

Title 8. Environmental Law

Chapter XIV. Southeast Arkansas Regional Solid Waste Management District

Subchapter A. Generally

Part 292. Certificate of Need

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

"Adopted this ___ day of _____, 20__.

Judge Jim Hudson

Attest

SEARSWMB Chair

SEARSWMB Secretary"

"RESOLUTION

Be it resolved by the Southeast Arkansas Solid Waste Management Board, a Resolution to be entitled:

A Resolution amending the Policies, Procedures, and Criteria for Arkansas Act 870 of 1989 Certificate of Need Review for Solid Waste Landfill & Transfer Facilities.

WHEREAS, the Southeast Arkansas Regional Solid Waste Management Board is responsible for the solid waste management of the entire solid waste system of operation within the District;

WHEREAS, in order to carry out the duties and powers set forth in Act 870 of 1989, the Board must set forth policies and procedures for a Certificate of Need Review for the Solid Waste Landfill and Transfer Facilities;

WHEREAS, the Board has previously developed and adopted a policy and procedure for a Certificate of Need Review; and

WHEREAS, certain amendments to the current policy and procedure for Certificate of Need Review are necessary as the current policy and procedure, as filed with the Arkansas Secretary of State, is missing some pages, and the amendment will result in a complete policy and procedure being on file with the Arkansas Secretary of State.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SOUTHEAST ARKANSAS REGIONAL SOLID WASTE MANAGEMENT BOARD:

ARTICLE 1: The District Board of Directors hereby approves and officially adopts the amended "Policies, Procedures, and Criteria for Arkansas Act 870 of 1989 Certificate of Need Review for Solid Waste Landfill and Transfer Facilities."

ARTICLE 2: The policy and procedure is renamed "Policies, Procedures, and Criteria for Arkansas Act 870 of 1989 Certificate of Need Review for Solid Waste Facilities."

ARTICLE 3: This rule will become effective ten (10) days after the date of final filing with the Arkansas Secretary of State.

ARTICLE 4: The Board hereby authorizes its Chair to submit to the Office of the Arkansas Secretary of State the Policies, Procedure, and Criteria attached hereto as Attachment 1, to be placed on file in the Arkansas Register.

ADOPTED:

APPROVED:

Jim Hudson, Chair SEARSWMB

ATTEST:

Subpart 1. Generally

8 CAR § 292-101. Description.

(a)(1) The Board of Directors of the Southeast Arkansas Regional Solid Waste Management District is the designated board to conduct the solid waste planning and management responsibilities mandated in Section 4 of Acts 1989, No. 870.

(2) The Board of Directors of the Southeast Arkansas Regional Solid Waste Management District has been duly designated under the terms and conditions prescribed in Section 3 or Section 9, as applicable, of Acts 1989, No. 870, and its jurisdictional boundaries include Arkansas, Ashley, Bradley, Chicot, Cleveland, Desha, Drew, Grant, Jefferson, and Lincoln counties.

(b) The state law referred to above provides that the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District shall have the following powers and duties:

(1) Collect data, study, and evaluate the solid waste management needs of all localities within this jurisdiction, as provided in Section 5 of Acts 1989, No. 870, and to publish findings as a regional needs assessment;

(2) Evaluate on a continuous basis the solid waste needs of this jurisdiction, and thereby update the regional needs assessments at least biennially, yearly, or as required by the Department of Energy and Environment, Division of Environmental Quality;

(3) Formulate recommendations to all local governments within this jurisdiction on solid waste management issues, and to formulate plans for providing adequate solid waste management;

(4) Issue or deny certificates of need to any applicant for a solid waste facility permit within this jurisdiction;

(5) Adopt such rules as necessary to ensure:

(A) Consistency of review and decision-making procedures/criteria among the boards; and

(B) Public notice and participation in any findings or rulings of the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District; and

(6) Carry out all other powers and duties conferred by Acts 1989, No. 870.

Authority. Arkansas Code § 8-6-704.

8 CAR § 292-102. Definitions.

For the purposes of this part:

(1) "Affected persons" includes:

(A) The applicant;

(B) The Division of Environmental Quality;

(C) The regional solid waste management board for the area in which the proposed solid waste facility is to be located;

(D) The regional solid waste management board having jurisdiction in contiguous areas to the location;

(E) Units of general local government within the geographical area served, or to be served, by the applicant and within the regional solid waste management district; and

(F) Solid waste facility permittees having a permitted solid waste facility in the regional solid waste management district in which the solid waste facility is proposed to be located;

(2)(A) "Certificate of need" means a certificate issued by the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District to an individual or organization proposing to obtain a solid waste facility permit for solid waste disposal or transfer.

