

**SEBASTIAN COUNTY REGIONAL
SOLID WASTE MANAGEMENT DISTRICT**

Proposed Rules

**§ 186.1.01 – § 186.2.13
§ 186.13.01 - § 186.14.04**

**Administrative & Procedural Regulations
Enforcement Program Regulations**

Proposed August 19, 2007

**Comment Period
September 6, 2007 – October 8, 2007**

**Public Hearing
October 30, 2007
10:00 a.m.
Fort Smith Public Library**

Approved 5/21/08

**RULES AND REGULATIONS OF THE
SEBASTIAN COUNTY REGIONAL
SOLID WASTE MANAGEMENT DISTRICT**

Cite as SCRSWMD Reg. § 186.xx.xx

Arkansas Secretary of State Agency No. 186

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CHAPTER A: PRACTICES AND PROCEDURES

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Subchapter 1	General.
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§ 1.01 Purpose and Authority

The purpose of this regulation is to assure the proper management of solid waste generated within the District; or generated outside the District, and brought to a processing, transfer, material recycling or disposal facility within the solid waste service area of the District.

The rules and regulations adopted and contained herein, and the enforcement thereof by the District, are designed and intended to provide minimum standards for the protection of the health and welfare of the public and making sure that the environment is not polluted and to prevent the creation or maintenance of unhealthful, unsanitary conditions or public health nuisances, and shall be liberally construed to accomplish these purposes.

Arkansas Code Annotated § 8-6-704(6) authorizes regional solid waste management boards to adopt such rules or regulations 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.

§ 1.02 Administration

The Director of the District shall administer, implement and enforce the provisions of this regulation.

§ 1.03 Definitions

For the purposes of Sebastian County Regional Solid Waste Management District rules

and regulations, the following definitions shall apply:

- (a) "Administrative Procedure Act" means the Arkansas Administrative Procedure Act codified at Arkansas Code Annotated §§ 25-15-201 to 214, as amended from time to time.
- (b) "ADEQ" means the Arkansas Department of Environmental Quality.
- (c) "APC&EC" means the Arkansas Pollution Control and Ecology Commission.
- (d) "Board" means the Sebastian County Regional Solid Waste Management Board.
- (e) "Class S Composting Facility" means a facility defined as requiring a Class S Composting Permit under ADEQ Regulation 22.
- (f) "Commission" means the Arkansas Pollution Control & Ecology Commission.
- (g) "Department" means the Arkansas Department of Environmental Quality.
- (h) "Directors" means the members of the Board of Directors of the Sebastian County Regional Solid Waste Management Board.
- (i) "District" means the Sebastian County Regional Solid Waste Management District. Jurisdiction and authority includes Sebastian County and all municipalities and unincorporated areas within the County.
- (j) "Director" means the Director of the Sebastian County Regional Solid Waste Management District.
- (k) "Illegal dump" means any place at which solid waste is placed, deposited, abandoned, dumped, or otherwise disposed of in a manner that is prohibited by Subchapter 13 or other state or federal statutes, rules or regulations, or which constitute any one (1) of the following:
 - 1) A nuisance that attracts pests or undesirable vectors such as mosquitoes, flies, bees, rodents, or any vermin;
 - 2) A fire, health, or safety hazard;
 - 3) A potential source of surface and/or groundwater contamination; or
 - 4) Other contamination that is hazardous to the public health or endangers the environment.

- (l) "Illegal dumping of solid waste" means the illegal placing, depositing, dumping, or causing to be placed, deposited, or dumped by any person any solid waste that is prohibited by these regulations:
 - 1) In or upon any public or private highway or road, including any portion of the right-of-way thereof;
 - 2) In or upon any private property into or upon which the public is admitted by easement or license or any private property;
 - 3) In or upon any public park or other public property, other than the property designated or set aside for such purpose by the governing board or body having charge thereof; or
 - 4) Upon any property for which an appropriate permit has not been issued by the Arkansas Department of Environmental Quality.
- (m) "Landfill" means a facility requiring a landfill permit as defined by APC&EC Regulation 22.
- (n) "Material Recovery Facility" means a facility, not subject to permitting requirements under APC&EC Regulation 22, which is engaged in the storage, processing and resale of recovered materials and receives source-separated recyclable materials.
- (o) "Permit" means to grant license in by legal means to perform specific operations as granted by the proper regulatory control authority through either a legal document (individual permit) or by regulation (general permit) or by other means deemed appropriate.
- (p) "Person" means any individual, partnership, corporation, association, or public or private organization of any character.
- (q) "Rule" means any District regulation 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 District.
- (r) "Rulemaking Action" shall include any action by the District to adopt, amend or repeal any District Rule.
- (s) "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 by-products material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923). Recovered materials as defined by APC&EC Regulation 22.201 are not considered solid waste.

