

## **Title 8. Environmental Law**

### **Chapter VI. Boston Mountain Regional Solid Waste Management District**

#### **Subchapter A. Generally**

#### **Part 130. Rules of the Boston Mountain Regional Solid Waste Management District**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"§ 1.01 Authority

Ark. Code Ann. § 8-6-704(6) authorizes regional solid waste management boards to adopt such rules 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."

#### **Subpart 1. General**

##### **8 CAR § 130-101. Definitions.**

For the purposes of this part, the following definitions shall apply:

- (1) "ADEQ" or "division" means the Division of Environmental Quality;
- (2) "Administrative order" means the written finding of the Boston Mountain Regional Solid Waste Management District which proposes to assess a penalty, suspend, revoke, or deny a license or permit, or to take other action against a person which grants that person a right to request a hearing pursuant to this part, other than the denial of a certificate of need;
- (3) "Arkansas Administrative Procedure Act" means the Arkansas Administrative Procedure Act codified at Arkansas Code § 25-15-201 et seq., as amended from time to time;
- (4) "Board" means the Board of Directors of the Boston Mountain Regional Solid Waste Management District;

(5) "Class S composting facility" means a facility defined as requiring a Class S composting permit under the Arkansas Pollution Control and Ecology Commission, Solid Waste Management Rules, 8 CAR pt. 60;

(6) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(7) "Director" means the Director of the Boston Mountain Regional Solid Waste Management District;

(8) "Directors" means the members of the Board of Directors of the Boston Mountain Regional Solid Waste Management District;

(9) "District" means the Boston Mountain Regional Solid Waste Management District, which includes Madison County and Washington County, and the municipalities within these counties;

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

(11) "Rule" means any Boston Mountain Regional Solid Waste Management District rule 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 Boston Mountain Regional Solid Waste Management District;

(12) "Rulemaking action" shall include any action by the Boston Mountain Regional Solid Waste Management District to adopt, amend, or repeal a Boston Mountain Regional Solid Waste Management District rule;

(13) "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 byproducts material as defined by the Atomic Energy Act of 1954, as amended, 68 Stat. 923;

(14) "Solid waste disposal facility" means any Class I or Class IV sanitary landfill as defined by the Division of Environmental Quality;

(15) "Solid waste facility" means any facility which holds or should hold a facility permit issued by the Solid Waste Division of the Division of Environmental Quality;

(16) "Solid waste material recovery facility" means a facility defined as requiring a solid waste material recovery facility permit by the Arkansas Pollution Control and Ecology Commission, Solid Waste Management Rules, 8 CAR pt. 60; and

(17) "Transfer station" means a facility defined as requiring a transfer station permit by the Arkansas Pollution Control and Ecology Commission, Solid Waste Management Rules, 8 CAR pt. 60.

**Authority.** Arkansas Code § 8-6-704.

**Codification Notes.** Atomic Energy Act of 1954 is codified generally at 42 U.S.C. § 2011 et seq.

## **Subpart 2. Rulemaking**

**Codification Notes.** This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

### "§ 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."

**8 CAR § 130-201. Proposed action.**

At any Board of Directors of the Boston Mountain Regional Solid Waste Management District meeting, the board may adopt proposed:

- (1) New rules;
- (2) Modifications to existing rules; or
- (3) Repeal of any existing rules.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-202. Notice of proposed action.**

(a) Notice of the proposed new rule or modification or repeal of an existing rule shall be given to the public via publication in a newspaper or newspapers of general circulation.

(b)(1) Notice will normally be published on Wednesdays.

(2) The notice shall:

(A) State the substance of the proposed new rule or modification or rescission of an existing rule; and

(B) Provide information on obtaining a copy of the proposal from the Boston Mountain Regional Solid Waste Management District.

(3) 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 the Division of Environmental Quality.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-203. Public comment.**

(a) The notice in 8 CAR § 130-202 shall solicit written comments from the public for a period of not less than thirty (30) days.

(b) The notice shall also provide the address where all comments should be sent.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-204. Public hearing.**

(a) The Boston Mountain Regional Solid Waste Management 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 8 CAR § 130-202 no less than ten (10) days in advance of the hearing.

(c) Where rules 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.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-205. Final action.**

(a) At any Board of Directors of the Boston Mountain Regional Solid Waste Management District meeting following the close of the public comment period or any public hearing, the board may act on the proposal by:

- (1) Adopting it as originally written;
- (2) Adopting a modified version; or
- (3) Denying the proposal.

(b) The board reserves the right to reissue any proposal for public comment following significant modifications.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-206. Emergency proceedings.**

(a) Should the Boston Mountain Regional Solid Waste Management District find that imminent peril to the public health, safety, or welfare requires adoption of a rule 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.

(b) Any emergency rule so adopted may be effective for no longer than one hundred twenty (120) days.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-207. Filing.**

The Boston Mountain Regional Solid Waste Management District shall file with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research, a certified copy of each rule adopted by it, and a statement of financial impact for the rule, when required.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-208. Effective date.**

(a) Each rule adopted by the Boston Mountain Regional Solid Waste Management District shall be effective ten (10) days after filing unless a later date is specified by law or in the rule itself.

(b)(1) However, an emergency rule may become effective immediately upon filing, or at a stated time less than ten (10) days thereafter, if the district finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare.

(2) The district's finding and a brief statement of the reasons therefore shall be filed with the rule.

(3) The district shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-209. Certification of rules.**

A copy of any rule adopted by the Board of Directors of the Boston Mountain Regional Solid Waste Management District may be certified by:

- (1) Signature of the Chair of the Board of Directors of the Boston Mountain Regional Solid Waste Management District and the Secretary-Treasurer of the Board of Directors of the Boston Mountain Regional Solid Waste Management District; and
- (2) Affixing the official seal of the Boston Mountain Regional Solid Waste Management District thereon.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-210. Official records.**

(a)(1) The Boston Mountain Regional Solid Waste Management District shall maintain a certified copy of every rule adopted by the district.

(2) This copy shall be kept at the principal office of the district.

(b) A copy of each notice of rulemaking shall also be kept on file at the district.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-211. Substantial compliance.**

Every rulemaking action by the Boston Mountain Regional Solid Waste Management District after the effective date of this subpart shall be effective if the rulemaking action substantially complies with this subpart.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-212. Preemption by state or federal law.**

(a) 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 subpart shall be preempted to the extent necessary to comply with state or federal law.

(b) Whenever possible, the provisions of this subpart shall be interpreted to be consistent with requirements of state and federal law.

**Authority.** Arkansas Code § 8-6-704.

**Subpart 3. Administrative Orders and Hearings**

**8 CAR § 130-301. Authority.**

(a) The Director of the Boston Mountain Regional Solid Waste Management District shall keep a log of all complaints received and violations determined by the Boston Mountain Regional Solid Waste Management District.

