

SOUTHWEST ARKANSAS REGIONAL



SOLID WASTE MANAGEMENT DISTRICT

**POLICIES, PROCEDURES & CRITERIA
FOR
ARKANSAS ACT 870 OF 1989
CERTIFICATE OF NEED
REVIEW FOR SOLID WASTE LANDFILL FACILITIES**

May 2014

Contents

RULE 1.	DESCRIPTION	3
RULE 2.	DEFINITIONS	4
RULE 3.	PURPOSE AND APPLICABILITY:.....	5
RULE 4.	GENERAL	5
RULE 5.	SCOPE OF CERTIFICATE OF NEED PROGRAM	6
RULE 6.	NOTICE OF INTENT	6
RULE 7.	ENFORCEMENT	7
RULE 8.	ADOPTION AND PUBLIC NOTICE OF REVIEW PROCEDURES AND CRITERIA	7
RULE 9.	PROCEDURES FOR CERTIFICATE OF NEED REVIEW	8
RULE 10.	CRITERIA FOR REVIEW OF CERTIFICATE OF NEED APPLICATIONS	10
RULE 11.	CONTINUING EFFECT OF A CERTIFICATE OF NEED	11
RULE 12.	THE SIXTY (60) DAY APPLICATION PROCESS FOR CERTIFICATE OF NEED REVIEWS	11
RULE 13.	APPEALS OF DECISION OF THE SOUTHWEST ARKANSAS REGIONAL SOLID WASTE PLANNING BOARD	13

CERTIFICATE OF NEED REVIEW FOR SOLID WASTE LANDFILL FACILITIES

RULE 1. DESCRIPTION

The Southwest Arkansas Regional Solid Waste Management Board (SWARSWMB) is the designated Board, to conduct the solid waste planning and management responsibilities mandated in Section Four (4) of Arkansas Act 870 of 1989. This Board has been duly designated under the terms and conditions prescribed in Section Three (3) of Section Nine (9), as applicable, of Act 870 of 1989, and its jurisdictional boundaries include: Calhoun, Columbia, Dallas, Miller, Ouachita and Union Counties; and the incorporated places of Bearden, Camden, Carthage, Chidester, East Camden, El Dorado, Emerson, Felsenthal, Fordyce, Fouke, Fulton, Garland, Huttig, Junction City, Louann, Magnolia, McNeil, Norphlet, Reader, Smackover, Sparkman, Stephens, Strong, Taylor, Texarkana, Thornton, and Tinsman.

The State Law referred to above provides that the SWARSWMB shall have the following powers and duties:

- a. Collect data, study and evaluate the solid waste management needs of all localities within this jurisdiction, as provided in Section Five (5) of the law, and to publish findings as a Regional Needs Assessment.
- b. 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 ADEQ**;
- c. Formulate recommendations to all local governments within this jurisdiction on solid waste management issues, and to formulate plans for providing adequate solid waste management;
- d. Issue or deny Certificates of Need to any applicant for a solid waste landfill permit within this jurisdiction;
- e. Adopt such rules or regulations as necessary to assure: 1) consistency of review and decision making procedures/criteria among the ~~Several~~ Boards, and public notice and participation in any findings or rulings of this Board; and
- f. Carry out all other powers and duties conferred by Act 870 of 1989.

RULE 2.

DEFINITIONS

- Affected Persons:** Includes: The applicant, the Arkansas Department of Environment Quality (ADEQ); the Regional Solid Waste Planning Board (RSWPB) or Solid Waste Service Area Board (SWSAB), where applicable, for the area in which the proposed solid waste landfill is to be located; RSWPBs and SWSABs having jurisdiction in contiguous areas to the location; units of general local government, within the geographic area served or to be served by the applicant and within the Regional Solid Waste Planning District (RSWPD) or Solid Waste Service Area (SWSA); and solid waste landfill permittees having a permitted solid waste disposal site in the RSWPD or SWSA in which the landfill is proposed to be located.
- Interested Party:** The Director or his designee, the Board, the person making application to the Board or any person submitting written comments on the application within the public comment period.
- Certificate of Need:** A certificate issued by the Southwest Arkansas Regional Solid Waste Planning Board to an individual or organization proposing to obtain a landfill permit for solid waste disposal. The certificate recognizes that such landfill, when available, will be needed by those for whom it is intended. A Certificate of Need is a condition of application for a solid waste landfill permit under the Arkansas Solid Waste Management Code. The Department may deny any permit based upon the denial of a Certificate of Need by the Southwest Arkansas Regional Solid Waste Planning Board.
- Certificate of Need Review:** Review of petitions for Certificates of Need where the landfill if permitted will be located in this jurisdictional area. Under Arkansas Act 870 of 1989, RSWPBs and SWSABs, where applicable, are required to have the respective Board administer a Certificate of Need Review Program.
- Solid Waste:** All putrescible and nonputrescible waste in solid or semi-solid form, including, but not limited to yard or food waste, waste glass, waste metals, waste plastics, wastepaper, waste paperboard, and all other solid or semi-solid wastes resulting from industrial, commercial, agricultural, community and residential activities.
- Landfill:** 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 wastes generated by the industry.