(B) The certificate recognizes that such solid waste facility, when available, will be needed by those for whom it is intended.

(C) A certificate of need is a condition of application for a solid waste facility permit under the Solid Waste Management Rules, 8 CAR pt. 60.

(D) The Division of Environmental Quality may deny any permit based upon the denial of a certificate of need by the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District;

(3)(A) "Certificate of need review" means a review of petitions for certificates of need where the solid waste facility, if permitted, will be located in this jurisdictional area.

(B) Under Acts 1989, No. 870, regional solid waste management boards are required to have the respective regional solid waste management board administer a certificate of need review program;

(4) "Interested party" includes:

(A) The director or his or her designee;

(B) The Board of Directors of the Southeast Arkansas Regional Solid Waste Management District;

(C) The person making application to the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District; or

(D) Any person submitting written comments on the application within the public comment period;

(5) "Solid waste" means all putrescible and nonputrescible waste in solid or semisolid form, including, but not limited to:

(A) Yard and food waste;

(B) Waste glass;

(C) Waste metals;

(D) Waste plastics;

(E) Waste papers;

(F) Waste paperboard; and

(G) All other solid or semisolid wastes resulting from industrial, commercial, agricultural, community, and residential activities; and

(6)(A) "Solid waste facility" means a permitted landfill under the Arkansas Solid Waste Management Act, Arkansas Code § 8-6-201 et seq., except those permitted landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry or waste of a similar kind of character.

(B) "Solid waste facility" also includes, except as limited above:

(i) Disposal sites, which means any place at which solid waste is dumped, abandoned, or accepted or disposed of for final disposition by incineration, landfilling, composting, or any other method; and

(ii) Transfer stations, which means a facility that is used to manage the removal, compaction, and transfer of solid waste from collection vehicles and other small vehicles to greater capacity transport vehicles.

Authority. Arkansas Code § 8-6-704.

8 CAR § 292-103. Purpose and applicability.

(a) The Board of Directors of the Southeast Arkansas Regional Solid Waste Management District will administer the certificate of need review program which:

(1) Applies to the offering of new or increased solid waste facility disposal capacity or transfer within its jurisdictional boundaries; and

(2) Is consistent with the laws of the state.

(b) In performing its review functions, the board shall follow procedures and apply criteria developed in accordance with procedures and rules herein.

Authority. Arkansas Code § 8-6-704.

8 CAR § 292-104. General.

(a) The Board of Directors of the Southeast Arkansas Regional Solid Waste Management District will administer a certificate of need review program within its jurisdictional boundaries.

(b) Only the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District will issue or deny certificates of need for proposed solid waste facility permits within its jurisdictional boundaries.

(c) In issuing or denying certificates of need, the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District will take into account the:

(1) Findings enumerated in the Regional Needs Assessment Report applicable to the area where the solid waste facility site is proposed; and

(2) Criteria enumerated in this subsection, subsections (d) and (e) of this section, and 8 CAR § 292-110.

(d) Each decision of the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District to issue a certificate of need must be consistent with the regional needs assessment.

(e)(1) Each decision of the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District to issue or deny a certificate of need must be based on documented evidence clearly indicating that the proposed solid waste facility:

(A) Is consistent with the regional planning strategy adopted by the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District in the regional needs assessment or the regional solid waste management plan;

(B) Does not conflict with existing comprehensive land use plans of any local governmental entities;

(C) Does not disturb:

(i) An archeological site as recognized by the Arkansas Archeological Survey; or

(ii) A rare and endangered species habitat as recognized by the Arkansas State Game and Fish Commission or the United States Fish and Wildlife Service;

(D) Will not adversely affect the public use of any local, state, or federal facility, including, but not limited to, parks and wildlife management areas;

(E) Does not conflict with the requirements of state laws and rules or federal laws, rules, and regulations on the location of disposal facilities;

(F) If located in the hundred-year floodplain, does not:

(i) Restrict the flow of the hundred-year flood;

(ii) Reduce the temporary water storage capacity of the floodplain; or

(iii) Result in washout of solid waste so as to pose a hazard to human health or the environment;

(G)(i) If the transfer station proposes to transfer waste outside of the regional solid waste management district in which it is located, the petition shall also contain documentation that the:

(a) District to which the waste will be transferred has been notified; and

(b) Board of that district has approved the receipt of the waste.

