

POLICIES, PROCEDURES AND CRITERIA

FOR

CERTIFICATE OF NEED REVIEW

FOR

SOLID WASTE DISPOSAL FACILITIES

**SEBASTIAN COUNTY REGIONAL
SOLID WASTE MANAGEMENT BOARD**

Updated August 2000

RULE 1. Description

The Sebastian County Regional Solid Waste Management Board (“Board”) is the designated Board to conduct the solid waste planning and management responsibilities mandated by state law. This board has been duly designated under the terms and conditions prescribed in state law, and its jurisdictional boundaries include Sebastian County.

State law provides that the Board shall have the following powers and duties:

- A. Collect data, study and evaluate the solid waste management needs of all localities within this jurisdiction and 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 Assessment as least biennially;
- C. Formulate recommendations to all local governments within this jurisdiction on solid waste management issues, and formulate plans for providing adequate solid waste management;
- D. Issue or deny certificates of need to any applicant for a solid waste disposal facility permit within their district, with the exception of permits for landfills when a private industry bears the expense of operating and maintaining such landfill solely for disposal of waste generated by the industry or wastes of a similar kind or character;
- E. Adopt such rules or regulations as necessary to assure: 1) consistency of review and decision making procedures/criteria, and 2) public notice and participation in any findings or ruling of this Board; and
- F. Carry out all other powers and duties conferred by state law.

RULE 2. Definitions

As used herein, the terms listed below shall have the following meanings:

- A. “Affected persons” includes: the applicant, the Arkansas Department of Environmental Quality (“Department”); Regional Solid Waste Management Boards (“RSWMB’s”) and Solid Waste Service Area Boards (SWSAB’s”) having jurisdiction contiguous to the boundary of the proposed landfill; any persons residing within the geographic area designated by the application for use as a solid waste disposal facility site; and solid waste landfill permittees having a permitted solid waste landfill site in Sebastian County.

- B. “Interested Persons” means the agencies, institutions, and associations with which the Board must coordinate its activities; units of general local government within the county; regional multi-purpose planning bodies which represent such units with respect to solid waste disposal matters; and contiguous RSWMB’s and SWSAB’s.
- C. “Certificate of Need” means a certificate issued by the 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 and/or transfer station permit under the Arkansas Solid Waste Management Code. The Department may deny any permit based upon the denial of a Certificate of Need by any Board.
- D. “Certificate of Need Review” means review of petitions for Certificates of Need where the landfill to be permitted will be located in its jurisdictional area.
- E. “Solid Waste” means all putrescible and non-putrescible waste in solid or semi-solid form, including but not limited to: food wastes, waste glass, waste metals, waste plastics, waste papers, waste paperboard and all other solid and semi-solid waste resulting from industrial, commercial, agricultural, community and residential activities.
- F. “Landfill” means a permitted landfill under the Arkansas Solid Waste Management Act, codified at A.C.A. 8-6-201 et. seq. As used herein, the term does not include, however, 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 or waste of a similar kind.
- G. “Transfer Station” 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 Board will administer the Certificate of Need review Program which: 1) applies to the offering of new or increased solid waste landfill and/or transfer station disposal capacity within its jurisdictional boundaries, and 2) is consistent with the laws of the State of Arkansas.
- B. In performing its review functions, the Board shall follow procedures and apply criteria developed in accordance with procedures and regulations herein.

RULE 4. General

- A. The board will administer within Sebastian County a Certificate of Need Review Program.
- B. Only the Board will issue or deny Certificates of Need for proposed landfill and/or transfer station permits within Sebastian County.
- C. In issuing or denying Certificates of Need, the Board will take into account the finding enumerated in the Regional Needs Assessment Report applicable to the area where the landfill and/or transfer station site is being proposed, and the criteria enumerated herein in RULE 4, Paragraphs C, D, E, and RULE 10.
- D. Except in the case of emergency circumstances that pose an imminent threat to public health and safety, each decision of the Board to issue a Certificate of Need must be consistent with the Regional Needs Assessment.
- E. Each decision of the Board to issue or deny a Certificate of Need must be based on evidence that the proposed solid waste landfill and/or transfer station:
 - (1) Is consistent with the regional planning strategy adopted by the 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 of Arkansas, or federal facility, including but not limited to parks and wildlife management areas.