(b) The director is granted the discretion and authority to assess monetary penalties for violations of district rules as well as to revoke, suspend, or deny a license or permit to any person for cause.

(c) No formal action regarding a complaint or violation, outlined below, may be taken until efforts have been made to resolve the violation or complaint informally and until the expiration of a twenty-four-hour period granted by the director to correct or remediate the complaint or violation.

**Authority.** Arkansas Code §§ 8-6-704, 8-6-714.

**8 CAR § 130-302. Administrative order.**

(a) When the Director of the Boston Mountain Regional Solid Waste Management District determines that a person is subject to penalties, revocation or suspension of a license, or other action, pursuant to the Boston Mountain Regional Solid Waste

Management District's rules, the director shall issue a written administrative order setting forth the basis for such proposed penalty, revocation or suspension, or action.

(b) The administrative order must be:

(1) Signed by the director or his or her authorized designee; and

(2) Delivered in person or by certified mail, return receipt requested, to the address of record at the district of the person against whom the administrative order is issued.

(c) The director has the discretion to:

(1) Attach a consent agreement to an administrative order; and

(2) Enter into consent agreements to settle any administrative order.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-303. Right to hearing.**

(a)(1) Upon receipt of an administrative order, the person against whom the administrative order is issued may object and request a hearing before the Board of Directors of the Boston Mountain Regional Solid Waste Management District.

(2) The request for hearing, which must be in writing, should set forth the reasons why the person disagrees with the administrative order.

(3)(A) The request for hearing may be delivered to the Boston Mountain Regional Solid Waste Management District in person or by certified mail, return receipt requested, and must be received by the district office no later than close of business thirty (30) days after the date of the administrative order.

(B) If the thirtieth day falls on a Saturday, Sunday, or district holiday, the request is due by close of business the following business day.

(4)(A) Persons who timely file a request for hearing shall be entitled to be heard at the first regularly scheduled board meeting following receipt of their request for hearing unless the request for hearing is received within fourteen (14) days prior to a scheduled board meeting.

(B) In such an event, the appeal will be heard at the following regularly scheduled board meeting.

(b) The hearing shall be conducted as follows:

(1) Both sides, which may appear in person or by counsel, shall have the opportunity to present documents and oral testimony in support of their position to be considered by the board;

(2)(A) The district shall present its case first, followed by the person requesting the hearing.

(B) Cross-examination shall be allowed as well as questioning by the board;

(3)(A) Conduct of the hearing shall be informal.

(B) The Chair of the Board of Directors of the Boston Mountain Regional Solid Waste Management District shall be entitled to use his or her discretion to allow, disallow, or strike any evidence or testimony that is deemed to be:

(i) Irrelevant;

(ii) Unreliable; or

(iii) Duplicative;

(4)(A) A court reporter, paid for by the district, will be present to develop a transcript of the hearing.

(B) This transcript, along with all evidence presented to and accepted by the chair, shall make up the administrative record in the matter;

(5)(A) Upon receipt and consideration of evidence and testimony at the hearing, the board members present shall vote on the action proposed by the administrative order.

(B) A majority vote of the board members present shall be final.

(C) The chair is allowed a vote;

(6)(A) At the close of the hearing, the board shall enter a written order, at which time the decision of the board shall be effective.

(B) Each party shall be responsible for drafting a proposed written order to be submitted to the board.

(C) Alternatively, the board may draft an order at the close of the hearing;  
and

(7) In all other respects, the hearing shall be conducted in accordance with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

(c) In the event no request for hearing is received by the district within the time prescribed by this part, the administrative order shall become final on the day following the date on which a request for hearing is due.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-304. First offense.**

The Board of Directors of the Boston Mountain Regional Solid Waste Management District may waive any penalty for a first offense based on the person's prior record.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-305. Final agency action.**

The written order adopted by the Board of Directors of the Boston Mountain Regional Solid Waste Management District shall be the final agency action for the purpose of appeal to circuit court.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-306. Appeals to circuit court.**

The appellant may appeal the final agency action of the Board of Directors of the Boston Mountain Regional Solid Waste Management District to Madison County Circuit Court or Washington County Circuit Court in Arkansas.

**Authority.** Arkansas Code § 8-6-704.

## **Subpart 4. Certificates of Need Generally**

**Codification Notes.** This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"§ 6.01 Authority

Ark. Code Ann. § 8-6-704(6) authorizes regional solid waste management boards to adopt such rules 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."

### **8 CAR § 130-401. Definitions.**

As used in this subpart:

(1) "Certificate of need" means a certificate issued by the Board of Directors of the Boston Mountain Regional Solid Waste Management District to any person proposing to obtain a permit for a solid waste facility;

(2) "Certificate of need review" means review of the application for a certificate of need;

(3) "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;

(4)(A) "Landfill" means a permitted landfill under the Arkansas Solid Waste Management Act, Arkansas Code § 8-6-201 et seq.

(B) 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:

- (i) Generated by the industry; or
- (ii) Of a similar kind or character;

(5) "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 byproduct material as defined by the Atomic Energy Act of 1954, as amended, 68 Stat. 923;

(6) "Solid waste facility" means a landfill or transfer station as defined in this section; and

(7) "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.

**Authority.** Arkansas Code § 8-6-704.

**Codification Notes.** Atomic Energy Act of 1954 is codified generally at 42 U.S.C. § 2011 et seq.

### **8 CAR § 130-402. Applicability.**

(a) This subpart and Subpart 5 of this part shall apply to every solid waste facility proposed to be located either wholly or partially within the jurisdiction of the Boston Mountain Regional Solid Waste Management District or the expansion of any existing landfill within the jurisdiction of the district.

(b) This subpart shall apply to facilities that do not have a preapplication pending with the Division of Environmental Quality for a new permit or modification of an existing permit as of the effective date of this part.

(c) 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:

- (1) Generated by the industry; or
- (2) Of a similar kind or character.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-403. Criteria for review.**

When reviewing an application for a certificate of need, the Boston Mountain Regional Solid Waste Management District will consider the following criteria:

- (1) Whether the proposed facility is consistent with the regional planning strategy adopted by the Board of Directors of the Boston Mountain Regional Solid Waste Management District in the:
  - (A) Regional needs assessment; or
  - (B) Regional solid waste management plan;
- (2) Whether the proposed facility conflicts with existing comprehensive land use plans of any local governmental entities;
- (3) Whether the proposed facility disturbs:
  - (A) An archeological site as recognized by the Arkansas Archeological Survey; or
  - (B) A rare and endangered species habitat as recognized by either the:
    - (i) Arkansas State Game and Fish Commission; or
    - (ii) United States Fish and Wildlife Service;
- (4) 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;
- (5) Whether the proposed facility conflicts with the requirements of state or federal laws, rules, and regulations on the location of disposal facilities;
- (6) If the proposed facility is located within the hundred-year floodplain, whether it restricts the flow of the hundred-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;

(7) Whether the proposed facility is appropriately located given the district's needs and taking into consideration its road system;

(8)(A) For landfills, whether the proposed facility provides landfill disposal capacity needed within the district.

