM

Subchapter 9 Waste Hauler Licenses

§ 9.01 Definitions

§ 9.02 Hauler's License Required

§ 9.03 Standards

§ 9.04 Licensing Procedures

§ 9.05 Fees

§ 9.06 Penalties

§ 9.07 Revocation and Suspension

§ 9.01 Definitions

(a) "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). Recovered materials as defined by ADEQ Regulation 22.201 are not considered solid waste.

(b) "Solid Waste Hauler" - A Solid Waste Hauler is any person engaged in the collection and/or transportation for disposal or storage of solid wastes. Solid Waste Hauler does not include a person transporting their personal household wastes to a permitted facility. Solid Waste Hauler does not include a person hauling only waste tires. Solid Waste Hauler does not include a person transporting solid waste from an industrial facility to its own Class 3 landfill. There are two types of Solid Waste Haulers:

(1) Type I Haulers are those that haul all categories of nonhazardous solid wastes as identified in ADEQ Regulation 22.203;

(2) Type II Haulers are those that haul only process wastes and special materials as identified in ADEQ Regulation 22.203.

§ 9.02 Hauler's License Required

(a) Effective January 1, 2005, no person shall engage in the business of collection and/or transportation of solid wastes in the District without first securing a Solid Waste Hauler's License from the Board. This does not apply to private individuals who transport their personal household solid waste to a permitted facility.

(b) A Solid Waste Hauler's License shall only be issued 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.

(c) A Solid Waste Hauler's License is required under the following circumstances:

(1) by any person whose primary source of income is derived from the collection and transportation of solid or process wastes;

(2) by any person who collects, for a fee, more than ten (10) cubic yards of solid or process wastes each week on a scheduled basis; or,

(3) by any person who provides solid waste collection or transportation services, for a fee, to six (6) or more households or businesses on a regular basis.

(d) The District may engage in the hauling of solid waste within the District without a license, but shall comply with all applicable standards required in Section 2(b).

(e) All Solid Waste Hauler's Licenses shall be issued for a period not to exceed one (1) year. Licenses shall run from January 1 through December 31 of each year. 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.

(f) 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.

(g) Any solid waste hauler who holds a valid Solid Waste Hauler's License issued by the Tri-County Regional Solid Waste Management District for the term of July 1, 2004 to June 30, 2005 shall be eligible to operate within the District under the existing Solid Waste Hauler's License until its expiration. Haulers operating under the Tri-County license will be required to properly license all vehicles with the District no later than June 30, 2005. A one-half year fee will be charged for each vehicle to be licensed. A new District license will be issued for the period of July 1, 2005 to December 31, 2005.

§ 9.03 Standards

All collection and transportation systems shall meet the conditions outlined below. Failure to comply with these conditions may result in a revocation of the hauler license.

(a) All persons driving collection and/or transportation vehicles shall hold the appropriate driver's licenses as required by state law.

(b) Solid wastes 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.

(c) Collection and transportation equipment shall be designed and constructed so as to be leak-proof. The waste shall be suitably enclosed or covered so as to prevent roadside littering, attraction of vectors or creation of other nuisances, in accordance with ADEQ Regulation 22. 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. Haulers should require customers to utilize animal resistant containers and bags of suitable strength to reduce tearing and spilling of litter.

(d) Collection and transportation of chemicals, medical wastes, poisons, explosives, radiological wastes and other hazardous materials shall be in accordance with the requirements of state and federal regulatory controls.

(e) All solid wastes collected shall be transported to a permitted facility in accordance with ADEQ Regulation 22.

(f) All vehicles hauling solid waste within the District shall display the registration sticker issued by the District near the driver's side door and in plain sight. In addition, beginning January 1, 2005, all licensed vehicles must display both the business name and phone number in letters no less than 2 inches high on both sides of the vehicle.

(g) Beginning April 1, 2005, all waste haulers that do not have a District-approved plan for implementing Pay-As-You-Throw pricing will be ineligible to haul wastes within the District.

(h) Service shall be provided at a minimum once a week. Haulers may skip hauling on major holidays, provided they provide service to those customers affected during that week. Customers should be provided a minimum of two weeks notice of any change in collection schedule. Inclement weather may excuse haulers from this provision.

