

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



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SOUTHEAST ARKANSAS SOLID WASTE MANAGEMENT BOARD

POLICIES, PROCEDURES, ~~AND~~ & CRITERIA

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FOR

ARKANSAS ACT 870 OF 1989

CERTIFICATE OF NEED
REVIEW

FOR

SOLID WASTE ~~LANDFILL~~ FACILITIES

~~Southeast Arkansas Regional
Solid Waste Management Board
721 Walnut
P.O. Box 6806
Pine Bluff, Arkansas 71611~~

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CERTIFICATE OF NEED REVIEW FOR SOLID WASTE FACILITIES

RULE Rule 1.- Description

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The Southeast Arkansas Regional Solid Waste Management Board (SEARSWMB) 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) or Section Nine (9), as applicable, of Act 870 of 1989, and its jurisdictional boundaries include: Arkansas-County, Ashley-County, Bradley-County, Chicot-County, Cleveland-County, Desha-County, Drew-County, Grant-County, Jefferson-County, and Lincoln Counties.

The State law referred to above provides that the ~~Southeast Arkansas Regional Solid Waste Management Board~~SEARSWMB 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 the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ);
- 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-facility 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 2) 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 Rule 2.- Definitions

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Affected Persons:

~~a. The term “affected persons” includes: the applicant; the Arkansas Department of Pollution Control and Ecology (DEQ); the Regional Solid Waste Management Board (RSWMB) or Solid Waste Service Area Board (SWSAB), where applicable, for the area in which the proposed solid waste landfill facility is to be located; the RSWMBs 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 Management District (RSWMD) or Solid Waste Service Area (SWSA); and solid waste landfill facility permittees having a permitted a solid waste disposal site facility in the RSWMD or SWSA in which the landfill solid waste facility is proposed to be located.~~

~~b. The term “interested party” means **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.~~

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~~e. The term “Certificate of Need” means **Certificate of Need:**~~

~~aA certificate issued by the Southeast Arkansas Regional Solid Waste Management Board (SEARSWMB) to an individual or organization proposing to obtain a landfill solid waste facility permit for solid waste disposal or transfer. The certificate recognizes that such landfill solid waste facility, 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 facility 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 Southeast Arkansas Regional Solid Waste Management Board (SEARSWMB).~~

~~d. The term “Certificate of Need Review” means **Certificate of Need Review:**~~

~~‡Review of petitions for Certificates of Need where the landfill solid waste facility, if permitted, will be located in this jurisdictional area. Under Arkansas Act 870 of 1989, RSWMBs and SWSABs, where applicable, are required to have the respective Board administer a Certificate of Need Review Program.~~

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~~e. The term “solid waste” means **Solid Waste:**~~

~~aAll putrescible and non-putrescible waste in solid or semi-solid form, including, but not limited to, yard and food waste, waste glass, waste metals, waste plastics, waste papers, waste paperboard and all other solid and or semi-solid wastes~~

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resulting from industrial, commercial, agricultural, community and residential activities.

f. The term "landfill" means Solid Waste Facility:

~~a~~A permitted landfill under the Arkansas Solid Waste Act, ~~Arkansas Ark. Code Ann. §~~ 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. Facility also includes, except as limited above, 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 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.

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~~RULE-~~ **Rule 3. Purpose and Applicability**

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- a. The ~~Southeast Arkansas Regional Solid Waste Management Board~~SEARSWMB will administer the Certificate of Need Review Program which: 1) applies to the offering of new or increased solid waste ~~landfill-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 ~~Southeast Arkansas Regional Solid Waste Management Board~~SEARSWMB shall follow procedures and apply criteria developed in accordance with procedures and regulations herein.