- (t) "Solid Waste Disposal Facility" means any Class I or II sanitary landfill as defined by the Arkansas Department of Environmental Quality.
- (u) "Solid Waste Facility" means any facility which holds or should hold a facility permit issued by the Solid Waste Division of ADEQ.
- (v) "Solid Waste Hauler" - A Solid Waste Hauler is any person engaged in the collection and/or transportation for disposal or storage of solid wastes. Any person transporting waste more than five times a year is a Solid Waste Hauler, unless exempted below. Solid Waste Hauler does not include a person transporting their personal household wastes to a permitted facility. Solid Waste Hauler does not include a person hauling only waste tires. Solid Waste Hauler does not include a person transporting solid waste from an industrial facility to its own Class 3 landfill. There are two types of Solid Waste Haulers:
 - 1) Type I Haulers are those that haul all categories of nonhazardous solid wastes as identified in APC&EC Regulation 22.203;
 - 2) Type II Haulers are those that haul only Class 4 wastes as identified in APC&EC Regulation 22.203.
- (w) "Solid Waste Material Recovery Facility" means a facility defined as requiring a Solid Waste Material Recovery Facility permit by APC&EC Regulation 22.
- (x) "Solid Waste Services Area" means Solid Waste Services Area as described in the Regional Solid Waste Management District and Boards Act, Arkansas Code Annotated § 8-6-701 *et seq.*
- (y) "Transfer Station" means a facility defined as requiring a Transfer Station permit by APC&EC Regulation 22.

§ 1.04 Authority to Enforce Other Regulations

For the purposes of providing intergovernmental support to all governmental jurisdictions within the District, the District shall be empowered to act as a legal agent or representative on behalf of any legally recognized federal, state, county or city or any

other local jurisdiction or special governmental entity within the District. Authority to the District shall be provided by means of a duly processed and authorized letter, or by an intergovernmental agreement, identifying all such specific and/or general powers given to the District.

The Director is provided authority to act as the legal representative of the District to enter into agreement and to accept delegated authority or primacy for the District and to direct resources to enforce such delegated authority.

Subchapter 2 Rulemaking.
§ 2.01 Purpose and Authority
§ 2.02 Notice of Proposed Action
§ 2.03 Public Comment
§ 2.04 Public Hearing
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§ 2.06 Emergency Proceedings
§ 2.07 Filing
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§ 2.10 Official Records
§ 2.11 Substantial Compliance
§ 2.12 Preemption by State or Federal Law
§ 2.13 Severability

§ 2.01 Purpose and Authority

At any Board meeting, the Board may adopt proposed or final: new rules or regulations; modifications to existing rules or regulations; or, repeal of any existing rules or regulations.

§ 2.02 Notice of Proposed Action

- (a) Notice of the proposed new rule or regulation, modification or repeal of an existing rule or regulation, shall be given to the public via publication in the following publications: The Southwest Times Record.
- (b) Notice will normally be published on Wednesdays and shall run for three consecutive days. The notice shall state the substance of the proposed new rule, modification or rescission of an existing rule and provide information on obtaining a copy of the proposal from the District. 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 ADEQ.
- (e) Notice shall also be provided to the Arkansas Secretary of State and the Bureau of Legislative Research.

§ 2.03 Public Comment

The notice in § 2.02 shall solicit written comments from the public for a period of not less than thirty (30) days. The notice shall also provide the address where all comments should be sent.