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

(j) Haulers may provide service in any 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 bills or other dispute between the customer and hauler. The location of the customer will not be considered good cause.

§ 9.04 Licensing Procedures

(a) Any person subject to § 9.03 shall register annually with the District on a form prescribed by the District:

(b) 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 of each year and provide the following information:

- (1) Name, address and telephone number of the business;
- (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;

(c) 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

- (1) Make, model and year of vehicle
- (2) VIN

(3) Current motor vehicle license

(4) name of vehicle owner

(5) vehicle capacity

(d) Any person applying for a license must establish financial responsibility to the District. Proof of liability insurance will be required and may be considered adequate financial responsibility.

(e) Licenses are non-transferable and non-reusable. If a licensed hauler replaces a registered vehicle with another vehicle during the year, the District shall be notified and the information in § 9.04(c) above shall be provided for both vehicles. A new registration sticker shall be provided for the new vehicle. The hauler shall remove the registration sticker from the disposed vehicle and if the hauler brings in the old sticker to the District a new one will be issued a one half the original cost for the new vehicle.

(f) Any person who begins business or any licensed person who adds additional collection vehicles during a calendar year shall register with the District and obtain a license for their vehicles before conducting business or using their vehicles.

§ 9.05 Fees

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.

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

(1) One (1) to sixty (60) days late – twenty-five percent (25%) of the license fee.

(2) Sixty-one (61) to ninety (90) days late – fifty percent (50%) of the license fee.

(3) Ninety-one (91) days and later – one hundred percent (100%) of the license fee.

§ 9.06 Penalties

(a) Failure to register under these regulations constitutes a misdemeanor under 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 (\$1,000.00), or both imprisonment and fine. Additionally, failure to register may subject the hauler to administrative penalties of not more than five hundred dollars (\$500.00) and two points for the first offense and not more than one thousand dollars (\$1,000.00) and 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.

(b) Failure to comply with any other part of this subchapter constitutes a misdemeanor under 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 two hundred fifty dollars (\$250.00) for the first offense, five hundred dollars (\$500.00) for a second offense and one thousand dollars (\$1,000.00) for subsequent offenses, or both imprisonment and fine. Each day or part of any day during which a violation is continued or repeated shall constitute a separate offense.

(c) 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, failure to submit adequate trust fund fees under Section 9.08, 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 points for subsequent offenses.

(d) 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 points for subsequent offenses.

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

§ 9.07 Revocation and Suspension

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.

§ 9.08 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 10	General.
Subchapter 11	Location Restrictions.
Subchapter 12	Operation and Maintenance.
Subchapter 13	Design Standards.
Subchapter 14	Financial Requirements.
Subchapter 15	Compliance and Enforcement.
Subchapter 16	Reserved.
Subchapter 17	Reserved.
Subchapter 18	Reserved.

Subchapter 19 Reserved.

Subchapter 10 General.

§ 10.01 Authority

§ 10.02 Purpose

§ 10.03 Applicability

§ 10.04 Definitions

§ 10.05 Effective Date

§ 10.01 Authority

Ark. Code Ann. § 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 assure public notice and participation in any findings or rulings of the board and 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."

§ 10.02 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.

§ 10.03 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.

§ 10.04 Definitions

For the purposes of Chapter E, the following definitions shall apply:

(a) "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.

(b) "ADEQ" or "Department" means the Arkansas Department of Environmental Quality.

(c) "Board" means the Board of Directors of the Benton-County Solid Waste District.

(d) "Directors" means the members of the Board of Directors of the Benton County Regional Solid Waste Management District.

(e) "District" means the Benton County and the municipalities within the county.

(f) "Director" means the Director of the Benton County Regional Solid Waste Management District.

(g) "Solid Waste" means solid waste as defined by the Arkansas Department of Environmental Quality Regulation 22.

(h) "Solid Waste Disposal Facility" means any Class I or II sanitary landfill as defined by the Arkansas Department of Environmental Quality.

(i) "Solid Waste Facility" means any facility which holds or should hold a facility permit issued by the Solid Waste Division of ADEQ.

§ 10.05 Effective Date

These rules are effective 20 days after their filing with the Arkansas Secretary of State.

Subchapter 11 Location Restrictions.