~~RULE-~~ **Rule 4. General**

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- a. The ~~Southeast Arkansas Regional Solid Waste Management Board~~SEARSWMB will administer ~~within the Southeast Region~~ a Certificate of Need Review Program within its jurisdictional boundaries.
- b. Only the ~~Southeast Arkansas Regional Solid Waste Management Board~~SEARSWMB will issue or deny Certificates of Need for proposed ~~landfill-solid waste facility~~ permits ~~within the Southeast Region~~its jurisdictional boundaries.
- c. In issuing or denying Certificates of Need, the ~~Southeast Arkansas Regional Solid Waste Management Board~~SEARSWMB will take into account the findings enumerated in the Regional Needs Assessment Report applicable to the area where the ~~landfill-solid waste facility~~ site is

proposed, and the criteria enumerated in ~~RULE~~ Rule 4, Paragraphs c., d., e., and ~~RULE~~ Rule 10.

- d. Each decision of the ~~Southeast Arkansas Regional Solid Waste Management Board~~ SEARSWMB to issue a Certificate of Need must be consistent with the Regional Needs Assessment.
- e. Each decision of the ~~Southeast Arkansas Regional Solid Waste Management Board~~ SEARSWMB to issue or deny a Certificate of Need must be based on documented evidence clearly indicating that the proposed solid waste ~~landfill~~ facility:
 - 1) Is consistent with the regional planning strategy adopted by the ~~Southeast Arkansas Regional Solid Waste Management Board~~ SEARSWMB in the Regional Needs Assessment or the Regional Solid Waste Management Plan;
 - 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;
 - 5) Does not conflict with the requirements of state laws, rules and regulations or federal laws, rules and regulations on the location of disposal facilities;
 - 6) If located in the hundred-year floodplain, does not restrict the flow of the hundred-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health or the environment;
 - 7) If the transfer station proposes to transfer waste outside of the RSWMD in which it is located, the petition shall also contain documentation that the district to which the waste will be transferred has been notified and that the board of that district has approved the receipt of the waste. This provision shall not apply if

the waste is being transported for disposal outside the geographical limits of this state;

8) Any other information deemed necessary by the Board; and

9) Subject to DEQ Rule 22 and any amendment to DEQ Rule 22.

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

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~~RULE~~ Rule 5.- Scope of Certificate of Need Program

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The ~~Southeast Arkansas Regional Solid Waste Management Board~~ SEARSWMB will conduct reviews for new or increased solid waste ~~landfill-facility~~ disposal capacity or transfer to be located, or proposed to be located, ~~in the Southeast Region within its jurisdictional boundaries~~ 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-facility~~ disposal sites,
- b. Transfers of existing solid waste landfill ~~disposal-facility~~ permits, and
- c. Reclassification of existing solid waste ~~landfill-facility~~ disposal permits.

~~RULE~~ Rule 6.- Notice of Intent

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Before any person submits a petition for a Certificate of Need, that person must notify the ~~Southeast Arkansas Regional Solid Waste Management Board~~ SEARSWMB 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 ~~A~~applicant;
- b. Applicant's ~~A~~address and ~~T~~telephone ~~N~~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-solid waste facility~~ permit;

- ~~de.~~ Site map of the proposed or existing solid waste ~~landfill~~facility, including precise legal description and total acreage;
- ~~ef.~~ Description of the geo-political jurisdictions to be served by the ~~landfill~~solid waste facility, including population estimates by jurisdiction;
- ~~fg.~~ Confirmation from ~~the Arkansas Department of Pollution Control and Ecology~~DEQ that the Applicant has requested a statement concerning the current and projected solid waste disposal capacity respective to the area and solid waste facility~~landfill~~ class being proposed; ~~and~~
- ~~gh.~~ Type of waste expected to receive, amount, fees charged, projected income, new jobs created, source of waste, name of owner and operator if different that applicant; ~~and~~.
- i. Any other information deemed necessary by the Board.