§ 2.04 Public Hearing

- (a) The District may, at its sole discretion, hold a public hearing to take oral comments from the public concerning any proposed action.
- (b) The District must hold a hearing to accept oral comments from the public concerning any proposed Rulemaking Action if requested by twenty-five persons, by a governmental subdivision or agency, or by an association having not less than twenty-five members. The District shall fully consider all written and oral submissions pertaining to the Rulemaking Action before finalizing the language of the proposed Rule.
- (c) Should a public hearing be held, notice of the hearing shall be made in the manner provided in § 2.02 no less than 10 days in advance of the hearing.
- (d) Upon adoption of a Rule, the Board, if requested to do so by an interested person within thirty 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.

§ 2.05 Final Action

(a) At any Board meeting following the close of the public comment period or any public hearing, the Board may act on the proposal by: adopting it as originally written; adopting a modified version; or, denying the proposal.

(b) The Board reserves the right to re-issue any proposal for public comment following significant modifications.

§ 2.06 Emergency Proceedings

Should the District find that imminent peril to the public health, safety or welfare requires adoption of a regulation upon fewer than 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 regulation. Any emergency regulation so adopted may be effective for no longer than 120 days.

§ 2.07 Filing

The District shall file with the Secretary of State, the Arkansas State Library and the Bureau of Legislative Research, a certified copy of each regulation adopted by it, and a statement of financial impact for the regulation.

§ 2.08 Effective Date

Each regulation adopted by the District shall be effective 10 days after filing unless a later date is specified by law or in the regulation itself. However, an emergency regulation may become effective immediately upon filing, or at a stated time less than 10 days thereafter, if the District finds that this effective date is necessary because of imminent peril to the public health, safety or welfare. The District's finding and a brief statement of the reasons therefore shall be filed with the regulation. The District shall take appropriate measures to make emergency regulations known to the persons who may be affected by them.

§ 2.09 Certification of Regulations

A copy of any regulation adopted by the Board may be certified by signature of the Chairman and Secretary/Treasurer of the Board, or by such other method as determined by the Board from time to time.

§ 2.10 Official Records

The District shall maintain a certified copy of every regulation or rule adopted by the District. This copy shall be kept at the principal office of the District. A copy of each notice of rulemaking shall also be kept on file at the District.

§ 2.11 Substantial Compliance

Every Rulemaking Action by the District after the effective date of this Subchapter shall be effective if the Rulemaking Action substantially complies with this Subchapter.

§ 2.12 Preemption by State or Federal Law

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 Subchapter shall be preempted to the extent necessary to comply with State or Federal law. Whenever possible, the provisions of this Subchapter shall be interpreted to be consistent with requirements of State and Federal law.

§ 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.

Subchapter 3	Reserved.
Subchapter 4	Reserved.
Subchapter 5	Reserved.

CHAPTER F: ENFORCEMENT PROGRAM

Subchapter 13 Illegal Dumping.

Subchapter 14 Illegal Burning.

Subchapter 13 Illegal Dumping.

§ 13.01 Purpose and Authority

§ 13.02 Definitions

§ 13.03 Prohibited Acts

§ 13.04 Enforcement Options

§ 13.05 Penalties

§ 13.01 Purpose and Authority

Ark. Code Ann. § 8-6-704(6) authorizes Regional Solid Waste Management Boards to adopt such rules or regulations pursuant to the Arkansas Administrative Procedure Act, Ark. Code Ann. § 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.

This Subchapter is being enacted to provide for a variety of mechanisms for the District to enforce violations of Arkansas laws and regulations governing the illegal dumping and disposal of solid wastes.

§ 13.02 Definitions

Definitions shall be derived from Chapter A; Subchapter 1, §1.03, of the Rules and Regulations of the Sebastian County Regional Solid Waste Management District, or; ADEQ Regulation 22 may be used if not found in District regulations and is deemed appropriate by the District Director.

