

Title 8. Environmental Law

Chapter VIII. East Arkansas Regional Solid Waste Management District

Subchapter A. Generally

Part 173. Rules Regarding Procedure for Obtaining Certificate of Need

Pursuant to the Provisions of Arkansas Code § 8-6-706

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

"Historical Background

The East Arkansas Regional Solid Waste Management District (EARSWMD) was created pursuant to the provisions of Arkansas Code Annotated §§ 8-6-701 et seq. Pursuant to such legislation, EARSWMD is given specific authority under the provisions of Arkansas Code Annotated § 8-6-704 to issue or deny certificates of need to any applicant for a solid waste disposal facility within its district.

The statutory authority for obtaining a certificate of need is found at Arkansas Code Annotated § 8-6-706. The following rules provide the procedure for an application for a certificate of need pursuant to Arkansas Code Annotated § 8-6-706 and applicable rules."

"11. Miscellaneous.

(a) Term. These Rules shall remain in full force and effect until such time as the Board modifies, amends or otherwise changes these Rules.

(c) Effective Date. The effective date of this rule shall be thirty (30) days after filing under Arkansas law."

Subpart 1. Generally

8 CAR § 173-101. Definition.

(a)(1) Unless otherwise specifically defined herein, the term used in this part shall have the meaning accorded to it in Arkansas Code § 8-6-701 et seq., and the rules promulgated thereunder.

(2) Additionally, the use of the singular shall include the plural where applicable.

(b) "Administrator" means the East Arkansas Planning and Development District or any successor agency or entity as determined by the East Arkansas Regional Solid Waste Management District to carry out the administrative and staff duties for the East Arkansas Regional Solid Waste Management District.

Authority. Arkansas Code § 8-6-704.

8 CAR § 173-102. Notice of intent.

(a) At least thirty (30) days prior to submitting an application for a certificate of need, the applicant must notify the East Arkansas 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 landfill or transfer station permit and the classification of the permit sought;
- (4) The site of the proposed facility;
- (5) A description of the area to be served, including population estimates by cities and counties within the area being served; and
- (6) Confirmation from the Division of Environmental Quality that the applicant has requested a statement concerning the:

(A) Current and proposed solid waste landfill disposal capacity for the area; and

(B) Landfill class being proposed.

Authority. Arkansas Code § 8-6-704.

8 CAR § 173-103. Application.

(a) An applicant requesting a certificate of need from the East Arkansas 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, telephone number, and existing permit number, if applicable;

(2) The name of the person or entity having legal or equitable title to the land where the proposed facility will be located and documentation of the right to develop such property as a solid waste landfill or transfer station from the legal owner and the equitable owner, where applicable;

(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, including, but not limited to the:

(A) Useable airspace above ground level; and

(B) Life expectancy of the proposed facility;

(5) A description of the area to be served, including population estimates by cities and counties within the area being served;

(6) Documentation that the proposed solid waste landfill or transfer station or modification complies with all of the criteria for evaluation listed in 8 CAR § 173-107, below;

(7) The current permitted capacity for the appropriate landfill class within the district and the estimated increase in permitted capacity for the proposed facility or modification;

(8) Confirmation that the proposed facility is in compliance with all existing comprehensive land use plans of any local governmental entity;

(9) Any other information deemed necessary by the district to make a determination of need; and

(10) If applicable, notification to and approval from the regional solid waste management board in the State of Arkansas which is receiving the solid waste for the district in accordance with Arkansas Code § 8-6-706(b)(2)(G).

Authority. Arkansas Code § 8-6-704.

8 CAR § 173-104. Completeness determination.

(a) Within thirty (30) days of receipt of the initial application, the East Arkansas Regional Solid Waste Management District will make a completeness determination of the application.

(b)(1) Any additional information that the district determines necessary to make a decision on the need of the proposed facility will be requested within this time.

(2) The applicant will then be required to submit such information.

(3) If additional information is requested by the district, it will again make a completeness determination within thirty (30) days of the receipt of the additional information.

Authority. Arkansas Code § 8-6-704.