(B) In no event shall the district's excess projected capacity for any class of landfill exceed thirty (30) years, including the proposed facility;

(9) For transfer stations, whether:

(A) Another transfer station is located within a twelve-mile radius of the proposed facility; and

(B) Sufficient transfer station capacity exists within the proposed service area;

(10) 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;

(11) The service area to be served by the proposed facility; and

(12) Whether the applicant followed the procedures for obtaining a certificate of need in Subpart 5 of this part.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-404. Continuing effect.**

(a)(1) Upon receipt of a certificate of need, the applicant has sixty (60) days in which to file a preapplication for a solid waste landfill permit with the Division of Environmental Quality.

(2) If a preapplication is not filed within sixty (60) days, the certificate of need shall expire.

(b)(1) 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 the division.

(2) If a permit application is not filed within six (6) months, the certificate of need shall expire.

(c)(1) Certificates of need are issued to specific persons.

(2) 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.

## **Subpart 5. Procedures for Obtaining a Certificate of Need**

### **8 CAR § 130-501. Notice of intent.**

(a) At least fifteen (15) days prior to submitting an application for a certificate of need, the applicant must notify the Boston Mountain Regional Solid Waste Management District, in writing, of its intent to submit such an application.

(b) The notice of intent shall include the following information:

- (1) The name of the applicant;
- (2) The applicant's address and telephone number;
- (3) Whether the applicant is seeking a new or modified solid waste facility permit and the classification of the permit sought;
- (4) The site of the proposed facility;
- (5) A description of the geopolitical area to be served by the proposed facility, including population estimates by jurisdiction; and
- (6) For landfills, confirmation from the Division of Environmental Quality 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.

**Authority.** Arkansas Code § 8-6-704.

### **8 CAR § 130-502. Application.**

(a) Persons requesting a certificate of need from the Boston Mountain Regional Solid Waste Management District must submit an application to the district.

(b) All applications for certificates of need shall include, at a minimum, the following information:

- (1) The applicant's name, address, and telephone number;
- (2) 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;
- (3) The location of the proposed facility as shown on the applicable 7.5-minute United States Geological Survey topographic map or maps;
- (4) The size of the proposed facility and capacity proposed;
- (5) A description of the geopolitical jurisdictions to be served, including population estimates by jurisdiction;
- (6) Documentation that the proposed solid waste facility or modification complies with all of the criteria for evaluation listed in 8 CAR § 130-403;
- (7) For landfills, the:
  - (A) Current permitted capacity for the appropriate landfill class within the district; and
  - (B) Estimated increase in permitted capacity for the proposed facility or modification;
- (8) 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
- (9) Any other information deemed necessary to make a determination of need.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-503. Completeness determination.**

(a) Within fourteen (14) days of receipt of the initial application, the Boston Mountain Regional Solid Waste Management District will make a completeness determination of the application.

(b) 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.

(c) 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.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-504. Review period.**

(a) Once the Boston Mountain Regional Solid Waste Management 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 8 CAR § 130-202.

(b)(1) 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.

(2) The review period will run for thirty (30) days.

(c) During the review period, public comment will be taken.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-505. Public hearing.**

During the review period, the Boston Mountain Regional Solid Waste Management District will conduct a public hearing within the county where the proposed facility or modification is to be located.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-506. Determination.**

(a)(1) At the first scheduled Board of Directors of the Boston Mountain Regional Solid Waste Management District meeting following the close of the review period, the board will take up for consideration the application for a certificate of need.

(2) The Director of the Boston Mountain Regional Solid Waste Management District shall present a recommendation to the board.

(3) 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 ten (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 twenty (120) days of the beginning of the review period, the certificate of need will be deemed to have been denied.

(c)(1) The board shall issue written findings when making a determination.

(2) The findings shall state the basis for issuing or denying the certificate of need.

(3) The findings will be sent to the following:

(A) The applicant;

(B) The Division of Environmental Quality; and

(C) Any interested persons who request such findings in writing from the Boston Mountain Regional Solid Waste Management District.

**Authority.** Arkansas Code § 8-6-704.

### **8 CAR § 130-507. Appeal of decision.**

(a) 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 the Division of Environmental Quality in accordance with Division of Environmental Quality rules governing such appeals.

(b) Only interested persons shall have a right of appeal.

**Authority.** Arkansas Code § 8-6-704.

## **Subpart 6. Waste Hauler Licenses**

## **8 CAR § 130-601. Definitions.**

As used in this subpart:

(1)(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, 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 byproduct material as defined by the Atomic Energy Act of 1954, as amended, 68 Stat. 923.

(B) Recovered materials as defined by 8 CAR § 60-201 are not considered solid waste; and

(2)(A) "Solid waste hauler" means any person engaged in the collection and/or transportation for disposal or storage of solid wastes.

(B) "Solid waste hauler" does not include a person:

(i) Transporting his or her personal household wastes to a permitted facility;

(ii) Hauling only waste tires; or

(iii) Transporting solid waste from an industrial facility to its own

Class 3 landfill.

(C) There are two (2) types of solid waste haulers:

(i) Type I haulers are those that haul all categories of nonhazardous solid wastes as identified in 8 CAR § 60-202; and

(ii) Type II haulers are those that haul only process wastes and special materials as identified in 8 CAR § 60-202.

**Authority.** Arkansas Code § 8-6-704.

**Codification Notes.** Atomic Energy Act of 1954 is codified generally at 42 U.S.C. § 2011 et seq.

**8 CAR § 130-602. Hauler's license required.**

(a)(1) Effective February 1, 1993, no person shall engage in the business of collection and/or transportation of solid wastes in the Boston Mountain Regional Solid Waste Management District without first securing a solid waste hauler's license from the Board of Directors of the Boston Mountain Regional Solid Waste Management District.

(2) 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:

- (1) A person;
- (2) A partnership;
- (3) A corporation;
- (4) An association;
- (5) The State of Arkansas;
- (6) A political subdivision of the state;
- (7) An improvement district;
- (8) A sanitation authority; or
- (9) 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 cubic yards (10 yd<sup>3</sup>) 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 subsection (b) of this section.

(e)(1) All solid waste hauler's licenses shall be issued for a period not to exceed one (1) year.

(2) Licenses shall run from July 1 through June 30 of each year.

(3) Applications for a license shall be mailed out by the district to each hauler and postmarked no later than May 1.

(4) If said applications are not mailed out by May 1, then the deadline to submit such shall be extended accordingly.