§ 11.01 Reserved

§ 11.02 Watershed Buffers

§ 11.03 Measurement of Distances

§ 11.01 Reserved

§ 11.02 Watershed Buffers

(a) No Solid Waste Disposal 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 § 11.02(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.

§ 11.03 Measurement of Distances

All distances as put forth in Section 11.02 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 11.02, the facility will be in violation of these regulations.

Subchapter 12 Operation and Maintenance.

§ 12.01 District Inspector.

§ 12.02 Leachate Collection Reporting.

§ 12.03 Groundwater Monitoring.

§ 12.04 Other Reporting.

§ 12.05 Landfill Personnel

§ 12.01 District Inspector.

(a) The District is empowered to hire an inspector, who shall have access to any open or closed solid waste facility within the District during normal operating hours.

(b) The District inspector 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 inspector will be used for District purposes. In addition, a copy of the findings will be provided to ADEQ and to the facility.

§ 12.02 Leachate Collection Reporting.

Every Solid Waste Disposal 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.

§ 12.03 Groundwater Monitoring.

(a) Every Solid Waste Disposal 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 Disposal 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.

§ 12.04 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.

§ 12.05 Landfill Personnel

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

(a) A Registered Professional Engineer must be responsible for the construction and operation of the landfill.

(b) Landfill managers/operators must hold a Class I landfill operators license issued by the ADEQ.

Subchapter 13 Design Standards.

§ 13.01 Pre-Construction Design.

§ 13.02 Landfill Design.

§ 13.03 Stormwater Basin Design.

§ 13.04 Compliance

§ 13.01 Pre-Construction Design.

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

(a) 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.

(b) The requirements of this Section shall not apply to Solid Waste Disposal Facilities which have submitted a final permit application to ADEQ prior to January 1, 1994.

§ 13.02 Landfill Design.

(a) Every Solid Waste Disposal Facility 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 Solid Waste Disposal Facility 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.

(c) The requirements of this Section shall not apply to landfill cells constructed prior to January 1, 1994.

§ 13.03 Stormwater Basin Design.

(a) Any Solid Waste Disposal 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.

§ 13.04 Compliance.

Any Solid Waste Disposal Facility may demonstrate compliance with §§ 13.01 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 Disposal Facility may

demonstrate compliance with §§ 13.02 and 13.03 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 14 Reserved

Subchapter 15 Compliance and Enforcement.

§ 15.01 Violations.

§ 15.02 Penalties.

§ 15.03 Enforcement.

§ 15.04 Inspection and Information Gathering.

§ 15.05 Severability.

§ 15.01 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.

§ 15.02 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.

§ 15.03 Enforcement.

The 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.

§ 15.04 Inspection and Information Gathering.

Any Solid Waste Facility 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.

§ 15.05 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 16 **Reserved.**
Subchapter 17 **Reserved.**
Subchapter 18 **Reserved.**
Subchapter 19 **Reserved.**

CHAPTER F: SOLID WASTE ASSESSMENT.

Subchapter 20 **Assessment.**
Subchapter 21 **Procedure.**
Subchapter 22 **Compliance and Enforcement.**

Subchapter 20 **Assessment.**
§20.01 Applicable Waste
§20.02 Fee Amount

§20.01 Applicable Waste

- (a) Starting January 1, 2005, there shall be assessed a fee, to be paid to the District, on all solid waste generated within the District; or generated outside the District and brought to a processing or disposal facility within the District.
- (b) This fee will be applicable to all solid waste that is collected and delivered to a processing, transfer or disposal facility.
- (c) This fee will not be applied to permitted landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of solid wastes generated by the industry; to any recyclable materials which are processed and marketed for recycling; to any organic materials which are delivered to a Class Y or O composting facility; to any materials which are removed from solid waste and processed for recycling; to waste tires processed through the District's waste tire program; or to household hazardous wastes collected through the District's HHW program that is handled as Subtitle C waste.