§ 13.03 Prohibited Acts

1) It shall be illegal for any person:

- (1) To construct, install, alter, modify, use, or operate any facility or site on any property for the purpose of either receiving, storing or processing of solid waste without an appropriate permit that is current, valid and properly implemented as issued by the Arkansas Department of Environmental Quality specifically for the purposes of such operation in all or part;
- (2) To dispose of solid wastes at any facility or site other than a facility or site for which an appropriate permit that is current, valid and properly

implemented as issued by the Arkansas Department of Environmental Quality specifically for the purposes of such operation in all or part;

- (3) To dump, deposit, throw, or in any manner leave or abandon any solid wastes, including, but not limited to, trash, garbage, tin cans, bottles, rubbish, refuse, vehicles, mechanical equipment, trailers, or other undesirable material upon property owned by another person without the written permission of the owner or occupant of the property: or upon any public highway, street, road, public park or recreation area, or any other public property except as designated for disposal of such waste; or
 - (4) To either: store, collect, transport, sort, process, burn, or dispose of solid waste in such a manner or place as to create or be likely to create a public nuisance or a public health hazard or to cause or have the potential to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 et seq.
- b) There is created a rebuttable presumption that shall arise in any administrative, civil, or criminal action under this subchapter to the effect that, if it can be proved that one (1) or more items of solid waste bear the name or names of one (1) or more persons in such a form as to indicate that the person or persons were the owners of those items and those items were unlawfully disposed of, then the person or persons are presumed to have committed the unlawful act of illegal dumping of solid waste.
- c) No person shall be liable for any violation of this subchapter or of any rule, regulation, or order of the Board of Directors, issued pursuant to this subchapter if, the violation results solely from the act or omission of a third party, unless the person has knowingly allowed the violation to occur through acquiescence, acts, and/or omissions.

§ 13.04 Enforcement Options

Any person who violates a provision of this subchapter may be subject to the following enforcement actions;

- a) A civil complaint filed pursuant to Ark.Code Ann. § 8-6-505;
- b) A citation issued by a duly authorized Illegal Dump Enforcement Officer;
- c) A citation issued by a duly authorized Enforcement Officer pursuant to Ark.Code Ann. § 8-6-704(b)(1)(D); or
- d) A criminal action filed by an authorized prosecuting attorney.

§ 13.05 Penalties

Any person who violates any provision of this subchapter is in violation of District Rules and is also guilty of a misdemeanor under Ark. Code. Ann. § 8-6-722. Upon conviction the person shall be subject to imprisonment for not more than thirty (30) days or a fine of not more than one thousand dollars (\$1,000.00), or both imprisonment and fine. Each day or part of any day during which a violation is continued or repeated shall constitute a separate offense.

Subchapter 14	Illegal Burning.
§ 14.01	Purpose and Authority
§ 14.02	Prohibited Acts
§ 14.03	Enforcement Options
§ 14.04	Penalties

§ 14.01 Purpose and Authority

Ark. Code Ann. § 8-6-704(6) authorizes regional solid waste management boards to adopt such rules or regulations pursuant to the Arkansas Administrative Procedure Act, Ark. Code Ann. § 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. This Subchapter is being enacted to provide for a variety of mechanisms for the District to enforce violations of Arkansas laws and regulations governing the illegal burning of solid wastes.

§ 14.02 Prohibited Acts

It shall be illegal for any person to burn solid wastes in a manner inconsistent with APC&EC Regulation 18.

§ 14.03 Enforcement Options

Any person who violates a provision of this subchapter may be subject to the following enforcement actions;

- a) A civil complaint filed pursuant to Ark.Code Ann. § 8-6-505;
- b) A citation issued by a duly authorized Illegal Dump Enforcement Officer;
- c) A citation issued by a duly authorized Enforcement Officer pursuant to Ark.Code Ann. § 8-6-704(b)(1)(D);or
- d) A criminal action filed by an authorized prosecuting attorney.

§ 14.04 Penalties

Any person who violates any provision of this subchapter is guilty of a misdemeanor under Ark. Code. Ann. § 8-6-722. Upon conviction the person shall be subject to imprisonment for not more than thirty (30) days or a fine of not more than one thousand dollars (\$1,000.00), or both imprisonment and fine. Each day or part of any day during which a violation is continued or repeated shall constitute a separate offense.

CERTIFICATION OF RULES

The preceding 13 pages, containing Chapters A and Chapter F of regulations of the Sebastian County Regional Solid Waste Management District, are a certified copy of the regulations as enacted by action of the Board taken May 21, 2008 in Fort Smith, Arkansas.



Randy Hall
Chairman



Carl Davis
Vice Chairman/Secretary