~~RULE~~ Rule 7. Enforcement

~~a.~~ The Certificate of Need Program provides that:

- ~~1)a.~~ No Certificate of Need Application will be accepted, nor will a Certificate of Need be issued to any applicant, where the solid waste ~~landfill-facility~~ disposal capacity for the respective area and class(es) of permit under review exceed twenty-five (25) years at the time the "Notice of Intent" (~~RULE~~ Rule 6-) is submitted.
- ~~2)b.~~ No Certificate of Need Application will be accepted for review unless a "Notice of Intent" has been filed in accordance with ~~RULE~~ Rule 6.
- ~~3)c.~~ The ~~Southeast Arkansas Regional Solid Waste Management Board~~SEARSWMB will only issue a Certificate of Need for applications which are found to be needed.

~~RULE~~ Rule 8- Adoption and Public Notice of Review Procedures and
Criteria

Before the ~~Southeast Arkansas Regional Solid Waste Management Board~~SEARSWMB 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 ~~Southeast Arkansas Regional Solid Waste Management Board~~SEARSWMB will

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mail a copy of the proposed revisions to ~~the Arkansas Department of Pollution Control and Ecology~~ DEQ at the time notice is provided pursuant to the following paragraph.

The ~~Southeast Arkansas Regional Solid Waste Management Board~~ SEARSWMB 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 ~~Southeast Arkansas Regional Solid Waste Management Board~~ SEARSWMB 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 ~~Southeast Arkansas Regional Solid Waste Management Board~~ SEARSWMB 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 ~~Southeast Arkansas Regional Solid Waste Management Board~~ SEARSWMB is located.

~~RULE~~ Rule 9. ~~Procedures for Certificate of Need Review~~

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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 requested his name on the ~~Southeast Arkansas Regional Solid Waste Management Board~~ SEARSWMB mailing list maintained by the ~~Southeast Arkansas Regional Solid Waste Management Board~~ SEARSWMB. Notification will include the proposed review period (~~RULE~~ 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 a Certificate of Need may be reviewed.

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- 1) For purposes of this paragraph, 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; and
- 2) Written notification to affected persons will be made by fax, mail, or e-mail; and notification to members of the public will be provided through newspapers of general circulation and public information channels in the ~~Regional Solid Waste Management District or the Solid Waste Service Area, which is applicable~~ jurisdictional boundaries of the SEARSWMB.

b. ~~Review Period: -- The Southeast Arkansas Regional Solid Waste Management BoardSEARSWMB~~ 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 facility~~ is to be located; and 2) the date of final ~~Southeast Arkansas Regional Solid Waste Management BoardSEARSWMB~~ finding (normally sixty (60) days or less from the date of notification). The review period begins on the date established in ~~RULE Rule 9-~~, Paragraph a.

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c. ~~Public Comment Period: -- The Southeast Arkansas Regional Solid Waste Management BoardSEARSWMB~~ will accept written comments regarding an application for the period from the date of notification (~~RULE Rule 9-~~, Paragraph a-) through the close of business on the date of the public hearing (~~RULE Rule 9-~~, Paragraph f-) regarding the application for which notification was made.

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d. ~~Information Requirements: --~~ There is a provision for persons subject to a review to submit to the ~~Southeast Arkansas Regional Solid Waste Management BoardSEARSWMB~~ information that the ~~Southeast Arkansas Regional Solid Waste Management BoardSEARSWMB~~ requires relating to ~~RULE Rule 4-~~, Paragraph e-, Items 1-49. The form, manner, and content of the information will be as follows:

1. The applicant's petition for a Certificate of Need shall include:

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a. Applicant name, address, and telephone number;

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b. Contact person and telephone number;

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

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d. Description of geo-political jurisdictions to be served; including population estimates by jurisdiction;

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e. Documentation that the proposed solid waste facility complies with each of the criteria enumerated in Rule 4, Paragraph e, Items 1-9;

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

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g. Other information deemed necessary to make determination of need. (This information will be specified and requested of the applicant within two (2) 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 SEARSWMB.)

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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.

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e. Written Findings and Conditions – Written findings, including specific documentation, which states the basis for any final decision made by the SEARSWMB are required. When a Certificate of Need is to be issued, these findings will include the findings of need required by Rule 7. The SEARSWMB will not make its final decision subject to any condition unless the condition directly related to criteria established under Rule 4, Paragraphs c, d, e, and Rule 10 and/or criteria prescribed by regulation by the SEARSWMB in accordance with an authorization under State law.