NOTE: The decision of the 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 and/or transfer stations.

RULE 5. Scope of Certificate of Need Program

The Board will conduct reviews for new or increased solid waste landfill and/or

transfer station capacity to be located or proposed to be located in Sebastian County and which are subject to review under the Certificate of Need Program. Certificates may be issued regarding:

- A. Permits for any new solid waste landfill and/or transfer station disposal site; or,
- B. Transfer of an existing solid waste landfill and/or transfer station disposal permit; or,
- C. Reclassification of an existing solid waste landfill and/or transfer station disposal permit.

RULE 6. Notice of Intent

At least thirty (30) days prior to submitting a petition for a Certificate of Need, the petitioner must notify the Board, in writing, of the intent to submit such petition. The information required in the "Notice of Intent" shall include:

- A. Name of applicant;
- B. Applicant's address and telephone number;
- C. Whether the applicant is seeking a new, or transfer or reclassification of an existing landfill and/or transfer station permit;
- D. Site of the proposed or existing solid waste landfill and/or transfer station;
- E. Description of the geo-political jurisdictions to be served by the landfill and/or transfer station, including population estimates by jurisdiction;
- F. Confirmation from the Arkansas Department of Environmental Quality ("ADEQ") that the applicant has requested a statement concerning the current and proposed solid waste landfill and/or transfer station disposal capacity respective to the service area and landfill class being proposed.

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 proposed service area and class(es)

of permit under review exceeds twenty-five (25) years at the time the "Notice of Intent" (See RULE 6 above) 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 above.
- (3) The Board will only issue a Certificate of Need where need is actually found to exist.

RULE 8. Adoption and Public Notice of Review Procedures and Criteria

Before the Board adopts any revisions to these review procedures and criteria, all interested persons will be given the opportunity to offer written comments on the proposed changes. The Board will mail a copy of the proposed revisions to ADEQ at the time notice is provided pursuant to the following paragraph.

The 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 revision to them, have been proposed for adoption and are available at the board office for inspection and copying.

RULE 9. Procedures for Review of Applications for Certificates of Need

- A. Notice of the beginning of a Review. Timely written notification will be sent to affected persons at the beginning of a review, and to any person or entity that has requested their name be included on the mailing list. Notification will include the proposed review period. (See RULE 9, Paragraph B).
 - (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 within the Board's jurisdiction;
 - (2) Written notification to members of the general public and to interested persons will be by publication in a newspaper of general circulation in Sebastian County or the proposed solid waste service area, whichever is applicable. Notification to all affected persons will be made by regular mail.
- B. Review Period. The 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 and/or transfer station is to be located; and 2) the date the Board will issue its final 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, supra .

C. Public Comment Period. From the date of notification (See RULE 9, Paragraph A, supra) through the close of business on the date of the public hearing (See RULE 9, Paragraph F, supra), the Board will accept written comments from any interested or affected party regarding the application for which notification was given.

D. Information Requirements. The Board may require any person or entity subject to a review to submit to the Board information that the board requires relating to RULE 4, Paragraph E., Items 1 - 4, supra. The form, manner, and content of the information will be as follows:

- (1) Applicant's name, address, and telephone number;
- (2) name of individual/organization having legal ownership of the land where the proposed site and/or existing landfill and/or transfer station is located;
- (3) Description of geo-political jurisdiction(s) to be served, including population estimates by jurisdiction;
- (4) Documentation that the proposed solid waste landfill and/or transfer station complies with each of the criteria enumerated in RULE 4, Paragraph E, Items 1 - 4, supra; and,
- (5) Other information deemed necessary to make a determination of need. (This information will be specified and requested of the applicant within two (2) weeks of receipt of the initial application.)

An application for a Certificate of Need will not be placed under review nor a notification of beginning of review will be made until or unless the application contains the information specified herein, and has been determined to be complete.

E. Written finding and Conditions. Written finding which state the basis for any final decision made by the Board are required. When a Certificate of Need is to be issued, these findings will include the findings of need required by RULE 7, supra. The 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, supra, and/or criteria prescribed by regulation by the Board in accordance with authorization under Arkansas law.

F. Public Hearing in the Course of Review. The Board will provide a public hearing during the course of review (before the board makes its decision).

The public hearing will be held in the county where the proposed 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, supra.

