

ARKANSAS REGISTER

Transmittal Sheet

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For Office
Use Only:

Effective Date _____ Code Number _____

Name of Agency Southwest Central Regional Solid Waste Management District

Department _____

Contact Dan Turner E-mail dan@abt.us Phone 870-246-9844

Statutory Authority for Promulgating Rules ACA 8-6-704

Rule Title: Administrative Policies and Procedures

Intended Effective Date
(Check One)

Emergency (ACA 25-15-204)

30 Days After Filing (ACA 25-15-204)

Other _____
(Must be more than 30 days after filing date.)

Date

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Reviewed by Legislative Council Sept. 25, 2013

Adopted by State Agency Sept. 18, 2013

Electronic Copy of Rule submitted under ACA 25-15-218 by:

Dan Turner dan@abt.us 09-19-2013

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Signature

870-246-9844

Phone Number

dan@abt.us

E-mail Address

Counsel for SWCRSWMD

Title

Sept. 19, 2013

Date

SOUTHWEST CENTRAL REGIONAL SOLID WASTE MANAGEMENT DISTRICT

ADMINISTRATIVE POLICIES AND PROCEDURES

I. GENERAL

Sec. 1.01 Background

The Southwest Central Regional Solid Waste Management District (“SWCRSWMD” or “District”) was created by authority of Act 870 of 1989. The District includes Clark, Garland and Hot Spring counties.

Sec. 1.02 Authority

The District has authority over regional solid waste management and planning within the District. The powers and duties of SWCRSWMD are codified at Ark. Code Ann. § 8-6-704. Additionally, Ark. Code Ann. § 8-6-704(a)(6) authorizes regional solid waste management boards to adopt such rules or regulations pursuant to the Arkansas Administrative Procedures 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 otherwise administer the duties of the board.

Sec. 1.03 Definitions

For purposes of these regulations, the following definitions shall apply:

- (a) “APA” means the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 *et seq.*, as may be otherwise amended or modified from time to time.
- (b) “ADEQ” or “Department” means the Arkansas Department of Environmental Quality.
- (c) “Board” means the Board of Directors of the Southwest Central Regional Solid Waste Management District.
- (d) “Chairman” means the Chairman of the Board of Directors of the Southwest Central Regional Solid Waste Management District.
- (e) “Commission” means the Arkansas Pollution Control and Ecology Commission.

- (f) "Director" means the duly authorized chief administrative officer of the Southwest Central Regional Solid Waste Management District, regardless of the actual position title. The present administrator for the District is West Central Arkansas Planning and Development District.
- (g) "District" or "SWCRSWMD" means the Southwest Central Regional Solid Waste Management District.
- (h) "Person" means any individual, partnership, corporation, association or public or private organization of any character.
- (i) "Rule" means any District regulation, resolution 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. "Rule" does not include statements concerning internal management or intra-agency memoranda.
- (j) "Rulemaking Action" shall include any action by the District to adopt, amend or repeal any District Rule.

Sec. 1.04 Information and Access

Copies of information, minutes of prior meetings, resolutions, and other rules or information of the District are available for public inspection. Pursuant to Ark. Code Ann. § 25-15-203, such information may be obtain or review information, or make any submissions or requests pertaining to the District by contacting the administrator for the District – West Central Arkansas Planning and Development District.

Requests to review or submit information should be directed to:

Dwayne Pratt
Executive Director
WCAPPD, Inc.
P.O. Box 6409
Hot Springs, AR 71902
Phone: (501) 525-7577
Fax: (501) 525-7677

West Central Arkansas Planning and Development District may also be found on the web at wcapdd.dina.org. The District may charge such expenses as may be authorized by law in connection with preparation of copies.

II. PRACTICES AND PROCEDURES

Sec. 2.01 Proposed Rulemaking Action

At any Board meeting, the Board may adopt, amend, or repeal any Rule, consistent with the requirements of this Subchapter.