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f. Public Hearing in the Course of Review: – -The ~~Southeast Arkansas Regional Solid Waste Management Board~~SEARSWMB will provide a public hearing during the course of review on each Certificate of Need application (before the ~~Southeast Arkansas Regional Solid Waste Management Board~~SEARSWMB makes it 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 Rule 9~~, Paragraph a, Item 2.

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g. Ex Parte Contacts: – -After the commencement of a public hearing under Paragraph e,f, of ~~RULE 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 on or employed by the SEARSWMB who exercises any responsibility respecting the application or withdrawal.

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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 specify the time the applicant will make application for a solid waste landfill facility permit to the Arkansas Department of Pollution Control and Ecology (ADPCE) DEQ, and a time, that if and when a permit is issued by the ADPCE DEQ, that construction will be completed and operation of the permitted solid waste facility is to begin. After issuance of a Certificate of Need, the Southeast Arkansas Regional Solid Waste Management Board SEARSWMB will periodically review the progress of the holder to the Certificate of Need in meeting the timetable specified in the approved application and report same to the ADPCE DEQ and the holder of a Certificate of Need. If on the basis of this review the Southeast Arkansas Regional Solid Waste Management Board SEARSWMB 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 Southeast Arkansas Regional Solid Waste Management Board SEARSWMB may withdraw the Certificate of Need. In withdrawing a Certificate of Need, the Southeast Arkansas Regional Solid Waste Management Board SEARSWMB will follow the procedures in Paragraph f: of this RULE Rule.~~

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i. Availability of Reports; Method of Obtaining Public Access: - ~~The Southeast Arkansas Regional Solid Waste Management Board SEARSWMB 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. For all applications resulting in the issuance of a solid waste facility permit by DEQ, the SEARSWMB will maintain, keep on file, and will provide access to the general public all applications reviewed by the SEARSWMB and to all other written materials essential to any review, for as long as the facility remains permitted by DEQ. All applications that do not result in the issuance of a solid waste facility permit by DEQ, 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 SEARSWMB's records retention policy.~~

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Rule 10. Criteria for Review of Certificate of Need Applications

The SEARSWMB 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;

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- 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 facility based on the needs within the jurisdictional boundaries and its highway and road system;
- e. The need for the solid waste facility 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 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;
- g. In the case of existing or previously permitted solid waste facilities, the quality of operation and compliance by those facilities in the past; and
- 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 SEARSWMB grants a Certificate of Need, the obligation for such approval shall be the submission of a pre-application to ~~Department of Pollution Control and Ecology (ADPCE) DEQ~~ within sixty (60) days of the date of the Certificate of Need. If after sixty (60) days a pre-application has not been submitted to ~~ADPCE-DEQ~~ then the Certificate of Need shall be withdrawn as prescribed in ~~RULE 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 ADPCEDEQ~~. ~~If-If~~ in the event a permit application is denied or approved by ~~the ADPCEDEQ~~, then the Certificate of Need, for which the permit was requested, becomes withdrawn.

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- 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.

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~~RULE Rule 12.~~ The Sixty (60)- Day Application Process for Certificate of Need Reviews

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

- a. ~~Letter-Notice~~ of Intent – A ~~letter~~notice of intent is required for every proposal to be reviewed. A potential applicant must submit a ~~letter-notice~~ of intent to the ~~Southeast Arkansas Regional Solid Waste Management BoardSEARSWMB~~ prior to submission of an application. (Refer to ~~RULE Rule 6.~~)
- b. Submission of Application ~~to DEQ~~ – 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 facility~~ permit. (Refer to ~~RULE Rule 9.~~, Paragraph d.)
- c. Determination of Completeness – The ~~Southeast Arkansas Regional Solid Waste Management BoardSEARSWMB~~ 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. If no requests for additional information are made by the ~~Southeast Arkansas Regional Solid Waste Management BoardSEARSWMB~~ within two (2) weeks, the application will be deemed to be complete and affected persons will be notified of the beginning of review. (Refer to ~~RULE Rule 9.~~, Paragraphs a. and d.)
- d. Beginning of Review – The initiation of the sixty (60) day review period begins on the date of notification by the ~~Southeast Arkansas Regional Solid Waste Management BoardSEARSWMB~~, 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. (Refer to ~~RULE Rule 9.~~, Paragraph a.)
- e. Notification of the Beginning of Review – Upon determination of completeness, the ~~Southeast Arkansas Regional Solid Waste Management BoardSEARSWMB~~ will notify, in writing, the applicant and all other