(5) Application packets shall be returned to the district no later than June 15 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.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-603. Standards.**

(a)(1) All collection and transportation systems shall meet the conditions outlined below.

(2) Failure to comply with these conditions may result in a revocation of the solid waste hauler's license.

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

(c) Solid wastes shall be:

(1) Collected and transported so as to prevent:

- (A) Public health hazards;
- (B) Environmental hazards;
- (C) Safety hazards; and
- (D) Nuisances; and

(2) Kept in a sanitary condition.

(d)(1) Collection and transportation equipment shall be designed and constructed so as to be leak-proof.

(2) 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 Solid Waste Management Rules, 8 CAR pt. 60.

(3) This means that vehicles must have either:

(A) Enclosed waste storage areas; or

(B) For vehicles with open waste storage areas, such as caged pickups, they must be tarped when traveling in excess of thirty-five miles per hour (35 m.p.h.).

(4) Haulers should request customers to utilize animal resistant containers and bags of suitable strength to reduce tearing and spilling of litter.

(e) 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.

(f) All solid wastes collected shall be transported to a permitted facility in accordance with Solid Waste Management Rules, 8 CAR pt. 60.

(g)(1) All vehicles hauling solid waste within the Boston Mountain Regional Solid Waste Management District shall display the registration sticker issued by the district near the driver's side door.

(2) In addition, beginning July 1, 2003, all licensed vehicles must display both the business name and phone number in letters no less than two inches (2") high on both sides of the vehicle.

(h) Beginning January 1, 2004, 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.

(i)(1) Hauling services shall be provided at a minimum of one (1) time per week.

(2)(A) Haulers may skip hauling on major holidays, provided they provide service to those customers affected during that week.

(B) Customers should be provided a minimum of two (2) weeks' notice of any change in collection schedule.

(3) Inclement weather may excuse haulers from this provision.

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

(k)(1) At the time of licensing, a hauler will be required to indicate in which zones it wishes to provide service.

(2)(A) A hauler which indicates that it will provide service in a zone must provide service to any customer within that zone that requests it, unless that hauler can show good cause to the district why it will not provide service to a customer.

(B) The Director of the Boston Mountain Regional Solid Waste Management District has the discretion and authority to make a finding of good cause, which may be such things as:

- (i) A history of the customer failing to pay bills; or
- (ii) Some other dispute between the customer and hauler.

(C) However, the location of the customer will not be considered good cause.

**Authority.** Arkansas Code § 8-6-704.

### **8 CAR § 130-604. Licensing procedures.**

(a) Any person subject to 8 CAR § 130-603 shall register annually with the Boston Mountain Regional Solid Waste Management 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 June 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 June 1;
- (4) Names and driver's license numbers of employees providing hauling services; and
- (5) Identification of 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; and
- (5) Vehicle capacity.

(d)(1) Any person applying for a license must establish financial responsibility to the district.

(2) Proof of liability insurance will be required and may be considered adequate financial responsibility.

(e)(1) Licenses are nontransferable and nonreturnable.

(2)(A) If a licensed hauler replaces a registered vehicle with another vehicle during the year, the district shall be notified and the information in subsection (c) of this section shall be provided for both vehicles.

(B)(i) A new registration sticker shall be provided for the new vehicle.

(ii) The hauler shall remove the registration sticker from the disposed vehicle.

(f) Any person who begins business or any licensed person who adds additional collection vehicles during a calendar year shall have thirty (30) days to register with the district and obtain a license without a penalty.

**Authority.** Arkansas Code § 8-6-704.

**Codification Notes.** "VIN" means vehicle identification number.

### **8 CAR § 130-605. Fees.**

(a) Fees shall be assessed as follows:

(1) A minimum fee of one hundred dollars (\$100) is required and will license up to two (2) vehicles;

(2) An additional fee of fifty dollars (\$50.00) per vehicle per year will be assessed for the third and all subsequent vehicles up to a maximum fee of one thousand dollars (\$1,000) annually; and

(3) Fees for new licenses or additional units will be prorated based on the number of full months remaining in the calendar year.

(b) Any hauler's licensing application received by the Boston Mountain Regional Solid Waste Management District 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; and

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

**Authority.** Arkansas Code §§ 8-6-704, 8-6-714, 8-6-721.

### **8 CAR § 130-606. Penalties.**

(a)(1) Failure to register under this part constitutes a misdemeanor under Arkansas Code § 8-6-722.

(2) Upon conviction, the person shall be subject to:

(A) Imprisonment for not more than thirty (30) days;

(B) A fine of not more than one thousand dollars (\$1,000); or

(C) Both imprisonment and fine.

(3) Additionally, failure to register may subject the hauler to administrative penalties of:

(A) Not more than five hundred dollars (\$500) and two (2) points for the first offense; and

(B) Not more than one thousand dollars (\$1,000) and four (4) points for subsequent offenses.

(4) Each day or part of any day during which a violation is continued or repeated shall constitute a separate offense.

(b)(1) Failure to comply with any other part of this subpart constitutes a misdemeanor under Arkansas Code § 8-6-722.

(2) Upon conviction, the person shall be subject to:

(A) Imprisonment for not more than thirty (30) days;

(B) A fine of not more than:

(i) Two hundred fifty dollars (\$250) for the first offense;

(ii) Five hundred dollars (\$500) for a second offense; and

(iii) One thousand dollars (\$1,000) for subsequent offenses; or

(C) Both imprisonment and fine.

(3) 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 without good cause, failure to provide service when requested without good cause, failure to submit adequate trust fund fees under 8 CAR § 130-608, or failing to properly dispose of wastes collected may subject the hauler to administrative penalties of:

(1) Not more than two hundred fifty dollars (\$250) and one (1) point for the first offense; and

(2) Not more than five hundred dollars (\$500) and two (2) points for subsequent offenses.

(d) Failure to display the registration sticker, failure to notify the Boston Mountain Regional Solid Waste Management District of additional trucks, failure to display the hauler's name and telephone number on the sides of vehicles, or other administrative violations may subject the hauler to administrative penalties of:

(1) Not more than one hundred dollars (\$100) and one (1) point for the first offense; and

(2) Not more than two hundred fifty dollars (\$250) and two (2) points for subsequent offenses.

(e) To be considered a subsequent offense, the repeat offense must occur within thirty-six (36) months of the earlier offense.

(f) When the Director of the Boston Mountain Regional Solid Waste Management District determines that a person is subject to administrative penalties, pursuant to the district's rules, the director shall issue an administrative order in accordance with Subpart 3 of this part.