Sec. 2.02 Notice of Proposed Rulemaking Action

- (a) Notice of the proposed new rule or regulation, or amendment or repeal of any existing rule or regulation, shall be given to the public at least thirty (30) days prior to any proposed Rulemaking Action.
- (b) The notice shall state the substance of the proposed new rule, amendment or repeal or any existing rule and provide information on obtaining a copy of the proposed Rule from the District. The notice shall inform the public of the time, place and manner in which comments may be presented.
- (c) Notice shall also be mailed, via first class mail, to all persons who request advance notice, in writing, of any Rulemaking Action by the District.
- (d) Unless otherwise required by law, the notice shall be published in a newspaper or newspapers of general daily circulation within the District as selected by the Board in its discretion and shall run for three (3) consecutive days.
- (e) Together with any other required documentation, the notice and the proposed Rule shall also be provided to or filed with the Arkansas Secretary of State, the Bureau of Legislative Research, and such other agencies as may be required by the APA.

Sec. 2.03 Public Comment

The District shall afford any interested persons reasonable opportunity to submit written data, views, or arguments, orally or in writing.

Sec. 2.04 Public Hearing

- (a) The District may hold a public hearing to take oral comments from the public concerning any proposed Rulemaking Action.
- (b) The District must hold a hearing to accept oral comments from the public concerning any proposed Rulemaking Action if requested by twenty-five (25) persons, by a governmental subdivision or agency, or by an association having not less than twenty-five (25) members.

- (c) Should a public hearing be scheduled, notice of the hearing shall be made in the manner provided in Sec. 2.02.
- (d) Where regulations are required by law to be made on the record after opportunity for a hearing, the provisions of that law shall, as applicable, apply in place of these requirements.

Sec. 2.05 Final Action

- (a) At any Board meeting following the close of the public comment period and following a public hearing (if any is held), the Board may act on the proposed Rule by: adopting it as originally written; adopting a modified or amended version; or, rejecting the Rule.
- (b) The District shall fully consider all written and oral submissions pertaining to the Rulemaking Action before finalizing the language of the proposed Rule.
- (c) The Board reserves the right to re-issue any proposal for public comment following significant modifications.
- (d) Upon adoption of the Rule, the Board, if requested to do so by an interested person within thirty (30) days of adoption, shall issue a concise statement of the principal reasons for or against its adoption, and demonstrating that public comments were duly considered.

Sec. 2.06 Emergency Proceedings

Should the Board find that imminent peril to the public health, safety or welfare or compliance with state or federal laws requires adoption of a Rule upon fewer than thirty (30) days notice, and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to adopt an emergency Rule. Any emergency Rule so adopted may be effective for no longer than one hundred twenty (120) days.

Sec. 2.07 Petition for Rulemaking

Any person residing or doing business within the District may petition the Board for a Rulemaking Action. Within sixty (60) days after submission of a petition, the Board shall either deny the petition, stating in writing its reasons for denial, or shall initiate rulemaking proceedings. If no action is taken by the Board within sixty (60) days, the petitions shall be deemed to be denied, and the Board shall not be required to take any further action, except to state its reasons for denial, in writing within the (10) days after such denial is deemed to have occurred.

Sec. 2.08 Filing of Adopted Rule

The Board shall file with the Secretary of State, the Arkansas State Library, the Bureau of Legislative Research, and any other agency or legislative body as may be required by law, the adopted Rule, a statement of financial impact for the Rule and any other information or documents required by law.

Sec. 2.09 Effective Date

Each Rule adopted by the Board shall be effective thirty (30) days after filing unless a later date is specified by law or in the Rule itself. However, an emergency Rule may become effective immediately upon filing, or at a stated time less than thirty (30) days thereafter, if the Board finds that this effective date is necessary because of imminent peril to the public health, safety or welfare. The Board's finding and a brief statement of the reasons therefore shall be filed with the regulation or rule. The Board shall take appropriate measures to make emergency Rules known to the persons who may be affected by them.

Sec. 2.10 Certification of Rules or Regulations

A copy of any Rule adopted by the Board may be certified by signatures of the Chairman of the Board and Secretary, or by other such method as determined by the Board.

Sec. 2.11 Official Records

The District will maintain certified copies of every Rule adopted by the Board, and a copy of all other documents required to be filed by this Subchapter and, proof of all required filings. These copies shall be kept and maintained by the Director or offices of the administrator for the District. A copy of each notice of rulemaking shall also be kept on file by the Director or at the offices of the administrator for the District.