affected persons that the review period for the application has begun. (Refer to ~~RULE-Rule 9-~~, Paragraphs ~~a-~~ and ~~b-~~)

- f. Public Hearing During the Course of Review – The ~~Southeast Arkansas Regional Solid Waste Management Board~~SEARSWMB will provide a public hearing during the course of review. (Refer to ~~RULE-Rule 9-~~, Paragraph f.)
- g. ~~The SEARSWMB Findings – The Southeast Arkansas Regional Solid Waste Management Board~~SEARSWMB 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 to ~~RULE-Rule 9-~~, Paragraph f.) Such findings will be sent to:
 - 1. The applicant,
 - 2. ~~The Arkansas Department of Pollution Control and Ecology~~DEQ, and
 - 3. Others upon request.

~~RULE-Rule 13.~~ Appeals of Decision of the Southeast Arkansas Regional Solid Waste Management Board

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

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Adopted this _____ day of _____, 20__.

Judge Jim Hudson
SEARSWMB Chair

Attest
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.

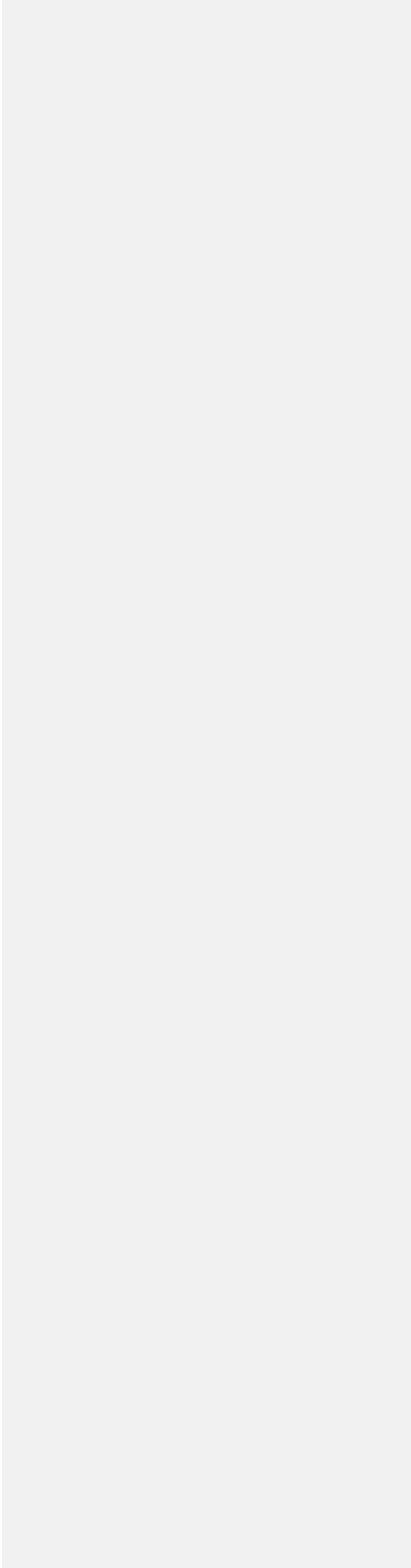
ARTICLE 4: The Board hereby authorizes its Chair to submit to the Office of the Arkansas Secretary of State the Policies, Procedure, and Criteria attached hereto as Attachment 1, to be placed on file in the Arkansas Register.

