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# Proposed Rulemaking

## Title

Promulgated by:  
Southwest Arkansas Regional Solid Waste Management District

### Title 8. Environmental Law

#### Chapter XVI. Southwest Central Regional Solid Waste Management District

##### Subchapter A. Generally

##### Part 332. General Rules

##### Subpart 1. Generally [Reserved]

##### Subpart 2. Licensing — Fees

#### **8 CAR § 332-201. Waste hauler license.**

(a) Under Acts 1991, No. 752, the Southwest Central Regional Solid Waste Management Board is required by law to enact and enforce a licensing program for all haulers who collect or transport solid waste in the Southwest Central Regional Solid Waste Management District.

(b)(1) By January 1 of each year, all current haulers subject to this program will be required to pay a minimum license fee which is initially set annually as follows:

<u>Non-Compacting Vehicles</u>	<u>Compacting Vehicles</u>	<u>Fee</u>
1 ton or less		\$25.00 each with a maximum of \$250.00

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Greater than 1 ton	1 ton or greater	\$50.00 each with a maximum of \$500.00
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(2)(A) Failure of any private solid waste hauler to obtain a license by January 1 of each year will result in doubling of the fee.

(B) Failure to obtain a license by February 1 of each year will result in the hauler being prohibited from using any permitted landfill facility used by the Southwest Central Regional Solid Waste Management District.

(3)(A) New haulers must obtain a license before collection of solid waste begins.

(B) If a new hauler is issued a license after January 1, the fees will be prorated based on the number of full months remaining in the calendar year.

(c) A person must obtain a license from West Central Arkansas Planning and Development District, Inc., P. O. Box 6409, Hot Springs, AR 71902, phone number (501) 525-7577, or come by the office at 1000 Central if he or she is engaged in the:

(1) Collection of solid waste within the Southwest Central Regional Solid Waste Management District; or

(2) Transportation of solid waste within or from the Southwest Central Regional Solid Waste Management District.

(d)(1)(A) All collection and transportation systems shall meet the conditions outlined below.

(B) Failure to comply with these conditions may result in a revocation of the hauler's license.

(2)(A) Solid waste shall be collected and transported so as to prevent:

- (i) Public health hazards;
- (ii) Environmental hazards;
- (iii) Safety hazards; and
- (iv) Nuisances.

(B) Collection and transportation equipment shall be designed and constructed so as to be leak-proof.

(C) The waste shall be suitably enclosed or covered so as to prevent:

- (i) Roadside littering;
- (ii) Attraction of vectors; or
- (iii) Creation of other nuisances.

(3) Collection and transportation vehicles shall be kept in sanitary condition.

(4)(A) Regular collection days shall be established as appropriate.

(B) Collection shall be performed as necessary.

(5) Appliances, furniture, and other solid waste which cannot be collected during regularly scheduled pickups shall be collected as frequently as necessary in accordance with the approved solid waste management system plan for the local government.

(6) Collection and transportation of chemicals, poisons, explosives, radiological wastes, and other hazardous materials shall be in accordance with the requirements of state and federal regulatory controls.

(7) All solid waste collected shall be transported to:

- (A) The designated landfill; or
- (B) An approved transfer station.

(8) Every hauler must display the one-year decal given at the time of licensing in the lower right corner of the windshield of the hauling vehicle.

(9) For all solid waste generated and transported within the state but to be disposed of outside the state, there is imposed on each such solid waste transporter a solid waste transportation fee of:

- (A) Twenty-five cents (25¢) for each uncompacted cubic yard of solid waste; and
- (B) Forty-five cents (45¢) for each compacted cubic yard of solid waste transported.

(e) If a solid waste transporter chooses to operate on a weight basis, the solid waste transporter fee shall be one dollar and fifty cents (\$1.50) for each ton of solid waste transported in the state.

(f) The above fees are:

(1) Over and above any fees imposed by the Southwest Central Regional Solid Waste Management District; and

(2) Due and payable to the Division of Environmental Quality.

(g) It is the responsibility of the landfill or transfer station operator to check the following prior to allowing the solid waste hauler to dispose at the landfill or transfer station:

(1) The solid waste vehicle must have a decal for the present year in the right-hand corner of the vehicle's windshield;

(2) The solid waste vehicle must be covered; and

(3) The solid waste vehicle must be leak-proof.

(h)(1) The operator of the landfill or transfer station is required to enforce the above-mentioned laws, as established by the General Assembly.

(2) Any vehicle arriving at the landfill that does not meet the above-mentioned obligations is to be turned away and refused disposal of his or her solid waste.

## **8 CAR § 332-202. District waste management fee.**

(a) **Definition of fee.**

(1) The Arkansas district waste management fee is a fee imposed by a designated regional solid waste management district within the State of Arkansas for the purpose of funding waste management programs, services, and infrastructure within the district's jurisdiction.

(2) The fee is applicable to the disposal or processing of solid waste within the regional solid waste management district.

(b) **Fee structure.**

(1) The fee shall be assessed on a per-ton basis and is payable by individuals, businesses, or other entities who dispose of waste within the jurisdiction of the Southwest Central Regional Solid Waste Management District.