- G. Ex parte Contacts. After the commencement of a public hearing under Paragraph E of RULE 9, supra, and before a decision is made, there shall be no "ex parte" contacts between: the applicant or any person acting on behalf of the applicant (or any person opposed to the issuance or in favor of withdrawal of a Certificate of Need petition) and any member of the Board. This does not preclude a governmental official, who is on the Board, from communicating with officials or employees in his or her community or county when that community or county is an applicant of a Certificate of Need.

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 a request 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 disposal facility permit, and a time that if and when a permit is issued by ADEQ, construction will be completed and operation of the permitted facility is to begin. After issuance of a Certificate of Need, the Board will periodically review the progress of the holder of the Certificate of Need in meeting the timetable specified in the approved application and will report same to the ADEQ. If, on the basis of this review, the Board determines that the holder of the Certificate of Need is not meeting the timetable and is not making a good faith effort to meet it, the Board may withdraw the Certificate of Need. In withdrawing a Certificate of Need, the Board will follow the procedures set forth in RULE 9, Paragraph F, supra.

- I. Availability of Records: Methods of Obtaining Public Access. The Board will, upon written request, provide written notification of the status of the review of proposals, finding made in the course of the reviews, and other appropriate information respecting all reviews. The Board will maintain and keep on file, and will provide access by the general public to all applications reviewed by the Board and to all other written materials essential to any review.

RULE 10. Criteria for Review

The Board will utilize the following criteria in its review of petitions for Certificates of Need:

- A. RULE 4, Paragraphs C, D, and E, supra.
- B. The information provided by the applicant in the petition.
- C. The requirements and considerations of any Needs Assessments prepared pursuant to state law.
- D. The location of the applicant's proposed solid waste landfill and/or transfer station based on the jurisdiction's needs and its highway and road system.
- E. The need for the solid waste landfill and/or transfer station 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 of landfill 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 and/or transfer stations the quality of operation and compliance by those facilities in the past.
- H. Any Solid Waste Management System Plan, promulgated and approved pursuant to Act 237 of the 1971 Acts of Arkansas, and the extent to which such plan conforms to an overall regional planing strategy.

RULE 11. Continuous Effect of a Certificate of Need

- A. When the Board grants a Certificate of Need, the applicant shall be required to submit a pre-application to the 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 the ADEQ, then the Certificate of Need shall be withdrawn as prescribed in RULE 9, Paragraph F, supra.
- 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 with the ADEQ. If a permit application is denied or approved by the 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

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

- 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 board prior to submission of an application. (See RULE 6, supra).

- B. Submission of Application - 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 and/or transfer station permit. (See RULE 9, Paragraph D, supra).

- C. Determination of Completeness - The board will determine the completeness of an application, and, within two (2) weeks of receipt of an application, notify the applicant of any additional information necessary for completion of the application. If no requests for additional information are made by the Board within two (2) weeks, the application will be deemed to be complete and affected persons will be notified of the beginning of the review. (See RULE 9, Paragraphs A and D, supra).

- D. Beginning of Review - The initiation of the sixty (60) day review period begins on the date of notification by the Board, by certified letter, to the applicant of the completeness of the application and the beginning of the review, or, on the date that the public notice appears in the newspaper, whichever is later. (See RULE 9, Paragraph A, supra).

- E. Notification of the Beginning of Review - Upon determination of completeness, the Board will notify, in writing, the applicant and all other affected persons that the review period for the application has begun. (See RULE 9, Paragraphs A and B, supra)

- F. Public Hearing during the Course of Review - The Board will provide a public hearing during the course of review. (See RULE 9, Paragraph F, supra).

- G. Board Findings - the board will make a final determination on the application based on the established criteria and will provide written findings which state the basis for the final determination. (See RULE 9, paragraph F, supra). This determination will be made within sixty (60) days from the beginning of review. (See RULE 12, Paragraph D, supra). Such findings will be sent to:

- (1) The applicant;

- (2) The Arkansas Department of Environmental Quality; and,
- (3) Others upon written request.

RULE 13. Appeals of Decisions of the Sebastian County Regional solid Waste Management Board

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

Adopted on this 17TH day of AUGUST, 2000.



Chairman, SCRSWMD

Attest:



Secretary, SCRSWMD