ADOPTED:

APPROVED: _____
 Jim Hudson, Chair
 SEARSWMB

ATTEST: _____
 Secretary
 SEARSWMB

MARK-UP





SOUTHEAST ARKANSAS
SOLID WASTE MANAGEMENT BOARD

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

_____, 2022

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CERTIFICATE OF NEED REVIEW FOR SOLID WASTE FACILITIES

Rule 1. Description

The Southeast Arkansas Regional Solid Waste Management Board (SEARSWMB) 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) or Section Nine (9), as applicable, of Act 870 of 1989, and its jurisdictional boundaries include: Arkansas, Ashley, Bradley, Chicot, Cleveland, Desha, Drew, Grant, Jefferson, and Lincoln Counties.

The State law referred to above provides that the SEARSWMB 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 the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ);
- 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 facility 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 Boards, and 2) 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; DEQ; the Regional Solid Waste Management Board (RSWMB) for the area in which the proposed solid waste facility is to be located; the RSWMB 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 Management District (RSWMD); and solid waste facility permittees having a permitted solid waste facility in the RSWMD in which the solid waste facility 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 SEARSWMB to an individual or organization proposing to obtain a solid waste facility permit for solid waste disposal or transfer. The certificate recognizes that such solid waste facility, 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 facility 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 SEARSWMB.

Certificate of Need Review:

Review of petitions for Certificates of Need where the solid waste facility, if permitted, will be located in this jurisdictional area. Under Arkansas Act 870 of 1989, RSWMBs are required to have the respective Board administer a Certificate of Need Review Program.

Solid Waste:

All putrescible and non-putrescible waste in solid or semi-solid form, including, but not limited to, yard and food waste, waste glass, waste metals, waste plastics, waste papers, waste paperboard and all other solid or semi-solid wastes resulting from industrial, commercial, agricultural, community and residential activities.

Solid Waste Facility:

A permitted landfill under the Arkansas Solid Waste Act, Ark. Code Ann. § 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. Facility also includes, except as limited above, 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 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.

Rule 3. Purpose and Applicability

- a. The SEARSWMB 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 SEARSWMB shall follow procedures and apply criteria developed in accordance with procedures and regulations herein.

Rule 4. General

- a. The SEARSWMB will administer a Certificate of Need Review Program within its jurisdictional boundaries.
- b. Only the SEARSWMB 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 SEARSWMB will take into account the findings enumerated in the Regional Needs Assessment Report applicable to the area where the solid waste facility site is proposed, and the criteria enumerated in Rule 4, Paragraphs c, d, e, and Rule 10.
- d. Each decision of the SEARSWMB to issue a Certificate of Need must be consistent with the Regional Needs Assessment.

- e. Each decision of the SEARSWMB to issue or deny a Certificate of Need must be based on documented evidence clearly indicating that the proposed solid waste facility:
- 1) Is consistent with the regional planning strategy adopted by the SEARSWMB in the Regional Needs Assessment or the Regional Solid Waste Management Plan;
 - 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;
 - 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;
 - 5) Does not conflict with the requirements of state laws, rules and regulations or federal laws, rules and regulations on the location of disposal facilities;
 - 6) If located in the hundred-year floodplain, does not restrict the flow of the hundred-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health or the environment;
 - 7) If the transfer station proposes to transfer waste outside of the RSWMD in which it is located, the petition shall also contain documentation that the district to which the waste will be transferred has been notified and that the board of that district has approved the receipt of the waste. This provision shall not apply if the waste is being transported for disposal outside the geographical limits of this state;
 - 8) Any other information deemed necessary by the Board; and
 - 9) Subject to DEQ Rule 22 and any amendment to DEQ Rule 22.

NOTE: The decision of the SEARSWMB to issue or deny a Certificate of Need shall not be based on any technical merits related to proposed or existing solid waste facilities.