**Authority.** Arkansas Code §§ 8-6-204, 8-6-704.

### **8 CAR § 130-607. Revocation and suspension.**

(a) The Boston Mountain Regional Solid Waste Management District may revoke or suspend a hauler's license under the following conditions:

(1) The district may suspend a hauler's license for six (6) months if the hauler is assessed penalties totaling five (5) points within a twelve-month period;

(2) The district may suspend a hauler's license for twelve (12) months if the hauler assessed penalties totaling ten (10) points within a twelve-month period;

(3) The district may permanently revoke a hauler's license if the hauler is assessed penalties totaling fifteen (15) points within a twelve-month period; and

(4) The district may permanently revoke a hauler's license if the hauler is suspended for more than twelve (12) months in any thirty-six-month period.

(b) When the Director of the Boston Mountain Regional Solid Waste Management District determines that a person is subject to revocation or suspension of a license, pursuant to the district's rules, the director shall issue an administrative order in accordance with Subpart 3 of this part.

**Authority.** Arkansas Code § 8-6-704.

### **8 CAR § 130-608. Waste Hauler Trust Fund.**

(a)(1) There shall be established on the books of the Boston Mountain Regional Solid Waste Management District a fund to be known as the Waste Hauler Trust Fund.

(2)(A) Moneys deposited into this fund shall be kept in a separate depository account and shall cover the entire tri-state area.

(B) Any hauler who chooses to post a cash bond may do so in lieu of the deposits set out below.

(b) Licensed waste haulers shall deposit the sum of one hundred twenty-five thousandths of a dollar (\$.125) per residential customer, less any customer serviced under municipal or POA contract, on a quarterly basis into the fund.

(c) Deposits shall be made no later than January 31, April 30, July 31, and October 31 based on the number of applicable customers on the first day of these months.

(d)(1) Deposits shall be made until the fund reaches ten thousand dollars (\$10,000).

(2) After which, deposits shall cease until the fund balance drops below five thousand dollars (\$5,000), at which time deposits will resume until the fund once again reaches ten thousand dollars (\$10,000).

(e)(1) Money deposited into the fund shall be used exclusively to provide reimbursement of unused prepaid fees to customers of a hauler which has abandoned an area of service.

(2) Customers in the abandoned area are entitled to reimbursement of any unused amounts prepaid by the customer to said hauler, not to exceed the limits of the fund.

(f) In order to qualify for reimbursement from the fund, the customer must demonstrate proof of payment.

(g) 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.

**Authority.** Arkansas Code § 8-6-704.

## **Subpart 7. Solid Waste Facilities — Generally**

**Codification Notes.** This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"§ 10.01 Authority

Ark. Code Ann. § 8-6-704(6) authorizes regional solid waste management boards to adopt such rules 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.'"

"§ 15.05 Severability.

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

### **8 CAR § 130-701. Purpose.**

(a) Northwest Arkansas is facing a critical shortage of solid waste disposal capacity due to the difficulties in siting landfill facilities at the local level.

(b) In order to protect the fragile environment of northwest Arkansas, yet provide for adequate solid waste disposal capacity, the Boston Mountain Regional Solid Waste Management District has adopted this subpart and Subparts 8 – 12 of this part.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-702. Applicability.**

Unless otherwise specified, this subpart and Subparts 8 – 12 of this part, shall apply to every solid waste facility, located either wholly or partially within the counties of Washington and Madison, Arkansas, which is operated after the effective date of this subpart and Subparts 8 – 12 of this part.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-703. Definitions.**

For the purposes of this subpart and Subparts 8 – 12 of this part, the following definitions shall apply:

- (1) "Arkansas Administrative Procedure Act" means the Arkansas Administrative Procedure Act codified at Arkansas Code § 25-15-201 et seq., as amended from time to time;
- (2) "Board" means the Board of Directors of the Boston Mountain Regional Solid Waste Management District;
- (3) "Division" means the Division of Environmental Quality;
- (4) "Director" means the Director of the Boston Mountain Regional Solid Waste Management District;
- (5) "Directors" means the members of the Board of Directors of the Boston Mountain Regional Solid Waste Management District;
- (6) "District" means the Boston Mountain Regional Solid Waste Management District, which includes the counties of Washington and Madison and the municipalities within these counties;
- (7) "Solid waste" means solid waste as defined by the Arkansas Pollution Control and Ecology Commission, Solid Waste Management Rules, 8 CAR pt. 60;
- (8) "Solid waste disposal facility" means any landfill as defined by the Division of Environmental Quality; and
- (9) "Solid waste facility" means any facility which holds or should hold a facility permit issued by the Solid Waste Division of the Division of Environmental Quality.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-704. Effective date.**

These rules are effective twenty (20) days after their filing with the Secretary of State.

**Authority.** Arkansas Code § 8-6-704.

**Subpart 8. Solid Waste Facilities — Location Restrictions**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"§ 10.01 Authority

Ark. Code Ann. § 8-6-704(6) authorizes regional solid waste management boards to adopt such rules 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.'"

"§ 15.05 Severability.

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

**8 CAR § 130-801. [Reserved].**

**8 CAR § 130-802. Watershed buffers.**

(a) No solid waste disposal facility shall be located within two (2) miles of the following surface water bodies:

- (1) Beaver Lake;
- (2) Lake Francis;
- (3) Lake Sequoyah;
- (4) Table Rock Lake;
- (5) Prairie Grove Lake;
- (6) Lincoln Lake;
- (7) Osage Creek (Benton County);
- (8) Illinois River;
- (9) White River including the East, Middle, or West Forks;
- (10) Kings River;
- (11) Osage Creek (Carroll County); and
- (12) War Eagle Creek.

(b) The water bodies listed in subsection (a) of this section shall be defined as those streams as marked and shown on the latest United States Geological Survey 7.5-minute topographic maps and the lake boundaries existing during normal pool elevation.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-803. Measurement of distances.**

(a) All distances as put forth in 8 CAR § 130-802 shall be measured by drawing a buffer of the appropriate distance radially around the permitted boundary of the facility, on the latest United States Geological Survey 7.5-minute topographic map.

(b) Should any portion of the extended perimeter contact any water body listed in 8 CAR § 130-802, the facility will be in violation of this subpart.

**Authority.** Arkansas Code § 8-6-704.

## **Subpart 9. Solid Waste Facilities — Operation and Maintenance**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"§ 10.01 Authority

Ark. Code Ann. § 8-6-704(6) authorizes regional solid waste management boards to adopt such rules 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.'"

"§ 15.05 Severability.

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

### **8 CAR § 130-901. District inspector.**

(a) The Boston Mountain Regional Solid Waste Management 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.

(c)(1) The findings of the inspector will be used for district purposes.

(2) In addition, a copy of the findings will be provided to the Division of Environmental Quality and to the facility.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-902. Leachate collection reporting.**

(a) Every solid waste disposal facility required to report the performance of its leachate collection system to the Division of Environmental Quality shall also provide a copy of reports monthly to the Boston Mountain Regional Solid Waste Management District.