(ii) This provision shall not apply if the waste is being transported for disposal outside the geographical limits of this state;

(H) Any other information deemed necessary by the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District; and

(I) Subject to Arkansas Pollution Control and Ecology Commission, Solid Waste Management Rules, 8 CAR pt. 60, and any amendment to 8 CAR pt. 60.

(2) **Note.** The decision of the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District to issue or deny a certificate of need shall not be based on any technical merits related to proposed or existing solid waste facilities.

Authority. Arkansas Code § 8-6-704.

8 CAR § 292-105. Scope of certificate of need program.

(a) The Board of Directors of the Southeast Arkansas Regional Solid Waste Management District will conduct reviews for new or increased solid waste facility disposal capacity or transfer to be located, or proposed to be located, within its

jurisdictional boundaries and which are subject to review under the certificate of need program.

(b) Following are the only types of permits that are reviewable under the certificate of need program:

- (1) Permits for new solid waste facility disposal sites;
- (2) Transfers of existing solid waste landfill facility permits; and
- (3) Reclassification of existing solid waste facility disposal permits.

Authority. Arkansas Code § 8-6-704.

8 CAR § 292-106. Notice of intent.

(a) Before any person submits a petition for a certificate of need, that person must notify the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District at least thirty (30) days prior to the submission of said petition.

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

- (1) Name of applicant;
- (2) Applicant's address and telephone number;
- (3) Contact person, telephone number, and email address;
- (4) Whether the applicant is seeking a new, or transfer or reclassification of, an existing solid waste facility permit;
- (5) Site map of the proposed or existing solid waste facility, including precise legal description and total acreage;
- (6) Description of the geopolitical jurisdictions to be served by the solid waste facility, including population estimates by jurisdiction;
- (7) Confirmation from the Division of Environmental Quality that the applicant has requested a statement concerning the current and projected solid waste disposal capacity respective to the area and solid waste facility class being proposed;
- (8) Type of waste expected to receive, amount, fees charged, projected income, new jobs created, source of waste, and name of owner and operator if different than applicant; and

(9) Any other information deemed necessary by the board.

Authority. Arkansas Code § 8-6-704.

8 CAR § 292-107. Enforcement.

The certificate of need program provides that:

(1) No certificate of need application will be accepted, nor will a certificate of need be issued to any applicant, where the solid waste facility disposal capacity for the respective area and class or classes of permit under review exceed twenty-five (25) years at the time the notice of intent (8 CAR § 292-106) is submitted;

(2) No certificate of need application will be accepted for review unless a notice of intent has been filed in accordance with 8 CAR § 292-106; and

(3) The Board of Directors of the Southeast Arkansas Regional Solid Waste Management District will only issue a certificate of need for applications which are found to be needed.

Authority. Arkansas Code § 8-6-704.

8 CAR § 292-108. Adoption and public notice of review procedures and criteria.

(a)(1) Before the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District adopts these proposed review procedures and criteria, or any revisions to the proposed review procedures and criteria, persons will be given the opportunity to offer written comments on the procedures and criteria.

(2) The board will mail a copy of the proposed revisions to the Division of Environmental Quality at the time notice is provided pursuant to subsection (b) of this section.

(b) The board will publish, in one or more newspapers of general circulation in the area of jurisdiction, a notice stating:

(1) That review procedures and criteria, or revisions to them, have been proposed for adoption and are available at the board office for inspection and copying; and

(2) The date of the public hearing referred to in subsection (c) of this section.

(c)(1) Prior to the adoption of this part and any revisions to this part, the board shall conduct a public hearing not less than twenty (20) days before the effective date of adoption.

(2) The public hearing will be held in the county where the administrative office of the board is located.

Authority. Arkansas Code § 8-6-704.

8 CAR § 292-109. Procedures for certificate of need review.

(a) Notification of the beginning of a review.

(1) Timely written notification will be sent to affected persons at the beginning of a review of an application for a certificate of need and to any person who has requested his or her name on the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District mailing list maintained by the board.

(2) Notification will include:

(A) The proposed review period (subsection (b) of this section);

(B) The date or dates of any scheduled or anticipated meetings;

(C) The public hearing to be held during the course of review; and

(D) The location where information related to the request for a certificate of need may be reviewed.

(3) For purposes of this subsection, the date of notification is the date on which the notice is sent or the date on which the notice appears in a newspaper of general circulation, whichever is later.