RULE 3. PURPOSE AND APPLICABILITY:

- A. The Southwest Arkansas Regional Solid Waste Planning Board will administer the Certificate of Need Review Program which: 1) applies to the offering of new or increased solid waste landfill disposal capacity within its jurisdictional boundaries, and 2) is consistent with the laws of the State.
- B. In performing its review functions, the Southwest Arkansas Regional Solid Waste Planning Board shall follow procedures and apply criteria developed in accordance with procedures and regulations herein.

RULE 4. GENERAL

- A. The Southwest Arkansas Regional Solid Waste Planning Board will administer within the Southwest Arkansas Regional Solid Waste Service Area a Certificate of Need Review Program.
- B. Only the Southwest Arkansas Regional Solid Waste Planning Board will issue or deny Certificates of Need for proposed landfill permits within the Southwest Arkansas Regional Solid Waste Service Area.
- C. In issuing or denying Certificates of Need, the Southwest Arkansas Regional Solid Waste Planning Board will take into account the findings enumerated in the Regional Needs Assessment Report applicable to the area where the landfill site is proposed, and the criteria enumerated in RULE 4., Paragraphs c., d., e., and RULE 10.
- D. Each decision of the Southwest Arkansas Regional Solid Waste Planning Board to issue a Certificate of Need must be consistent with the Regional Needs Assessment.
- E. Each decision of the Southwest Arkansas Regional Solid Waste Planning Board to issue or deny a Certificate of Need must be based on documented evidence clearly indicating that the proposed solid waste landfill:
 - 1) Is consistent with the regional planning strategy adopted by Southwest Arkansas Regional Solid Waste Planning Board in the Regional Needs Assessment;
 - 2) Does not conflict with existing comprehensive land use plans of any local governmental entities;
 - 3) Does not disturb an archaeological site as recognized by the Arkansas Archaeological Survey, or a Rare and Endangered Species habitat as recognized by the Arkansas Game and Fish Commission or the U.S. Fish and Wildlife Service; and

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

NOTE: The decision of the Southwest Arkansas Regional Solid Waste Planning Board to issue or deny a Certificate of Need shall not be based on any technical merits related to proposed or existing solid waste landfills.

RULE 5. SCOPE OF CERTIFICATE OF NEED PROGRAM

The Southwest Arkansas Regional Solid Waste Planning Board will conduct reviews for new or increased solid waste landfill disposal capacity to be located or proposed to be located in the Southwest Arkansas Regional Solid Waste Service Area and which are subject to review under the Certificate of Need Program. Following are the only types of permits that are reviewable under the Certificate of Need Program:

- a. Permits for new solid waste landfill disposal sites,
- b. Transfer of existing solid waste landfill disposal permits,
- c. Reclassification of existing solid waste landfill disposal permits.

RULE 6. NOTICE OF INTENT

Before any person submits a petition for a Certificate of Need, that person must notify Southwest Arkansas Regional Solid Waste Planning Board at least thirty (30) days prior to the submission of said petition. The information required in the “notice of intent” shall include:

- a. Name of Applicant;
- b. Applicant’s Address and Telephone Number;
- c. Contact Person, Telephone Number and E-Mail Address;
- d. Whether the applicant is seeking a new, or transfer or reclassification of an existing landfill permit;
- e. Site of the proposed or existing solid waste landfill, including precise legal description and total acreage;
- f. Description of the geo-political jurisdictions to be served by the landfill, including population estimates by jurisdiction;

- g. Confirmation from ADEQ that the applicant has requested a statement concerning the current and projected solid waste disposal capacity respective to the area and landfill class being proposed; and
- h. Any other information deemed necessary by the Board.