(b) Such reports shall contain at a minimum:

- (1) The amount of leachate collected;
- (2) Any test results from testing the leachate; and
- (3) The final disposition of all leachate generated.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-903. 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 Division of Environmental quality and/or the United States Environmental Protection Agency.

(b)(1) Every solid waste disposal facility shall sample and test all wells identified in the well inventory required by the division's Solid Waste Management Code Section XII, B, 2, before beginning construction of the facility.

(2) Samples shall be tested for all constituents required under 40 C.F.R. pt. 258, Appendix I.

(3)(A) Copies of all test results shall be provided to the well owner and the Boston Mountain Regional Solid Waste Management District.

(B) 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 this subpart.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-904. Other reporting.**

Copies of any engineering reports or operating reports required to be submitted to the Division of Environmental Quality or the United States Environmental Protection Agency shall also be contemporaneously submitted to the Boston Mountain Regional Solid Waste Management District.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-905. Landfill personnel.**

Every solid waste disposal facility operated within the Boston Mountain Regional Solid Waste Management District must employ the following landfill personnel:

(1) A registered professional engineer must be responsible for the construction and operation of the landfill; and

(2) Landfill managers/operators must hold a Class I landfill operator's license issued by the Division of Environmental Quality.

**Authority.** Arkansas Code § 8-6-704.

**Subpart 10. Solid Waste Facilities — Design Standards**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"§ 10.01 Authority

Ark. Code Ann. § 8-6-704(6) authorizes regional solid waste management boards to adopt such rules 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.'"

"§ 15.05 Severability.

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

### **8 CAR § 130-1001. Preconstruction design.**

(a) All landfills located either partially or wholly within the Boston Mountain Regional Solid Waste Management District shall adhere to the following site characterization and design criteria.

(b) Due to the unique land formations in northwest Arkansas, the following information and studies are required to characterize any site proposed for a solid waste landfill and must be submitted to the district:

- (1) Fracture trace analysis from aerial photographs of the proposed site;
- (2)(A) Detailed surface geologic mapping of the site and the area within one (1) mile of the boundary of the site.

(B) The following information must be obtained:

- (i) The stratigraphy of the study area; and
- (ii) Structure of the study area:
  - (a) Location of faults including orientation, displacement length, and hydraulic characteristics;

(b) Fracture spacing and fracture orientation for each stratigraphic unit identified; and

(c) 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; and

(3) Subsurface exploration which 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:

(a) Atterburg limits (ASTM D 4318);

(b) Sieve analysis and grain size distribution curves (ASTM D 1140 and D 422);

(c) Standard penetration tests (ASTM D 1452);

(d) Remolded hydraulic conductivity test (ASTM D 5084);

(e) In-situ hydraulic conductivity test;

(f) Proctor density curves (ASTM D 1557); and

(g) Moisture contents (ASTM D 2216).

(iii)(a) Quantity of soils must be determined by borings and test pits.

(b) Borings shall be at a minimum spacing of one (1) per five (5) acres.

(c) Trackhoe pits shall be at a minimum spacing of one (1) per acre;

(B) **Bedrock topography.**

(i) Core drilling on at least one (1) hole per five (5) acres with analysis of fracture density, fracture orientation, and sudden gains or losses of drilling fluid.

(ii) Geophysical logs of borings including:

(a) Resistivity;

- (b)* Conductivity;
- (c)* Caliper;
- (d)* Natural gamma;
- (e)* Acoustic logs;
- (f)* Video logs; and
- (g)* Temperature.

(iii)(a) Surface geophysical studies are required to evaluate areal changes in soil type, geologic structure, lithology, bedrock topography, and prospect for large caverns.

*(b)* Geophysical surveys must be correlated with borings.

*(c)* The proposed geophysical study of the site must include two (2) or more of the following methods:

- (1)* Ground penetrating radar;
- (2)* Surface conductivity;
- (3)* Resistivity;
- (4)* Shallow seismic refraction; and
- (5)* 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:

*(a)* Nested wells to determine vertical hydraulic gradients within the upper aquifer;

*(b)* Pump tests using appropriate methodology for the aquifer and using multiple observation wells; and

*(c)* A single well aquifer test.

(iv) A recommended groundwater monitoring system consisting of wells and springs must be developed.

(v)(a) Determine water chemistry variability within the uppermost aquifer for the list of detection monitoring parameters.

(b) At least one (1) year of data must be collected at quarterly intervals to demonstrate seasonal ambient water quality variability; and

(D)(i) All individual studies must be integrated into a comprehensive geologic and hydrogeologic model of the site which is summarized in a written report.

(ii) The facility groundwater monitoring points must be located based upon the hydrogeologic model developed for the site.

(iii) All maps and cross sections must be of a uniform scale (the same size as used in the design blueprints, typically one inch equals fifty feet (1" = 50') to one inch equals four hundred feet (1" = 400')) and must include the following:

(a) Geologic map of the site;

(b) Boring locations;

(c) Geophysical lines or data collection points;

(d) Potentiometric maps dye study results;

(e) Isopach maps of overburden;

(f) Bedrock topography maps (contour interval of two feet (2'));

(g) Geologic cross sections; and

(h) Percent coarse component soils map.

(c) The requirements of this section shall not apply to solid waste disposal facilities which have submitted a final permit application to the Division of Environmental Quality prior to January 1, 1994.

**Authority.** Arkansas Code § 8-6-704.

### **8 CAR § 130-1002. Landfill design.**

(a)(1) Every solid waste disposal facility operated within the Boston Mountain Regional Solid Waste Management 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.

(2) Each composite liner shall consist of a flexible membrane liner underlain by a compacted clay liner.

(b)(1) Every solid waste disposal facility constructed after the effective date of this part must employ a third party engineering firm to ensure proper construction of each component of the containment structure and operation of the landfill.

(2) 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.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-1003. Stormwater basin design.**

Any solid waste disposal facility, located either partially or wholly within the Boston Mountain Regional Solid Waste Management District, which is required to maintain a stormwater retention basin by either Division of Environmental Quality 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 twenty-four-hour, hundred-year rainfall event.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-1004. Compliance.**

(a) Any solid waste disposal facility may demonstrate compliance with 8 CAR § 130-1001 by submitting a certified statement, on a form provided by the Boston Mountain Regional Solid Waste Management District, signed by a professional geologist authorized to practice in the State of Arkansas.

(b) Any solid waste disposal facility may demonstrate compliance with 8 CAR §§ 130-1002 and 130-1003 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.

**Authority.** Arkansas Code § 8-6-704.

## **Subpart 11. Solid Waste Facilities — Financial Requirements**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"§ 10.01 Authority

Ark. Code Ann. § 8-6-704(6) authorizes regional solid waste management boards to adopt such rules 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.'"