(4)(A) Written notification to affected persons will be made by fax, mail, or email.

(B) Notification to members of the public will be provided through newspapers of general circulation and public information channels in the jurisdictional boundaries of the board.

(b) Review period.

(1) The board will establish a review period which will include:

(A) The date of the public hearing to be held in the county where the proposed solid waste facility is to be located; and

(B) The date of final board finding (normally sixty (60) days or fewer from the date of notification).

(2) The review period begins on the date established in subsection (a) of this section.

(c) **Public comment period.** The board will accept written comments regarding an application for the period from the date of notification (subsection (a) of this section) through the close of business on the date of the public hearing (subsection (f) of this section) regarding the application for which notification was made.

(d) Information requirements.

(1) There is a provision for persons subject to a review to submit to the board information that the board requires relating to 8 CAR § 292-104(e)(1)(A) – (I).

(2) The form, manner, and content of the information will be as follows.

(3) The applicant's petition for a certificate of need shall include:

(A) Applicant name, address, and telephone number;

(B) Contact person and telephone number;

(C) Name of individual/organization having legal ownership of the land where the proposed site and/or existing solid waste facility is located;

(D) Description of geopolitical jurisdictions to be served, including population estimates by jurisdiction;

(E) Documentation that the proposed solid waste facility complies with each of the criteria enumerated in 8 CAR § 292-104(e)(1)(A) – (I);

(F) Amount of disposal capacity being proposed (stated in years) and description of how the capacity was calculated; and

(G)(i) Other information deemed necessary to make determination of need.

(ii) This information will be specified and requested of the applicant within two (2) weeks of receipt of initial application.

(iii) The beginning of review (subsection (a) of this section) will not commence until all information is on file with the board.

(4) An application for a certificate of need will not be placed under review, nor will notification of beginning of review be made, until or unless the application:

(A) Contains the information specified herein; and

(B) Has been determined to be complete.

(e) Written findings and conditions.

(1) Written findings, including specific documentation, which states the basis for any final decision made by the board are required.

(2) When a certificate of need is to be issued, these findings will include the findings of need required by 8 CAR § 292-107.

(3) The board will not make its final decision subject to any condition unless the condition is directly related to criteria established under 8 CAR § 292-104(c) – (e), 8 CAR § 292-110, and/or criteria prescribed by rule by the board in accordance with an authorization under state law.

(f) Public hearing in the course of review.

(1) The board will provide a public hearing during the course of review on each certificate of need application before the board makes its decision.

(2) The public hearing will be held in the county where the proposed solid waste facility is to be located, and notification of said public hearing will be made in accordance with subdivision (a)(4) of this section.

(g) Ex parte contacts.

(1) After the commencement of a public hearing under subsection (f) of this section, and before a decision is made, there shall be no ex parte contacts between:

(A) Any person acting on behalf of the applicant; and

(B) Any person on or employed by the board who exercises any responsibility respecting the application or withdrawal.

(2) **Note.** An “ex parte contact” is defined as an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding.

(h) **Withdrawal of a certificate of need.**

(1) An applicant for a certificate of need will specify the time:

(A) The applicant will make application for a solid waste facility permit to the Division of Environmental Quality; and

(B) That if and when a permit is issued by the division, that construction will be completed and operation of the permitted solid waste facility is to begin.

(2)(A) After issuance of a certificate of need, the board will:

(i) Periodically review the progress of the holder to the certificate of need in meeting the timetable specified in the approved application; and

(ii) Report same to the division and the holder of a certificate of need.

(B)(i) If on the basis of this review, the board determines that the holder of the certificate of need is not meeting the timetable and is not making a good faith effort to meet it, the board may withdraw the certificate of need.

(ii) In withdrawing a certificate of need, the board will follow the procedures in subsection (f) of this section.

(i) **Availability of reports — Method of obtaining public access.**

(1) The board will provide, upon request:

(A) Notification of the status of the review of proposals;

(B) Findings made in the course of the reviews; and

(C) Other appropriate information respecting all reviews.

(2) For all applications resulting in the issuance of a solid waste facility permit by the division, the board will maintain, keep on file, and provide access to the general public all applications reviewed by the board and to all other written materials essential to any review, for as long as the facility remains permitted by the division.

(3) All applications that do not result in the issuance of a solid waste facility permit by the division will be maintained, kept on file, and access provided to the general public, along with all other written material essential to any review, for a period of seven (7) years, consistent with the board's records retention policy.