Sec. 2.12 Substantial Compliance

Every Rulemaking Action by the Board after the effective date of this Subchapter shall be effective if the Rulemaking Action substantially complies with this Subchapter. With the exception of maintenance and availability of records, this Subchapter shall not apply to rules or regulations previously adopted by the District prior to the effective date of this Subchapter.

Sec. 2.13 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.

Sec. 2.14 Severability

If any provisions 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.

III. ADJUDICATIONS

Sec. 3.01 General Procedures

Unless specifically set forth herein, the District shall follow the general procedures for Administrative adjudications as set forth in Ark. Code Ann. § 25-15-208.

Sec. 3.02 Assessment of Penalty

The Director, who shall keep a log of all complaints or violations as determined by the District, is granted the discretion and authority, to the extent permitted by Ark. Code Ann. § 8-6-701 *et seq.*, to assess monetary penalties for violations of District Rules as well as to revoke, suspend or deny a license or permit to any person for cause. No formal action regarding a complaint or violation, outlined below, may be taken until efforts have been made to resolve the violation or complaint informally and after the expiration of a twenty four (24) hour period granted by the Director to correct or remediate the complaint of violation.

Sec. 3.03 Form

- (a) Penalties shall be assessed by a written Administrative Order, signed by the Director or his or her authorized designee, and delivered to the person against whom the penalty is assessed, with the right to appeal and have a hearing as set out below.
- (b) Administrative Orders shall be delivered in person or by certified mail, return receipt requested, to the address of record at the District.
- (c) The Director has the discretion to attach a Consent Agreement to an Administrative Order and to enter into Consent Agreements to settle any Administrative Order.

Sec. 3.04 Request for Appeal

- (a) Within thirty (30) days of the receipt of any Administrative Order, the person against whom the Order was issued can request an appeal before the District Board, who may waive any penalty for a first offense based on the person's prior record.
- (b) The request for appeal must be in writing and received by the office of the administrator for the District no later than close of business thirty (30) days after the date of the Administrative Order. If the thirtieth day shall fall on a Saturday, Sunday, holiday, or other day that the office is closed, then the request shall be due by the close of business on the following business day.
- (c) Requests for appeal may be delivered to the office of the administrator for the District in person or by certified mail, return receipt requested.

Sec. 3.05 Appeal to Board

- (a) Persons who timely file a request for appeal shall be entitled to be heard at the first regularly scheduled Board meeting following their request for appeal, unless the request for hearing is received within fourteen (14) days prior to a scheduled Board meeting. In such an event, the appeal will be heard at the following regularly scheduled Board meeting.
- (b) Both sides may appear in person or by counsel. The District shall present their case first, followed by the appellant. Both sides may offer testimony and present evidence to be considered by the Board. Cross-examination shall be allowed as well as questioning by the Board.
- (c) The hearing shall be conducted by the presiding Chairman of the Board.
- (d) Conduct of the hearing shall be informal. The Chairman shall be entitled to use his or her discretion to allow, disallow or strike any evidence or testimony that they feel is irrelevant, unreliable or duplicative.
- (e) The hearing shall be recorded and either party may request a court reporter to develop a transcript of the hearing. This transcript, along with all evidence presented to and accepted by the Chairman shall make up the Administrative Record in that matter.
- (f) At the close of the hearing or as soon as practicable following same, the Board shall enter a written order. Each party shall be responsible for drafting proposed written orders to be submitted to the Board for consideration. Alternatively, the Board may draft its own order following the close of the hearing.

Sec. 3.06 Final Agency Action

The written order adopted by the Board shall be the final agency action for the purpose of appeal to Circuit Court. The Board shall deliver a copy of the written order to the appellant or appellant's counsel either in person or by regular mail.

Sec. 3.07 Appeals to Circuit Court

The appellant may appeal the final agency action of the Board to a circuit court in the appropriate county as required by the APA.

IV. DISTRICT BY-LAWS

Sec. 4.01 Creation and Amendment of By-Laws

The District's By-Laws were created and became effective on April 19, 1995. These by-laws may be amended or repealed by new by-laws which may be adopted by an affirmative vote of a majority or the entire Board of Directors at any regular or special meeting of the Board and as further set forth in the District's present By-Laws. A copy of these By-Laws is attached.