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# Carroll County Solid Waste Authority Request to Become an Arkansas Regional Solid Waste District: Arkansas Pollution Control and Ecology Commission Administrative Law Judge Recommended Decision

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Arkansas Pollution Control and Ecology Commission (“Commission”) Administrative Law Judge (“ALJ”) Charles Moulton issued a Recommended Decision (“RD”) in the proceeding styled *In the Matter of Carroll County Solid Waste Authority*. See Docket No. 19-001-MISC (Order No. 7).

The RD addresses the Carroll County Solid Waste Authority (“Authority”) Petition to the Commission to be designated The Carroll County Solid Waste District.

The Petition was submitted pursuant to Ark. Code Ann. 8-6-707 which provides the Commission the authority to designate a county or counties within each district or counties within two or more districts as a new Regional Solid Waste Management District. The Authority is currently a part of the Ozark Mountain Regional Solid Waste Management District (“District”).

Arkansas has had in place since the late 1980s various statutory authorities whose intent is to stimulate recycling or through various programs encourage regional approaches to solid waste management. Act 870 of 1989, codified as Ark. Ann. 8-6-701, et seq., established the original eight regional solid waste planning districts. The Commission, through the previously referenced statutory authority, has since granted a number of additional regional solid waste management districts. Arkansas currently has 18 regional solid waste management districts. The regional solid waste management districts are intended to facilitate local governments in planning and overseeing municipal solid waste management programs and services. They also administer recycling grants and waste tire management programs.

The Commission approval of a regional solid waste management district must be undertaken pursuant to rules promulgated by that body. Counties and municipalities included in the new regional solid waste management district shall cease to be members of any other district.

Subsequent to the Authority’s submission of the Petition to the Commission, the Receiver (Geoffrey B. Treece) for the District filed a Petition to Intervene in the proceedings. The Receiver for the District argued that the departure of the Authority would negatively impact the financial condition of the District. As a result, it argued that the Authority should not be permitted to withdraw from the District.

The ALJ held a Hearing and, after hearing witnesses and arguments, and reviewing exhibits issued the RD which includes both Findings of Fact and Conclusions of Law.

Three witnesses testified at the Hearing and 13 exhibits were admitted into evidence. The witnesses testifying were:

- Timothy R. McKinney – Mayor of Huntsville
- Phillip Jackson – Executive Director of the Authority
- Geoffrey B. Treece – District Receiver

The ALJ found that the Authority met the relevant criteria to separate from the District. This included:

- Population exceeds 25,000
- Has a County Sanitation Authority meeting the requirements of Ark. Code Ann. § 14-223-104
- Has the necessary program, assets, and personnel to run a model Solid Waste Management District

Nevertheless, the ALJ addressed whether granting the Petition would jeopardize the Receiver's and the Pulaski County Circuit Court's future plan to pay the District's bondholders, Arkansas Department of Environmental Quality, and fund post-closure monitoring costs at the Nabors Landfill. He noted that the Receiver put forth two objections.

One involved the District not being able to levy an \$18 service fee against the lot owners of Carroll County. The ALJ concluded that separation of the Authority would not "eliminate, minimize or reduce the obligation of the lot owners to pay the \$18 service fee."

The second objection was based on a concern that the Authority's separation from the District will result in a lawsuit culminating in dissolution of the \$18 service fee. The ALJ found that the objection about potential litigation is "simply not ripe at this juncture and the ALJ cannot base a decision on a future possibility that may not occur."

The ALJ RD recommends to the Commission that the Petition be granted.

A copy of the RD can be downloaded [here](#).