"§ 15.05 Severability.

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

### **8 CAR § 130-1101. Host county compensation.**

(a) Any solid waste disposal facility, located partially or wholly within the Boston Mountain Regional Solid Waste Management District, shall provide the host county with compensation in the amount of one dollar (\$1.00) per ton of waste disposed of at the facility.

(b) A facility which crosses county boundaries shall prorate the one-dollar per-ton fee in proportion to the percentage of the active facility located within each county.

(c) The host counties may use the fees provided for any purpose they see fit, it being the intent of this part to provide funds to the counties to assist in increased road maintenance, neighbor compensation, litter control, etc.

(d) Payments shall be made quarterly for the previous quarter.

**Authority.** Arkansas Code § 8-6-704.

## **Subpart 12. Solid Waste Facilities — Compliance and Enforcement**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"§ 10.01 Authority

Ark. Code Ann. § 8-6-704(6) authorizes regional solid waste management boards to adopt such rules 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.'"

"§ 15.05 Severability.

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

**8 CAR § 130-1201. 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 Subparts 7 – 11 of this part and this subpart.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-1202. Penalties.**

A penalty of up to ten thousand dollars (\$10,000) per violation per day of violation may be assessed against any person violating the provisions of Subparts 7 – 11 of this part and this subpart.

**Authority.** Arkansas Code §§ 8-6-204, 8-6-704.

**8 CAR § 130-1203. Enforcement.**

The Director of the Boston Mountain Regional Solid Waste Management District is authorized to seek the approval of the Board of Directors of the Boston Mountain Regional Solid Waste Management District to institute legal and/or equitable action in the appropriate courts to enforce any violation of Subparts 7 – 11 of this part and this subpart.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-1204. Inspection and information gathering.**

(a) Any solid waste facility shall, upon the request of any Boston Mountain Regional Solid Waste Management District-designated person:

- (1) Furnish information relating to any activity at the facility; and
- (2) Permit such person at all times to have access to and to copy all records

relating to such activity.

(b) Any district-designated person shall be allowed to:

- (1) Enter at any time all areas of the facility; and

(2) Inspect and obtain samples from any area of the facility.

**Authority.** Arkansas Code § 8-6-704.

**Subpart 13. [Reserved]**

**Subpart 14. [Reserved]**

**Subpart 15. Solid Waste Assessment — Generally**

**Codification Notes.** This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"§20.01 Authority

This Chapter F, Solid Waste Assessment Rule, is adopted and imposed pursuant to A.C.A. 8-6-714, as amended by Act 209 of 2011."

"§ 22.05 Severability.

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

**8 CAR § 130-1501. Applicable waste.**

(a) Starting May 1, 2011, there shall be assessed a fee to be paid to the Boston Mountain Regional Solid Waste Management District on all solid waste generated:

(1) Within the district; or

(2) Outside the district and brought to a processing or disposal facility within the district.

(b)(1) This fee will be applicable to all solid waste that is:

(A) Collected and delivered to a processing, transfer, or disposal facility within the district; or

(B) Generated outside the district and brought into a processing, transfer, recycle, or disposal facility within the district.

(2) This also includes all solid waste generated in the district and taken outside the district and delivered to a processing, transfer, or disposal facility.

(c) This fee will not be applied to:

(1) 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;

(2) Any nonmunicipal solid waste generated by private industry and shipped to another state for recycling, treatment, or disposal;

(3) Any recyclable materials which are processed and marketed for recycling;

(4) Any organic materials which are delivered to a Class Y or Class O composting facility;

(5) Any materials which are removed from solid waste and processed for recycling;

(6) Waste tires processed through the district's waste tire program; or

(7) Household hazardous wastes collected through the district's HHW program that is handled as Subtitle C waste.

**Authority.** Arkansas Code §§ 8-6-704, 8-6-714.

**Codification Notes.** "HHW" means household hazardous waste.

**8 CAR § 130-1502. Fee amount.**

(a)(1) The amount of the fee assessed shall be two dollars (\$2.00) per ton.

(2)(A) Fifty cents (50¢) per ton of this fee shall be deposited into a fund designated for landfill diversion strategies and programs.

(B) This fund is only to be used with approval by the Board of Directors of the Boston Mountain Regional Solid Waste Management District.

(b) If weight tickets are not available, the fee shall be calculated on a volume basis as follows:

(1) Twenty-five cents (25¢) per uncompacted cubic yard; and

(2) Forty-five cents (45¢) per compacted cubic yard.

(c)(1) If solid wastes subject to a fee under this subpart and Subparts 16 and 17 of this part are shipped, delivered, or transported to another solid waste management district within this state that also imposes a fee pursuant to Arkansas Code § 8-6-714(a)(1)(A), then the fees imposed shall be divided between the districts pursuant to any interlocal agreement in place between the districts.

(2) If no interlocal agreement is in place, the larger of the fees shall be imposed and said fees shall be split evenly between the districts.

**Authority.** Arkansas Code §§ 8-6-704, 8-6-714.

### **Subpart 16. Solid Waste Assessment — Procedures**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"§ 22.05 Severability.

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

### **8 CAR § 130-1601. Intent.**

(a) It is the intention under this subpart for all waste that is generated or disposed of within the Boston Mountain Regional Solid Waste Management District to be assessed this fee one (1) time only.

(b) Wastes which are ultimately recycled or composted should be exempt or credited.

**Authority.** Arkansas Code §§ 8-6-704, 8-6-714.

**8 CAR § 130-1602. Landfills.**

(a) Any landfill located within the Boston Mountain Regional Solid Waste Management District shall pay to the district an amount equal to the per-ton fee amount in 8 CAR § 130-1501 times the number of tons of solid waste handled.

(b) Such fee will be paid according to the schedule listed in 8 CAR § 130-1607.

**Authority.** Arkansas Code §§ 8-6-704, 8-6-714.

**8 CAR § 130-1603. Solid waste material recovery facility.**

(a)(1) Any solid waste material recovery facility located within the Boston Mountain Regional Solid Waste Management District shall pay to the district an amount equal to the per-ton fee amount in 8 CAR § 130-1501 times the number of tons of solid waste handled.

(2) Such fee will be paid according to the schedule listed in 8 CAR § 130-1607.

(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.

**Authority.** Arkansas Code §§ 8-6-704, 8-6-714.

**8 CAR § 130-1604. Class S composting facilities.**

(a)(1) Any Class S composting facility located within the Boston Mountain Regional Solid Waste Management District shall pay to the district an amount equal to the per-ton fee amount in 8 CAR § 130-1501 times the number of tons of solid waste handled.

(2) Such fee will be paid according to the schedule listed in 8 CAR § 130-1607.

(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.

