

**NORTHEAST ARKANSAS REGIONAL SOLID WASTE MANAGEMENT DISTRICT**

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**SUBJECT:** Northeast Arkansas Regional Solid Waste Management District Rules and Regulations

**DESCRIPTION:** The Northeast Arkansas Regional Solid Waste Management District is amending its rules to do the following:

- Make technical and grammatical changes to existing rules
- Make slight changes to the requirements for obtaining a Solid Waste Hauler's License
- Adjust assessments for hauling waste to the District's disposal facility
- Provide a fee for waste hauled outside the District

The purposes of the amended rules are to clean up language within the existing rules, to provide fees that allow the District to be financially solvent, and to provide a system where solid waste haulers can transport waste outside the District while still providing for financial solvency of the District.

**PUBLIC COMMENT:** No public hearing was held on this proposed rule. The public comment period expired on November 17, 2022. The agency indicated that it received no public comments.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

1. Sections 1.01 and 7.06 of the proposed rules, as well as the document title, retain the term "regulation." In light of Act 315 of 2019, which concerned the uniform use of the term "rule" throughout the promulgation process, is there a reason the District has retained the term "regulation" for the present? **RESPONSE:** There is no specific reason the proposed rule uses the term "regulation" immediately following the word "rule." This language was used in the rules approved by the legislative committee in 2018 and it has not been changed in our proposed amended rules.

2. Section 7.04 states, "Failure to pay the fee as prescribed in this section shall . . . revoke or suspend a Hauler's License . . . ." Is a license automatically suspended upon failure to pay the fee, or does this section allow the District to revoke/suspend a license?

**RESPONSE:** A waste hauler's license is suspended if the fee is not paid – the District will suspend the license automatically. Language at the end of section 7.01 may clarify this. Payment will not be required until December 15, 2023, which will allow all waste haulers time to pay the fee.

3. Section 9.01 lists types of waste to which the solid waste assessment fee is not applicable. This list appears to mirror the list in Ark. Code Ann. § 8-6-714(b). However, the list in the proposed rules does not include "household hazardous waste collected

through a district's household hazardous waste program." See A.C.A. § 8-6-714(b)(7). Is there a reason this item was excluded from the proposed rule? **RESPONSE:** There is no particular reason that section 9.01 does not mirror exactly Ark. Code Ann. § 8-6-714(b). This rule was approved by the legislature in 2018, and we are not amending or modifying it with our proposed rules in this submission.

4. Section 9.02 sets forth the dollar amounts for the solid waste assessment fee. Ark. Code Ann. § 8-6-714(a)(1)(A) and (c)(1) authorize solid waste management districts to charge fees related to the movement and disposal of solid waste but cap those fees at \$2.00 per ton of solid waste. Are the fees in the proposed rules authorized under § 8-6-714 or is there some other authority for the § 9.02 fees?

**RESPONSE:** These fees are fees charged to anyone actually disposing of solid waste in the landfill operated by the District. Note the language in the earlier part of section 9.01: "This fee will be applicable to all solid waste that is collected and delivered to processing, transfer, or disposal facility." I do not believe the \$2.00 per ton fee is intended to apply to solid waste disposed of in a landfill operated by a regional solid waste management district, especially since the fees by the District to ADEQ for all solid waste disposed of in the District's landfill total \$1.50 per ton. I believe this interpretation is consistent with the legislature's approval in 2018 of the fees assessed by the District for solid waste disposed of in the District's landfill.

5. In a follow-up telephone call, Ms. Johnson inquired whether the agency's response to Question 4 above also applies to the proposed \$8.00 fee assessed on waste hauled out of the District by § 13.03 of the proposed rule.

**RESPONSE:** Regarding proposed Section 13.03 of the amended Rules and Regulations of the NEARSWMD, I do not believe the \$2.00 per ton fee is intended to apply to solid waste disposed of, or that could be disposed of, in a landfill operated by a regional solid waste management district, especially since the fees by the District to ADEQ for all solid waste disposed of in the District's landfill total \$1.50 per ton. The District has the ability to require all solid waste generated in the District to be disposed of in its landfill. This authority is found at Ark. Code Ann. § 8-6-712(a)(1)(A). Solid waste haulers can avoid paying the fee found at section 13.03 of the proposed and amended rules by disposing of solid waste at the landfill operated by the District. I believe this interpretation is consistent with the legislature's approval in 2018 of the fees assessed by the District for solid waste disposed of in the District's landfill.

6. While the proposed rules amend the definition of "ADEQ" to "DEQ," the rules still refer to the Department of Environmental Quality rather than the Division of Environmental Quality. **RESPONSE:** There is no particular reason that the proposed rules use the word "Department" rather than "Division." This language was used in the rules approved by the legislative committee in 2018 and it has not been changed in our proposed amended rules.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact.

Per the agency, this rule increases fees from \$11.75 per yard to \$13.00 per yard for loose waste and from \$12.00 per yard to \$13.50 per yard for compact waste. The expense of shingles will be \$20 per yard, and waste from outside the District will have an additional fee of 5%. The cost of the rule will be paid mostly by public and private waste haulers. The financial impact will depend on the amount of waste hauled by each public or private hauler.

**LEGAL AUTHORIZATION:** Regional solid waste management boards have the authority to issue licenses for solid waste haulers. Ark. Code Ann. § 8-6-721(a). “A 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 support the district’s management of the solid waste needs of the district.” Ark. Code Ann. § 8-6-714(a)(1)(A). “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.” Ark. Code Ann. § 8-6-714(a)(2).

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