

## **Title 8. Environmental Law**

### **Chapter XIV. Southeast Arkansas Regional Solid Waste Management District**

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

#### **Part 290. Practices and Procedures**

**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(a)(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 § 290-101. Definitions.**

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

(1) "APA" means the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., as amended from time to time;

(2) "ADEQ" or "division" means the Division of Environmental Quality;

(3) "Board" means the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District;

(4) "Board members" means the members of the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District;

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

(6) "Director" means the duly appointed chief administrative officer of the Southeast Arkansas Regional Solid Waste Management District, regardless of the actual position title;

(7) "District" means the Southeast Arkansas Regional Solid Waste Management District, which includes the counties of:

- (A) Arkansas;
- (B) Ashley;
- (C) Bradley;
- (D) Chicot;
- (E) Cleveland;
- (F) Desha;
- (G) Drew;
- (H) Grant;
- (I) Jefferson; and
- (J) Lincoln;

(8) "Person" means any:

- (A) Individual;
- (B) Partnership;
- (C) Corporation;
- (D) Association; or
- (E) Public or private organization of any character;

(9) "Rule" means any Southeast Arkansas 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 Southeast Arkansas Regional Solid Waste Management District; and

(10) "Rulemaking action" shall include any action by the Southeast Arkansas Regional Solid Waste Management District to adopt, amend, or repeal any Southeast Arkansas Regional Solid Waste Management District rule.

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

## **Subpart 2. Rulemaking**

**8 CAR § 290-201. Proposed rulemaking action.**

At any Board of Directors of the Southeast Arkansas Regional Solid Waste Management District meeting, the board may adopt, amend, or repeal any rule, consistent with the requirements of this subpart.

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

**8 CAR § 290-202. Notice of proposed rulemaking action.**

(a) Notice of the proposed new rule, amendment, or repeal of an existing rule, shall be given to the public at least thirty (30) days prior to any proposed rulemaking action.

(b) The notice shall:

(1) State the substance of the proposed new rule, amendment, or repeal of an existing rule;

(2) Provide information on obtaining a copy of the proposed rule from the Southeast Arkansas Regional Solid Waste Management District; and

(3) Inform the public of the time, place, and manner in which they may present their comments.

(c) The notice shall also be mailed via first-class mail to all persons who request advance notice, in writing, of any rulemaking action by the district.

(d) Unless otherwise required by law, the notice shall be published in the Arkansas Democrat-Gazette, or in such other newspaper or newspapers of general daily circulation selected by the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District, in its discretion, and shall run for three (3) consecutive days.

(e) Together with any other required documentation, the notice and the proposed rule shall also be provided to or filed with the Secretary of State, the Bureau of Legislative Research, and such other agencies, as required by the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

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

**8 CAR § 290-203. Public comment.**

The Southeast Arkansas Regional Solid Waste Management District shall afford all interested persons reasonable opportunity to submit written data, views, or arguments, orally or in writing.

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

**8 CAR § 290-204. Public hearing.**

(a) The Southeast Arkansas Regional Solid Waste Management District may hold a public hearing to take oral comments from the public concerning any proposed rulemaking action.

(b) The district must hold a hearing to accept oral comments from the public concerning any proposed rulemaking action if requested by:

- (1) Twenty-five (25) persons;
- (2) A governmental subdivision or agency; or
- (3) An association having not less than twenty-five (25) members.

(c) Should a public hearing be held, notice of the hearing shall be made in the manner provided in 8 CAR § 290-202.

(d) Where rules are required by law to be made on the record after opportunity for a hearing, the provisions of that law shall, as applicable, apply in place of these requirements.

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

**8 CAR § 290-205. Final action.**

(a) At any Board of Directors of the Southeast Arkansas Regional Solid Waste Management District meeting following the close of the public comment period and following a public hearing, if any is held, the board may act on the proposed rule by:

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

(b) The Southeast Arkansas Regional Solid Waste Management District shall fully consider all written and oral submissions pertaining to the rulemaking action before finalizing the language of the proposed rule.

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

(d) Upon adoption of a rule, the board, if requested to do so by an interested person within thirty (30) days of adoption, shall issue a concise statement of the principal reasons for or against its adoption and demonstrating that public comments were duly considered.

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

### **8 CAR § 290-206. Emergency proceedings.**

(a) Should the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District find that imminent peril to the public health, safety, or welfare or compliance with federal laws 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 § 290-207. Petition for rulemaking.**

(a) Any person residing or doing business within the Southeast Arkansas Regional Solid Waste Management District may petition the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District for a rulemaking action.