Rule 5. Scope of Certificate of Need Program

The SEARSWMB 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. Following are the only types of permits that are reviewable under the Certificate of Need Program:

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

Rule 6. Notice of Intent

Before any person submits a petition for a Certificate of Need, that person must notify the SEARSWMB 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 solid waste facility permit;
- e. Site map of the proposed or existing solid waste facility, including precise legal description and total acreage;
- f. Description of the geo-political jurisdictions to be served by the solid waste facility, including population estimates by jurisdiction;
- g. Confirmation from DEQ 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;
- h. Type of waste expected to receive, amount, fees charged, projected income, new jobs created, source of waste, name of owner and operator if different that applicant; and

- i. Any other information deemed necessary by the Board.

Rule 7. Enforcement

The Certificate of Need Program provides that:

- a. 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(es) of permit under review exceed twenty-five (25) years at the time the “Notice of Intent” (Rule 6) is submitted.
- b. No Certificate of Need Application will be accepted for review unless a “Notice of Intent” has been filed in accordance with Rule 6.
- c. The SEARSWMB 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 SEARSWMB 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 SEARSWMB will mail a copy of the proposed revisions to DEQ at the time notice is provided pursuant to the following paragraph.

The SEARSWMB 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 SEARSWMB 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 SEARSWMB 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 SEARSWMB 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 requested

his name on the SEARSWMB mailing list maintained by the SEARSWMB. 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 a Certificate of Need may be reviewed.

- 1) For purposes of this paragraph, 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; and
 - 2) Written notification to affected persons will be made by fax, mail, or e-mail; and notification to members of the public will be provided through newspapers of general circulation and public information channels in the jurisdictional boundaries of the SEARSWMB.
- b. Review Period – The SEARSWMB 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 facility is to be located; and 2) the date of final SEARSWMB 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 SEARSWMB 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 SEARSWMB information that the SEARSWMB requires relating to Rule 4, Paragraph e, Items 1-9. 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 solid waste facility is located;
 - d. Description of geo-political 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 Rule 4, Paragraph e, Items 1-9;
 - 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 (2) 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 SEARSWMB.)
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 states the basis for any final decision made by the SEARSWMB are required. When a Certificate of Need is to be issued, these findings will include the findings of need required by Rule 7. The SEARSWMB will not make its final decision subject to any condition unless the condition directly related to criteria established under Rule 4, Paragraphs c, d, e, and Rule 10 and/or criteria prescribed by regulation by the SEARSWMB in accordance with an authorization under State law.
 - f. Public Hearing in the Course of Review – The SEARSWMB will provide a public hearing during the course of review on each Certificate of Need application (before the SEARSWMB makes its decision). 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 Rule 9, Paragraph a, Item 2.
 - g. Ex Parte Contacts – After the commencement of a public hearing under Paragraph f, 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 on or employed by the SEARSWMB 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 specify the time the applicant will make application for a solid waste facility permit to DEQ, and a time, that if and when a permit is issued by DEQ, that construction will be completed and operation of the permitted solid waste facility is to begin. After issuance of a Certificate of Need, the SEARSWMB will periodically review the progress of the holder to the Certificate of Need in meeting the timetable specified in the approved application and report same to the DEQ and the holder of a Certificate of Need. If on the basis of this review the SEARSWMB 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 SEARSWMB may withdraw the Certificate of Need. In withdrawing a Certificate of Need, the SEARSWMB will follow the procedures in Paragraph f of this Rule.
- i. Availability of Reports; Method of Obtaining Public Access – The SEARSWMB 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. For all applications resulting in the issuance of a solid waste facility permit by DEQ, the SEARSWMB will maintain, keep on file, and will provide access to the general public all applications reviewed by the SEARSWMB and to all other written materials essential to any review, for as long as the facility remains permitted by DEQ. All applications that do not result in the issuance of a solid waste facility permit by DEQ, 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 SEARSWMB’s records retention policy.