RULE 7. ENFORCEMENT

- A. 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 landfill disposal capacity for the respective area and class (s) of permit under review exceeds twenty-five (25) years at the time of the “Notice of Intent” (RULE 6.) is submitted.
 - 2) No Certificate of Need Application will be accepted for review unless a “Notice of Intent” has been filed in accordance with RULE 6.
 - 3) The Southwest Arkansas Regional Solid Waste Planning Board will only issue a Certificate of Need for applications which are found to be needed.

RULE 8. ADOPTION AND PUBLIC NOTICE OF REVIEW PROCEDURES AND CRITERIA

Before the Southwest Arkansas Regional Solid Waste Planning Board 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. The Southwest Arkansas Regional Solid Waste Planning Board will mail a copy of the proposed revisions to ADEQ at the time notice is provided pursuant to the following paragraph.

The Southwest Arkansas Regional Solid Waste Planning Board will publish, in one or more newspapers of general circulation in the area of jurisdiction, a notice stating that review procedures and criteria, or revisions to them have been proposed for adoption and are available at the Southwest Arkansas Regional Solid Waste Planning Board Office for inspection and copying, and the date of the public hearing referred to below.

Prior to the adoption of these rules and any revisions to these rules, the Southwest Arkansas Regional Solid Waste Planning Board shall conduct a public hearing not less than twenty (20) days before the effective date of adoption. The public hearing will be held in the county where the administrative office of the Southwest Arkansas Regional Solid Waste Planning Board is located.

RULE 9. PROCEDURES FOR CERTIFICATE OF NEED REVIEW

- A. Notification of the Beginning of a Review – 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 required his name on the Southwest Arkansas Regional Solid Waste Planning Board mailing list maintained by the Southwest Arkansas Regional Solid Waste Planning Board. Notification will include the proposed review period (Rule 9, Paragraph b.), the date (s) of any scheduled or anticipated meetings and the public hearing to be held during the course of review, and the location where information related to the request for Certificate of Need may be reviewed.
1. For purposes of this paragraph, the date of notifications 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, and
 2. Written notification to affected persons will be made by **fax**, mail or **email**; and notification to members of the public will be provided through newspaper of general circulation and public information channels in the Regional Solid Waste Service Area, whichever is applicable.
- B. Review Period – The Southwest Arkansas Regional Solid Waste Planning Board will establish a review period, which will include: 1) the date of the public hearing to be held in the County where the proposed solid waste landfill is to be located; and 2) the date of final Southwest Arkansas Regional Solid Waste Planning Board finding (normally sixty (60) days or less from the date of notification). The review period begins on the date established in Rule 9., Paragraph a.
- C. Public Comment Period – The Southwest Arkansas Regional Solid Waste Planning Board will accept written comments regarding an application for the period from the date of notification (Rule 9, Paragraph a.) through the close of business on the date of the public hearing (Rule 9, Paragraph f.) regarding the application for which notification was made.
- D. Information Requirements – There is a provision for persons subject to a review to submit to the Southwest Arkansas Regional Solid Waste Planning Board information that the Southwest Arkansas Regional Solid Waste Planning Board requires relating to Rule 4, Paragraph e., Items 1-4. The form, manner, and content of the information will be as follows:
1. 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 landfill is located;

- d. Description of geo-political jurisdictions to be served; including population estimates by jurisdiction;
 - e. Documentation that the proposed solid waste landfill complies with each of the criteria enumerated in Rule 4, Paragraph e., Items 1-4.;
 - f. Amount of disposal capacity being proposed (stated in years) and description of how the capacity was calculated; and
 - g. Other information deemed necessary to make determination of need. (This information will be specified and requested of the applicant within two weeks of receipt of initial application. The beginning of review (Rule 9., Paragraph a.) will not commence until all information is on file with the Southwest Arkansas Regional Solid Waste Planning Board.
2. 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 contains the information specified herein, and has been determined to be complete.

