

Arkansas Regional Solid Waste Management District: Arkansas Appellate Court Addresses Fee Assessment Issue



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The Court of Appeals of Arkansas (“Appellate Court”) addressed in a November 29th Opinion the Arkansas Regional Solid Waste Management Districts’ (“ARSWMD”) ability to assess certain fees. See *Benton County Regional Solid Waste Management District v. Waste Management of Arkansas, et al.*, Ark. App. 538.

The ARSWMDs’ statutory authority addressed involved the following fee setting provisions:

- Service fee which can be a levy on each resident or business for which the Arkansas Regional Solid Waste Management Board (“Board”) makes solid waste collection or disposal services available. See Ark. Code Ann. § 8-6-714(b).
- Waste assessment fee assessed against the generator, transporter, or disposal facility for any solid waste generated within the ARSWMD or brought into the District for disposal. See Ark. Code Ann. § 8-6-714(4)(A), (B).

Act 870 of 1989, codified as Ark. Code Ann. § 8-6-701, *et seq.* originally established eight regional solid waste planning districts. The Arkansas Pollution Control & Ecology Commission has since granted a number of additional ARSWMDs. The ARSWMDs are intended to facilitate local governments in planning and overseeing municipal solid waste management programs and services. They also administer recycling grants and waste tire management programs.

The Appellate Court notes that when waste generated in one ARSWMD is disposed of in another, the waste assessment fee may be assessed by either the district in which the solid waste was generated or a district in which the same solid waste is transported, managed, or disposed – but not both. Because only districts can assess the waste assessment fee the ARSWMDs are required to determine by interlocal agreement how the fee will be assessed, administered, and divided. If they cannot reach an interlocal agreement regarding the division of fees, then the fees are required to be divided equally.

The Benton County ARSWMD and Boston Mountain ARSWMD both adopted rules assessing a \$1.50 per ton waste assessment fee. No landfills exist within the boundaries of the Benton County ARSWMD and therefore much of the waste generated is disposed of at the Eco-Vista Landfill (i.e., Waste Management Company) which is located in the Boston Mountain ARSWMD.

Both districts entered into an interlocal agreement that allowed the Benton County ARSWMD to receive the entire \$1.50 per ton waste assessment fee on interdistrict waste for a period of five years. Once the

term of the interlocal agreement expired, the Boston Mountain ARSWMD declined to renew it. Instead, it exercised its statutory right to receive half of the waste assessment fee on interdistrict waste.

Benton County ARSWMD eventually enacted a rule which reduced the waste assessment from \$1.50 per ton to one cent per ton and instead levied a service fee of \$1.49 per ton. Consequently, for waste disposed of outside of that district (including in the Boston County ARSWMD) the waste assessment fee and the service fee were required to be paid to the Benton County ARSWMD by the waste hauler. The practical effect was to eliminate the Boston Mountain ARSWMD's waste assessment fee.

Waste hauler Waste Management Company (which transports to Eco-Vista Landfill) was therefore subjected to competing demands from both Benton County and Boston Mountain ARSWMDs. The company filed suit in Washington County Circuit Court seeking a declaratory judgment that the Benton County ARSWMD's Board exceeded its statutory authority.

The Circuit Court held that the Benton County ARSWMD lacked the statutory authority to unilaterally supersede and replace Boston Mountain ARSWMD's waste assessment fee on waste generated in Benton County and disposed within Boston Mountain's ARSWMD.

Further, the Circuit Court held that the Benton County ARSWMD:

. . . may assess a service fee on residents and businesses for which the district makes solid waste collection or disposal services available but lacks statutory authority to assess the service fee on haulers and require haulers to collect and remit the service fee.

The Appellate Court upholds the Circuit Court. It determines that the Benton County ARSWMD could not unilaterally deny the Boston Mountain ARSWMD its statutory right to assess and collect its own waste assessment fee. Further, it upheld the Circuit Court's determination that the Benton County ARSWMD lacked the authority to assess a service fee on haulers and require haulers to collect and remit the service fee.

The Appellate Court noted:

. . . After purporting to reduce its Waste Assessment Fee to \$0.01 per ton, Benton County RSWMD recharacterized the remaining \$1.49 per ton of the Waste Assessment Fee as a Service Fee under this provision of the Fee Statute.

The service fee adopted by Benton County ARSWMD was noted to not be levied on residents or businesses. Nor was it triggered by the Board's making solid waste collection or disposal services available. As a result, the Circuit Court was stated to have correctly held that the Benton County ARSWMD lacked statutory authority to assess a per ton service fee on waste haulers.

The Appellate Court stated that:

. . . The plain language of the fee statute provides that the service fee is to be levied on residences and businesses for which the Board makes solid waste collection or disposal services available – not on haulers.

The Appellate Court upholds the Circuit Court.

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