Rule 10. Criteria for Review of Certificate of Need Applications

The SEARSWMB 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 facility based on the needs within the jurisdictional boundaries and its highway and road system;
- e. The need for the solid waste facility 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 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;
- g. In the case of existing or previously permitted solid waste facilities, the quality of operation and compliance by those facilities in the past; and
- 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 SEARSWMB grants a Certificate of Need, the obligation for such approval shall be the submission of a pre-application to DEQ within sixty (60) days of the date of the Certificate of Need. If after sixty (60) days a pre-application has not been submitted to DEQ 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 DEQ. In the event a permit application is denied or approved by DEQ, 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 a Certificate of Need. Each step in the process must be completed prior to issuing or denying a Certificate of Need.

- a. Notice of Intent – A notice of intent is required for every proposal to be reviewed. A potential applicant must submit a notice of intent to the SEARSWMB prior to submission of an application. (Refer to Rule 6)
- b. Submission of Application to DEQ – 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. (Refer to Rule 9, Paragraph d)
- c. Determination of Completeness – The SEARSWMB 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. If no requests for additional information are made by the SEARSWMB within two (2) weeks, the application will be deemed to be complete and affected persons will be notified of the beginning of review. (Refer to Rule 9, Paragraphs a and d)
- d. Beginning of Review – The initiation of the sixty (60) day review period begins on the date of notification by the SEARSWMB, 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. (Refer to Rule 9, Paragraph a)
- e. Notification of the Beginning of Review – Upon determination of completeness, the SEARSWMB will notify, in writing, the applicant and all other affected persons that the review period for the application has begun. (Refer to Rule 9, Paragraphs a and b)
- f. Public Hearing During the Course of Review – The SEARSWMB will provide a public hearing during the course of review. (Refer to Rule 9, Paragraph f)

- g. The SEARSWMB Findings – The SEARSWMB 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 to Rule 9, Paragraph f) Such findings will be sent to:
 - 1. The applicant,
 - 2. DEQ, and
 - 3. Others upon request.

Rule 13. Appeals of Decision of the Southeast Arkansas Regional Solid Waste Management Board

- a. Any interested party to a Certificate of Need determination by a Board may appeal the decision to the Director of DEQ, pursuant to procedures adopted by the DEQ.

Adopted this _____ day of _____, 20__.

Judge Jim Hudson
SEARSWMB Chair

Attest
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:

Secretary
SEARSWMB

PUBLIC NOTICE FOR AMENDED POLICIES, PROCEDURES & CRITERIA FOR
ARKANSAS ACT 870 OF 1989 CERTIFICATE OF NEED REVIEW FOR SOLID WASTE
FACILITIES

The Southeast Arkansas Regional Solid Waste Management Board (SEARSWMB) consists of the following ten (10) counties: Arkansas, Ashley, Bradley, Chicot, Cleveland, Desha, Drew, Grant, Jefferson, and Lincoln. The SEARSWMB's Policies, Procedures and Criteria for Arkansas act 870 of 1989 Certificate of Need Review for Solid Waste Landfill Facilities was originally adopted in November, 1990. The SEARSWMB intends to amend this rule to include pages that were inadvertently excluded from the original rule and make some additional updates and corrections to the language of the rule. This amendment is necessary to comply with state laws governing the Certificate of Need Review by local solid waste management districts. The draft rule amendment that the SEARSWMB intends to adopt may be viewed at the SEARSWMB's administrative offices located in the Southeast Arkansas Economic Development District building at 721 South Walnut Street, Pine Bluff, Arkansas 71601.

Written comments may be delivered to the SEARSWMB administrative offices at 721 South Walnut Street, Pine Bluff, Arkansas 71601, or mailed to P.O. Box 6806, Pine Bluff, Arkansas 71611. Written and oral comments will be accepted until July 10, 2022. Questions and comments regarding the above, as well as oral comments on the rule amendment may be directed to Mr. Shane Knight at 870-536-1971.

A Public Hearing on the rule amendment will be held at the SEARSWMB administrative offices located at 721 South Walnut Street, Pine Bluff, Arkansas 71601, on July 11, 2022 at 10:00 a.m.