8 CAR § 173-105. Review period.

(a) Once the East Arkansas 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 once a week for two (2) consecutive weeks in a newspaper of general circulation in the area of the proposed facility.

(b)(1) The review period will begin on the date of the first publication of notice of the review period.

(2) The review period will run for sixty (60) days.

(3) During the review period, public comment will be received on the application for the certificate of need.

Authority. Arkansas Code § 8-6-704.

8 CAR § 173-106. Public hearing.

During the sixty-day review period, the East Arkansas 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 § 173-107. Criteria for review.

When reviewing an application for a certificate of need, the East Arkansas Regional Solid Waste Management District shall consider and evaluate the following criteria:

(1) Whether the proposed facility is consistent with the regional planning strategy adopted by the district in the:

(A) Regional needs assessment; or

(B) Regional solid waste management plan;

(2) A review of any needs assessment that has been prepared;

(3) Whether the proposed facility conflicts with existing comprehensive land use plans of any local governmental entity;

(4) Whether the proposed facility disturbs an archeological site as recognized by the Arkansas Archeological Survey, or a rare and endangered species or habitat as recognized by either the Arkansas State Game and Fish Commission or the United States Fish and Wildlife Service or any other similar federal, state, or local agency;

(5) 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;

(6) Whether the proposed facility conflicts with the requirements of state or federal laws and regulations on the location of disposal facilities;

(7) If the proposed facility is located within the hundred-year floodplain, whether it:

(A) Restricts the flow of the hundred-year flood;

(B) Reduces the temporary water storage capacity of the floodplain; or

(C) Could result in washout of solid waste which could pose a hazard to human health or the environment;

(8) Whether the proposed facility is appropriately located given the needs of the district, including a review of the road system serving such area;

(9) Whether the proposed facility provides disposal or transfer capacity needed within the district;

(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 area to be served by the proposed facility;

(12) For landfill permits, consider the need for the landfill based upon the district's excess projected capacity which is currently permitted for operation, but in no event shall the district's excess permitted projected capacity exceed thirty (30) years, unless the city or county government within whose jurisdiction the proposed landfill is located authorizes through adoption of a resolution approval of the excess capacity; and

(13) Whether the applicant has complied with the rules for obtaining a certificate of need.

Authority. Arkansas Code § 8-6-704.

8 CAR § 173-108. Determination.

(a) Within sixty (60) days following the close of the review period, the East Arkansas Regional Solid Waste Management District will act upon the application for a certificate of need at a district meeting.

(b) The administrator for the district shall present a recommendation to the Board of the East Arkansas Regional Solid Waste Management District.

(c) Those supporting the issuance of the certificate of need and those opposing the issuance of the certificate of need will be provided a reasonable time period to:

- (1) Make a presentation to the board; and
- (2) Address the administrator's recommendation.

(d) In the event that the district has neither issued nor denied a certificate of need within one hundred fifty (150) days of the beginning of the review period, the certificate of need will be deemed to have been denied.

(e)(1) The district shall:

(A) Issue written findings when making a determination on the application for the certificate of need; and

(B) Set forth the basis for issuing or denying the certificate of need.

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

(A) The applicant;

(B) The Division of Environmental Quality; and

(C) Any interested party who requests such findings in writing from the district.

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

8 CAR § 173-110. Obligations.

(a)(1) The applicant has sixty (60) days from the issuance of the certificate of need in which to file a preapplication for a solid waste landfill or transfer station permit with the Division of Environmental Quality.

(2) If a preapplication is not filed within such sixty-day period, the certificate of need shall expire.

(b)(1) The applicant has six (6) months from the issuance of the certificate of need in which to file an application for a solid waste landfill or transfer station permit with the division.

(2) If such application is not filed within such six-month period, the certificate of need shall expire.

(c) A certificate of need shall be issued to a specific person or entity.

(d) Under no conditions or circumstances shall a certificate of need be assigned or otherwise transferred to any person or entity other than the one originally specified on the certificate of need.

Authority. Arkansas Code § 8-6-704.

8 CAR § 173-111. Severability.

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

Authority. Arkansas Code § 8-6-704.