§20.02 Fee Amount

- (a) The amount of the fee assessed shall be \$1.50 per ton.
- (b) If weight tickets are not available, the fee shall be calculated on a volume basis as follows.
 - (1) \$0.25 per uncompacted cubic yard
 - (2) \$0.45 per compacted cubic yard

Subchapter 21 Procedures
§21.01 Landfills
§21.02 Solid Waste Material Recovery Facility
§21.03 Class S Composting Facility
§21.04 Transfer Stations
§21.05 Sludge/Other Material
§21.06 Out-of-District Haulers
§21.07 Schedule
§21.08 Recycling Credits

§21.01 Landfills

Any landfill located within the District shall pay to the District an amount equal to the per ton fee amount in Section 20.02 times the number of tons of solid waste handled. Such fee will be paid according to the schedule listed in Section 21.06.

§21.02 Solid Waste Material Recovery Facility

- (a) Any Solid Waste Material Recovery Facility located within the District shall pay to the District an amount equal to the per ton fee amount in Section 20.02 times the number of tons of solid waste handled. Such fee will be paid according to the schedule listed in Section 21.06.
- (b) Any waste handled by a solid waste material recovery facility that is delivered to a landfill within the District shall be exempt from the fees imposed by this Section.

§21.03 Class S Composting Facilities

- (a) Any class S composting facility located within the District shall pay to the District an amount equal to the per ton fee amount in Section 20.02 times the number of tons of solid waste handled. Such fee will be paid according to the schedule listed in Section 21.06.
- (b) Any waste handled by a class S composting facility that is delivered to a landfill within the District shall be exempt from the fees imposed by this Section.

§21.04 Transfer Stations

- (a) Any transfer station located within the District shall pay to the District an amount equal to the per ton fee amount in Section 20.02 times the number of tons of solid waste handled. Such fee will be paid according to the schedule listed in Section 21.06.
- (b) Any waste handled by a transfer station that is delivered to a landfill, solid waste material recovery facility or class S composting facility within the District shall be exempt from the fees imposed by this Section.

§21.05 Sludge/Other Material

Any hauler who collects and/or transports sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, generated within the District shall be required to submit the applicable fee in Section 20.02 times the number of tons of waste transported, to the District according to the schedule in §21.06.

§21.06 Out-of-District Haulers

Any hauler who collects solid waste generated within the District but transports it out of district for processing or disposal shall be required to submit the applicable fee in Section 20.02 times the number of tons of waste transported, to the District according to the schedule in §21.06.

§21.07 Schedule

Fees shall be paid to the District quarterly. For all wastes handled during the months of January – March, payment will be due by April 30th. For all wastes handled during the months of April – June, payment will be due by July 30th. For all wastes handled during the months of July – September, payment will be due by October 30th. For all wastes handled during the months of October – December, payment will be due by January 30th.

Fees must be submitted along with a form, provided by the District. A copy of ADEQ's Solid Waste Quarterly Report Form is acceptable in lieu of the District form.

§21.08 Recycling Credits

- (a) Any facility required to pay fees under this Chapter, may be entitled to credits for fees paid on waste handled at their facility that was later recycled or composted.
- (b) Solid Waste Material Recovery Facility. A Solid Waste Material Recovery Facility may take credit for any materials they have previously paid a fee on if they can demonstrate that those materials were later shipped for recycling or converted to compost.
- (c) Class S Composting Facility. A Class S Composting Facility may take credit for any materials they have previously paid a fee on if they can demonstrate that those materials were later shipped for recycling or converted to compost.

§21.08 Intent

It is the intention under these regulations for all waste that is generated or disposed of within this District to be assessed this fee one time only. Wastes which are ultimately recycled or composted should be exempt or credited.

Subchapter 22 Compliance And Enforcement

§ 22.01 Violations.

§ 22.02 Penalties.

§ 22.03 Enforcement.

§ 22.04 Inspection and Information Gathering.

§ 22.05 Severability.

§ 22.01 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 F.

§ 22.02 Penalties.

A penalty of up to \$1,000.00 per violation per day of violation may be assessed against any person violating the provisions of Chapter F.

§ 22.03 Enforcement.

The 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.

§ 22.04 Inspection and Information Gathering.

Any Solid Waste Facility or Solid Waste Hauler shall, upon the request of any District designated person, furnish information relating to any activity at the facility or business 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 access to all requested records during normal business hours.

§ 22.05 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.

Approved By the Board on the 6th day of January, 2005

ATTEST:

APPROVAL:

BOARD SECRETARY

BOARD CHAIRMAN

DATE

DATE