(b) Within thirty (30) days after submission of a petition, the board shall either:

- (1) Deny the petition, stating in writing its reasons for denial; or
- (2) Initiate rulemaking proceedings.

(c) If no action is taken by the board within thirty (30) days, the petition shall be deemed to be denied, and the board shall not be required to take any further action, except to state its reasons for denial, in writing, within ten (10) days after such denial is deemed to have occurred.

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

**8 CAR § 290-208. Filing of adopted rule.**

The Board of Directors of the Southeast Arkansas Regional Solid Waste Management District shall file with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research, and any other agency or legislative body, as required by law:

- (1) The adopted rule;
- (2) A statement of financial impact for the rule; and
- (3) Any other information or documents required by law.

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

**8 CAR § 290-209. Effective date.**

(a) Each rule adopted by the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District shall be effective thirty (30) 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 thirty (30) days thereafter, if the board finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare.

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

(3) The board 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 § 290-210. Certification of rules.**

A copy of any rule adopted by the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District may be certified by signatures of the chair of the board and secretary, or by such other method as determined by the board.

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

**8 CAR § 290-211. Official records.**

(a)(1) The Southeast Arkansas Regional Solid Waste Management District shall maintain:

(A) A certified copy of every rule adopted by the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District;

(B) A copy of all other documents required to be filed by this subpart; and

(C) Proof of all required filings.

(2) These copies 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 § 290-212. Substantial compliance.**

Every rulemaking action by the Board of Directors of the Southeast Arkansas 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 § 290-213. 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.

**8 CAR § 290-214. Severability.**

If any provisions of any Southeast Arkansas Regional Solid Waste Management 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.

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

**Subpart 3. Adjudications**

**8 CAR § 290-301. Assessment of penalty.**

(a) The director, who shall keep a log of all complaints or violations as determined by the Southeast Arkansas Regional Solid Waste Management District, is granted the

discretion and authority, to the extent permitted by Arkansas Code § 8-6-701 et seq., 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.

(b) 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 after 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 § 290-302. Form.**

(a) Penalties shall be assessed by a written administrative order, signed by the director or his or her authorized designee, and delivered to the person against whom the penalty is assessed, with the right to appeal and have a hearing as set out below.

(b) Administrative orders shall be delivered in person or by certified mail, return receipt requested, to the address of record at the Southeast Arkansas Regional Solid Waste Management District.

(c) The director has the discretion to attach a consent agreement to an administrative order and to enter into consent agreements to settle any administrative order.

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

**8 CAR § 290-303. Request for appeal.**

(a) Within thirty (30) days of the receipt of any administrative order, the person against whom the order was issued can request an appeal before the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District, who may waive any penalty for a first offense based on the person's prior record.

(b)(1) The request for appeal must be in writing and received by the Southeast Arkansas Regional Solid Waste Management District office no later than close of business thirty (30) days after the date of the administrative order.

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

(c) Requests for appeal may be delivered to the district in person or by certified mail, return receipt requested.

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

**8 CAR § 290-304. Appeal to board.**

(a)(1) Persons who timely file a request for appeal shall be entitled to be heard at the first regularly scheduled Board of Directors of the Southeast Arkansas Regional Solid Waste Management District meeting following their request for appeal, unless the request for hearing is received within fourteen (14) days prior to a scheduled board meeting.

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

(b)(1) Both sides may appear in person or by counsel.

(2) The Southeast Arkansas Regional Solid Waste Management District shall present their case first, followed by the appellant.

(3) Both sides may offer testimony and present evidence to be considered by the board.

(4) Cross-examination shall be allowed as well as questioning by the board.

(c) The hearing shall be conducted by the presiding chair of the board.

(d)(1) Conduct of the hearing shall be informal.

(2) The chair shall be entitled to use their discretion to allow, disallow, or strike any evidence or testimony that they feel is irrelevant, unreliable, or duplicative.

(e)(1) A court reporter shall be hired to develop a transcript of the hearing.

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

(f)(1) At the close of the hearing, the board shall enter a written order.

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

(3) Alternatively, the board may draft an order at the close of the hearing.

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

**8 CAR § 290-305. Final agency action.**

The written order adopted by the Board of Directors of the Southeast Arkansas 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 § 290-306. Appeals to circuit court.**

The appellant may appeal the final agency action of the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District to circuit court in the appropriate county required by the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

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