Authority. Arkansas Code § 8-6-704.

8 CAR § 292-110. Criteria for review of certificate of need applications.

The Board of Directors of the Southeast Arkansas Regional Solid Waste Management District will utilize the following criteria in its review of petitions for certificates of need:

- (1) 8 CAR § 292-104(c) – (e);
- (2) The information provided by the applicant in the petition;
- (3) The requirements and considerations of any needs assessments prepared pursuant to Section 8 of Acts 1989, No. 870;
- (4) The location of the applicant's proposed solid waste facility based on the needs within the jurisdictional boundaries and its highway and road system;
- (5) The need for the solid waste facility based upon the jurisdiction's excess projected capacity which is currently permitted for operation;
- (6) That the approval of the certificate of need and resulting increase in solid waste facility capacity for the respective class does not cause the jurisdiction's excess projected capacity for that class to exceed thirty (30) years;
- (7) In the case of existing or previously permitted solid waste facilities, the quality of operation and compliance by those facilities in the past; and
- (8) Any solid waste management system plan promulgated and approved pursuant to Acts 1971, No. 237, and to the extent these plans conform to an overall regional planning strategy.

Authority. Arkansas Code § 8-6-704.

8 CAR § 292-111. Continuing effect of a certificate of need.

(a)(1) When the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District grants a certificate of need, the obligation for such approval shall be the submission of a preapplication to the Division of Environmental Quality within sixty (60) days of the date of the certificate of need.

(2) If after sixty (60) days a preapplication has not been submitted to the division, then the certificate of need shall be withdrawn as prescribed in 8 CAR § 292-109(h).

(b)(1) Under no conditions or circumstances shall a certificate of need be in effect for more than six (6) months, unless a permit application for which the certificate of need was issued is pending and active with the division.

(2) In the event a permit application is denied or approved by the division, then the certificate of need for which the permit was requested becomes withdrawn.

(c) 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.

Authority. Arkansas Code § 8-6-704.

8 CAR § 292-112. The sixty-day application process for certificate of need reviews.

(a) The following is a summary of the process for submitting and the progression of an application for a certificate of need.

(b) Each step in the process must be completed prior to issuing or denying a certificate of need:

(1)(A) Notice of intent.

(B) A notice of intent is required for every proposal to be reviewed.

(C) A potential applicant must submit a notice of intent to the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District prior to submission of an application.

(D) Refer to 8 CAR § 292-106;

(2)(A)(i) Submission of application to the Division of Environmental Quality.

(ii) The applicant is responsible for submitting all information concerning the proposed acquisition of a certificate of need for the purpose of obtaining a solid waste facility permit.

(B) Refer to 8 CAR § 292-109(d);

(3)(A)(i) Determination of completeness.

(ii) The board will determine the completeness of an application, and within two (2) weeks of receipt of an application, notify the applicant of any additional information necessary for completion of the application.

(iii) If no requests for additional information are made by the board within two (2) weeks, the application will be deemed to be complete and affected persons will be notified of the beginning of review.

(B) Refer to 8 CAR § 292-109(a) and (d);

(4)(A)(i) Beginning of review.

(ii) The initiation of the sixty-day review period begins on the date of notification by the board, by letter, to the applicant of the completeness of the application and the beginning of the review or the date that the public notice appears in the newspapers, whichever is later.

(B) Refer to 8 CAR § 292-109(a);

(5)(A)(i) Notification of the beginning of review.

(ii) Upon determination of completeness, the board will notify, in writing, the applicant and all other affected persons that the review period for the application has begun.

(B) Refer to 8 CAR § 292-109(a) and (b);

(6)(A)(i) Public hearing during the course of review.

(ii) The board will provide a public hearing during the course of review.

(B) Refer to 8 CAR § 292-109(f); and

(7)(A)(i) The board findings.

(ii) The board will make a final determination on the application based on the established criteria and will provide written findings which state the basis for the final determination.

(B) Refer to 8 CAR § 292-109(f).

(C) Such findings will be sent to:

(i) The applicant;

(ii) The division; and

(iii) Others upon request.

Authority. Arkansas Code § 8-6-704.

8 CAR § 292-113. Appeals of decisions of the board.

Any interested party to a certificate of need determination by the Board of Directors of the Southeast Arkansas Regional Solid Waste Management District may appeal the decision to the Director of the Division of Environmental Quality, pursuant to procedures adopted by the Division of Environmental Quality.

Authority. Arkansas Code § 8-6-704.