**Authority.** Arkansas Code §§ 8-6-704, 8-6-714.

#### **8 CAR § 130-1605. Transfer stations.**

(a)(1) Any transfer station located within the Boston Mountain Regional Solid Waste Management District shall pay to the district an amount equal to the per-ton fee amount in 8 CAR § 130-1501 times the number of tons of solid waste handled.

(2) Such fee will be paid according to the schedule listed in 8 CAR § 130-1607.

(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.

**Authority.** Arkansas Code §§ 8-6-704, 8-6-714.

#### **8 CAR § 130-1606. Out-of-district haulers.**

Any hauler who collects solid waste generated within the Boston Mountain Regional Solid Waste Management District but transports it out of district for processing or disposal shall be required to submit the applicable fee in 8 CAR § 130-1501 times the number of tons of waste transported to the district according to the schedule in 8 CAR § 130-1607.

**Authority.** Arkansas Code §§ 8-6-704, 8-6-714.

#### **8 CAR § 130-1607. Schedule.**

(a)(1) Fees shall be paid to the Boston Mountain Regional Solid Waste Management District quarterly.

(2) For all wastes handled during the months of January – March, payment will be due by April 30.

(3) For all wastes handled during the months of April – June, payment will be due by July 30.

(4) For all wastes handled during the months of July – September, payment will be due by October 30.

(5) For all wastes handled during the months of October – December, payment will be due by January 30.

(b)(1) Fees must be submitted along with a form, provided by the district.

(2) A copy of the Division of Environmental Quality's Solid Waste Quarterly Report Form is acceptable in lieu of the district form.

**Authority.** Arkansas Code §§ 8-6-704, 8-6-714.

**8 CAR § 130-1608. Recycling credits.**

(a) Any facility required to pay fees under Subpart 15 of this part, this subpart, and Subpart 17 of this part may be entitled to credits for fees paid on waste handled at the 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 it has previously paid a fee on if it 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 it has previously paid a fee on if it can demonstrate that those materials were later shipped for recycling or converted to compost.

**Authority.** Arkansas Code §§ 8-6-704, 8-6-714.

## **Subpart 17. Solid Waste Assessment — Compliance and Enforcement**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"§ 22.05 Severability.

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

### **8 CAR § 130-1701. 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 Subparts 15 and 16 of this part and this subpart.

**Authority.** Arkansas Code § 8-6-704.

### **8 CAR § 130-1702. Penalties.**

A penalty of up to one thousand dollars (\$1,000) per violation per day of violation may be assessed against any person violating the provisions of Subparts 15 and 16 of this part and this subpart.

**Authority.** Arkansas Code §§ 8-6-204, 8-6-704.

### **8 CAR § 130-1703. Enforcement.**

The Director of the Boston Mountain Regional Solid Waste Management District is authorized to seek the approval of the Board of Directors of the Boston Mountain Regional Solid Waste Management District to institute legal and/or equitable action in

the appropriate courts to enforce any violation of Subparts 15 and 16 of this part and this subpart.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-1704. Inspection and information gathering.**

(a) Any solid waste facility or solid waste hauler shall, upon the request of any Boston Mountain Regional Solid Waste Management District-designated person:

- (1) Furnish information relating to any activity at the facility or business; and
- (2) Permit such person at all times to have access to, and to copy all records relating to such activity.

(b) Any district-designated person shall be allowed access to all requested records during normal business hours.

**Authority.** Arkansas Code § 8-6-704.

**Subpart 18. Solid Waste Management and Recycling Grants**

**Codification Notes.** This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"§23.01 Authority

To set standard rules governing the distribution and administration of the Recycling Grants Program in support of Act 1333 of 2013 with the intent to use recycling grant funds for the purpose of recycling activities."

**8 CAR § 130-1801. Definition.**

For purposes of this subpart, "solid waste reduction activities" means:

- (1) Recycling;
- (2) Using waste items as raw materials in a production process;

- (3) Using waste items to produce an end product with or without recycling;
- (4) Using waste items as fuel; and
- (5) Any other activity that diverts materials from landfills for reuse, including items of administration, research, equipment, and training to implement such solid waste reduction activities.

**Authority.** Arkansas Code § 8-6-704.

**8 CAR § 130-1802. Eligibility.**

(a) For the purposes of this subpart, eligible grant recipients shall be:

- (1) Municipalities and counties;
- (2) Solid waste authorities; and
- (3) Regional solid waste management boards.

(b) Also, partnerships between these public entities and private recycling interests may be eligible if and when the public entity involved in the partnership assumes the responsibility for meeting all grant requirements.

(c) Projects eligible for grant assistance include, without limitation, costs for:

- (1) Solid waste management planning that integrates recycling;
- (2) Public information and education programs that:
  - (A) Encourage waste reduction; and
  - (B) Stimulate demand for products produced from recycled materials;
- (3) Waste transfer facilities and equipment that integrate recycling into their operation;
- (4) Recycling, recycling activities, and waste reduction activities associated with illegal dump abatement programs;
- (5) Other waste stream reduction activities that divert the flow of materials away from landfills to be put to beneficial use, which may include equipment;
- (6) Activities that support a recycling system (MRF) that include without limitation:
  - (A) Operation;

- (B) Construction;
- (C) Logistical systems;
- (D) Training; and
- (E) Equipment;

(7) Administrative cost for operation of the district recycling activities, not to exceed twenty-five percent (25%) of the Boston Mountain Regional Solid Waste Management District total allocation; and

(8) Any other activity or program for the purpose of solid waste reduction, reuse, or recycle as:

(A) Approved by the Board of Directors of the Boston Mountain Regional Solid Waste Management District; or

(B) Outlined in the State of Arkansas Solid Waste Management Plan.

(d) The district shall be responsible for the prioritization and selection of grant recipients from within its district boundaries.

**Authority.** Arkansas Code § 8-6-704.

**Codification Notes.** "MRF" means material recovery facility.

**8 CAR § 130-1803. Procedures.**

(a) Supporting documentation for all purchases should be kept on file by each grant recipient for a period of three (3) years from the date of disbursement to the grantee.

(b)(1) Each grantee shall provide Recycling Activity Surveys for a period of five (5) years after a grant award to the Board of Directors of the Boston Mountain Regional Solid Waste Management District on or before August 1 of each year.

(2) The annual Recycling Activity Survey shall include, at a minimum, the following information:

- (A) Tonnage and type of materials collected;
- (B) Revenues produced from the sale of materials collected; and

(C) Total diversion savings calculated using total tons recycled multiplied by the local landfill tipping fee as of June 30.

(c)(1) The board shall ensure public participation and notice prior to any grant award by publishing a notice describing each grant request and soliciting comments in a newspaper of general circulation prior to the grant award.

(2) The notice shall be published one (1) time but the comment period shall not be less than thirty (30) days from the date of publication.

**Authority.** Arkansas Code § 8-6-704.