- E. Written Findings and Conditions – Written findings, including specific documentation, which state the basis for any final decision made by the southwest Arkansas Regional Solid Waste Planning Board are required. When a Certificate of Need is to be issued, these findings will include the findings of need required by Rule 7. The Southwest Arkansas Regional Solid Waste Planning Board will not make its final decision subject to any condition unless the condition directly relates to criteria established under Rule 4., Paragraphs c., d., e., and Rule 10., and/or criteria prescribed by regulation by the Southwest Arkansas Regional Solid Waste Planning Board in accordance with an authorization under State Law.
- F. Public Hearing in the course of Review – The Southwest Arkansas Regional solid Waste Planning Board will provide a public hearing during the course of review on each Certificate of Need application (before the Southwest Arkansas Regional Solid Waste Planning Board makes its decision). The public hearing will be held in the County where the proposed solid waste disposal facility is to be located, and notification of said public hearing will be made in accordance with Rule 9, Paragraph a., Item 2).
- G. Ex Parte Contacts – After the commencement of a public hearing under paragraph e. of Rule 9., and before a decision is made, there shall be no “ex parte” contacts between: (1) any person acting on behalf of the applicant, and (2) any person in the Southwest Arkansas Regional Solid Waste Planning Board who exercises any responsibility respecting the application or withdrawal.

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 – An applicant for a Certificate of Need will need specify the time the applicant will make an application for a solid waste landfill permit to the ~~Arkansas Department of Pollution Control and Ecology (ADPCE)~~ **Arkansas Department of Environmental Quality**, and a time, that if and when a permit is issued by the ~~ADPCE~~ **ADEQ**, that construction will be completed and operation of the permitted facility is to begin. After issuance of a Certificate of Need, the Southwest Arkansas Regional Solid Waste Planning Board will periodically review the progress of the holder of the Certificate of Need in meeting the timetable specified in the approved application and report same to the ~~ADPCE~~ **ADEQ** and permit holder. If on the basis of this review the Southwest Arkansas Regional Solid Waste Planning 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 Southwest Arkansas Regional Solid Waste Planning Board may withdraw the Certificate of Need. In the withdrawing a Certificate of Need, the Southwest Arkansas Regional Solid Waste Planning Board will follow the procedures in Paragraph f. of this RULE.
- I. Availability of Reports; Method of obtaining Public Access – The Southwest Arkansas Regional Solid Waste Planning Board will provide upon request, notification of the status of the review of proposals, findings made in the course of the reviews, and other appropriate information respecting all reviews. The Southwest Arkansas Regional Solid Waste Planning Board will maintain and keep on file, and will provide access by general public to all applications reviewed by the Southwest Arkansas Regional Solid Waste Planning Board and to all other written materials essential to any review.

RULE 10. CRITERIA FOR REVIEW OF CERTIFICATE OF NEED APPLICATIONS

The Southwest Arkansas Regional Solid Waste Planning Board will utilize the following criteria in its review of petitions for Certificates of Need.

- A. Rule 4., Paragraphs c., d., and e.
- B. The information provided by the applicant in the petition.
- C. The requirements and considerations of any Needs Assessments prepared pursuant to Section 8 of ACT 870.
- D. The location of the applicant's proposed solid waste landfill based on jurisdictions needs and its highway and road system.
- E. The need for the solid waste landfill based upon the jurisdiction's excess projected capacity which is currently permitted for operation.
- F. That the approval of the Certificate of Need and resulting increase in landfill capacity for the respective class does not cause the jurisdiction's excess projected capacity for that class to exceed thirty (30) years.

- G. In the case of existing or previously permitted landfills the quality of operation and compliance by those facilities in the past.
- H. Any Solid Waste Management System Plan, promulgated and approved pursuant to Arkansas Act 237 of 1971, and to the extent these plans conform to an overall regional planning strategy.

RULE 11. CONTINUING EFFECT OF A CERTIFICATE OF NEED

- A. When the southwest Arkansas Regional Solid Waste Planning Board grants a Certificate of Need, the obligation for such approval shall be the submission of a pre-application to the ~~Arkansas Department of Pollution Control and Ecology (ADPCE)~~ **Arkansas Department of Environmental Quality (ADEQ)** within sixty (60) days of the date of the Certificate of Need. If after sixty days a pre-application has not been submitted to ~~ADPCE~~ **ADEQ** then the Certificate of Need shall be withdrawn as prescribed in Rule 9., Paragraph h.
- B. 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 was issued is pending and active with the ~~ADPCE~~ **ADEQ**. If in the event a permit application is denied or approved by ~~ADPCE~~ **ADEQ**, 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.

