

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION**

**GEOFFREY B. TREECE, as Receiver for
OZARK MOUNTAIN SOLID WASTE DISTRICT**

APPELLANT

v.

CASE NO.: 60CV-19-8350

**ARKANSAS POLLUTION CONTROL AND
ECOLOGY COMMISSION and
CARROLL COUNTY SOLID WASTE DISTRICT
f/k/a CARROLL COUNTY SOLID WASTE AUTHORITY**

APPELLEES

MOTION TO TRANSFER

Comes the Carroll County Solid Waste District, formerly known as the Carroll County Solid Waste Authority and for its Motion to Transfer, states:

1. This is an appeal from a decision of the Arkansas Pollution Control and Ecology Commission which granted Movant's petition to form a single county solid waste management district pursuant to Ark. Code Ann. § 8-6-707.

2. Movant is an original party to this appeal pursuant to Ark. Code Ann. § 8-4-224 because it is "the owner or operator of the business, industry, municipality, or thing involved."

3. Ark. Code Ann. § 8-4-223(d) provides:

(1) Within ten (10) business days of service of the notice of appeal required under subdivision (a)(2) of this section, the owner or operator of the business, industry, municipality, or thing involved may file a motion to transfer the appeal from the circuit court to the Court of Appeals.

(2) Upon the filing of a motion under subdivision (d)(1) of this section, the appeal **shall** be transferred from the circuit court to the Court of Appeals. (emphasis added).

4. As “the owner or operator of the business, industry, municipality, or thing involved” Movant is entitled to transfer this matter to the Court of Appeals.

5. This Motion to Transfer is timely since it is filed within ten (10) days of service of the Notice of Appeal.

6. The requirement for transfer on timely request is mandatory.

7. Movant is entitled to a transfer to expedite the process of resolving this appeal.

Section 8-4-223(d) was enacted as part of Act 1021 of 2013. The Act’s preamble states that its purpose was, in part, to allow a ‘direct appeal’ to the Arkansas Court of Appeals in order to ‘streamline’ the review of PC&E rulings. When interpreting a legislative enactment, our courts have looked to the preamble of an act to determine its purpose and intent. *See Okla Homer Smith Furn. Mfg. Co. v. Larson & Wear, Inc.*, 278 Ark. 467, 646 S.W.2d 696 (1983); *Two Bros. Farm, Inc. v. Riceland Foods, Inc.*, 57 Ark. App. 25, 940 S.W.2d 889 (1997). In light of the preamble to Act 1021, the only reasonable interpretation of section 8-4-223(d) is that it was intended simply to expedite the process of bringing a PC&E ruling forward for appellate review. We discern no intent to divest the appellate court of its ordinary function or to have it assume the posture of a circuit court. *Nucor Steel-Arkansas v. Ark. Pollution Control*, 2015 Ark. App. 703.

For the reasons stated herein, Movant Carroll County Solid Waste District, formerly known as the Carroll County Solid Waste Authority, requests that this matter be transferred to the Arkansas Court of Appeals pursuant to Ark. Code Ann. § 8-4-223(d), and for all other relief to which it is entitled.

Respectfully submitted,

By: /s/ Samuel E. Ledbetter
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CERTIFICATE OF SERVICE

I, Samuel E. Ledbetter, hereby certify that a true and correct copy of the foregoing has been sent via email and first class United States mail on this 3rd day of December, 2019 to the following:

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/s/ Samuel E. Ledbetter _____