RULE 12. THE SIXTY (60) DAY APPLICATION PROCESS FOR CERTIFICATE OF NEED REVIEWS

The following is a summary of the process for submitting and the progression of an application for Certificate of Need. Each step in the process must be completed prior to issuing or denying a Certificate of Need.

- A. Letter of Intent – A letter of intent is required for every proposal to be reviewed. A potential applicant must submit a letter of intent to the Southwest Arkansas Regional Solid Waste Planning Board prior to submission of an application. (Refer to Rule 6.)
- B. Submission of Application to ~~ADPCE~~ **ADEQ**– 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 landfill permit. (Refer to Rule 9., Paragraph d.)

- C. Determination of Completeness – The Southwest Arkansas Regional Solid Waste Planning Board will determine the completeness of an application, and within two weeks of receipt of an application, notify the applicant of any additional information necessary for completion of the application. If no request for additional information are made by the Southwest Arkansas Solid Waste Planning Board within two weeks, the application will be deemed to be complete and affected persons will be notified of the beginning of review. (Refer to Rule 9., Paragraph a. and d.)
- D. Beginning of Review – The initiation of the sixty (60) day review period begins on the date of notification by the Southwest Arkansas Regional Solid Waste Planning Board, by letter, to the applicant of the completeness of the application and the beginning of the review or the date that public notice appears in the newspapers, whichever is later. (Refer Rule 9., Paragraph a.)
- E. Notification of the Beginning of Review – Upon determination of completeness, the Southwest Arkansas Regional Solid Waste Planning Board will notify in writing, the applicant and all other affected persons that the review period for the application has begun. (Refer Rule 9., Paragraph a and b.)
- F. Public Hearing During Course of Review – The Southwest Arkansas Regional Solid Waste Planning Board will provide a public hearing during the course of review. (Refer Rule 9., Paragraph f.)
- G. The Southwest Arkansas Regional Solid Waste Planning Board Findings – The Southwest Arkansas Regional Planning 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. (Refer Rule 9., Paragraph f.) Such findings will be sent to:
 - 1. The applicant,
 - 2. ~~The Arkansas Department of Pollution Control and Ecology~~ **Arkansas Department of Environmental Quality**, and
 - 3. Others upon request.

RULE 13. APPEALS OF DECISION OF THE SOUTHWEST ARKANSAS REGIONAL SOLID WASTE PLANNING BOARD

- A. Any interested party to a Certificate of Need determination by a Board may appeal the decision to the Director of the ~~Department of Pollution Control and Ecology~~ **Arkansas Department of Environmental Quality** pursuant to procedures adopted by the Commission.

ADOPTED THIS _____ DAY OF _____, 2014.

Judge Larry Atkinson, Chairman
Southwest Arkansas RSWMB

Attest: Mayor Frank Hash
Secretary SWARSWMB

Resolution _____

Be it resolved by the Board of the
Southwest Arkansas Regional Solid
Waste Management District Resolution
to be entitled

A Resolution adopting the Policies, Procedures, and
Criteria for Arkansas Act 870 of 1989 Certificate of Need Review
For Solid Waste Landfill Facilities

WHEREAS, the Southwest 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 be able to pay for overhead, maintenance and operation of the office, to pay for the services of the contracts into which it enters, to purchase the insurance, and to pay the professionals.~~ **the Board must set forth policies & procedures for a Certificate of Need Review for Solid Waste Landfill Facilities.**

WHEREAS, the Regional Solid Waste Management Plan calls for the board to develop a ~~financing mechanism for the operations of the board, and implementation of the regional plan.~~ **Policy and procedure for a certificate of need review.**

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

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

ARTICLE 2: This rule will become effective August _____, 2014. ~~The collection of fees for each quarter should be complete before the last day of the first month of each new quarter.~~

ARTICLE 3: The Board hereby authorizes its President to submit to the Office of Secretary of State the Policies, Procedures and Criteria attached hereto as Attachment 1, to be placed on file in the Arkansas Register.

ADPOTED: August _____, 2014

APPROVED: _____
Larry Atkinson, Chairman
Southwest Arkansas RSWM District

ATTEST: _____
Frank Hash, Secretary
Southwest Arkansas RSWMD District