(2) The exact amount of the fee shall be determined by the Southwest Central Regional Solid Waste Management District and may vary depending on the Southwest Central Regional Solid Waste Management District's operational needs and budgetary requirements, provided that such fee does not exceed the maximum allowable fee as prescribed by law.

(c) **Use of funds.** Revenues collected from the Arkansas district waste management fee shall be used exclusively for funding waste management services, including but not limited to:

- (1) Waste collection;
- (2) Transportation;
- (3) Recycling programs;
- (4) Landfill operations; and

(5) Other activities that support the Southwest Central Regional Solid Waste Management District's efforts to:

- (A) Ensure the efficient management of solid waste;
- (B) Protect public health; and
- (C) Comply with state and federal environmental rules and regulations.

(d) **Authority to adjust.**

(1) The Southwest Central Regional Solid Waste Management District shall have the authority to revise or adjust the Arkansas district waste management fee in accordance with applicable legal and regulatory procedures.

(2) Any changes to the fee structure must comply with the relevant provisions set forth by:

- (A) The Division of Environmental Quality; or
- (B) Other governing authorities.

(e) **Fee limitation.** The Arkansas district waste management fee shall not exceed two dollars (\$2.00) per ton of waste processed or disposed of within the Southwest

Central Regional Solid Waste Management District, unless otherwise approved by the appropriate regulatory authorities in accordance with state law.

### **Subpart 3. Rules Governing the Distribution and Administration of the Recycling Grants Program**

#### **8 CAR § 332-301. Recycling and waste reduction.**

(a) The Southwest Central Regional Solid Waste Management District finds that the recycling of glass, plastic, cans, paper, and other materials will reduce the State of Arkansas's reliance upon landfills.

(b) Additionally, other solid waste reduction activities will help reduce the state's dependence on landfills using waste items as raw materials in a production process, using waste items to produce an end product without recycling, using waste items as fuel, and other activities.

(c) "Solid waste reduction activities" means other activities that divert materials from landfills for reuse and disposal, including all of the above without limitation.

#### **8 CAR § 332-302. Eligible grant projects.**

Projects eligible for recycling grant assistance include without limitation costs for:

- (1) Solid waste management planning that integrates recycling;
- (2) Public information and education programs;
- (3) Waste transfer facilities and equipment that integrates recycling into the operation;
- (4) Other waste stream reduction activities that divert the flow of materials away from landfills to be used for:
  - (A) Beneficial use;
  - (B) Proper disposal; or
  - (C) Construction and demolition;
- (5) Activities that support a recycling system including without limitation:
  - (A) Operation;

- (B) Construction;
- (C) Logistical systems; and
- (D) Equipment; and

(6) Administrative expenses for operation of the Southwest Central Regional Solid Waste Management District recycling activities, not to exceed twenty-five percent (25%) of the allocated recycling grant funding.

### **8 CAR § 332-303. Reporting.**

(a)(1) Each recycling grant recipient shall, until all grant funds are expended on a project, provide the Southwest Central Regional Solid Waste Management District with an annual report of project activity.

(2) These reports shall be kept on file at the district office.

(b)(1) Each grantee shall provide a recycling activity survey for a period of five (5) years after a grant award to the district to be submitted to the Division of Environmental Quality due on August 1 of each year.

(2) The annual recycling activity survey shall include:

(A) The tonnage and type of materials collected; and

(B) Revenues produced from the sale of materials collected and total diversion savings calculated using total tons recycled multiplied by the respective landfill disposal tipping fee.

### **8 CAR § 332-304. Arkansas Administrative Procedure Act.**

(a) The Southwest Central Regional Solid Waste Management District shall ensure public participation and notice prior to any grant award.

(b) The district will follow and adopt policies that are based on the rules in keeping with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

(c)(1) A notice shall be published listing recycling grants and soliciting comments in a newspaper of general circulation prior to the grant award.

(2) The notice shall be published one (1) ~~timetime~~, but the comment period shall not be less than thirty (30) days from the date of publication.

## **Subpart 4. Certificate of Need Issuance Policy**

### **8 CAR § 332-401. Certificate of Need Requirement.**

Any applicant for a new solid waste facility permit or the modification of an existing solid waste facility permit to be located in whole or in part, within the geographic boundaries of the Southwest Central Regional Solid Waste Management District must obtain a Certificate of Need from the Southwest Central Regional Solid Waste Management District Board of Directors' prior to submitting the application to the Arkansas Division of Environmental Quality.

### **8 CAR § 332-402. Procedure for obtaining a Certificate of Need.**

#### (a) Notice of Intent

(1) At least fifteen (15) days prior to applying for a Certificate of Need, the Applicant must notify the Southwest Central Regional Solid Waste Management District, in writing, of its intent to submit such an application.

(2) The Notice of Intent shall include the following information:

(A) The name of the applicant; and

(B) The applicant's address and telephone number; and

(C) Whether the applicant is seeking a new or modified solid waste facility permit; and

(D) The classification of the permit sought, pursuant to Arkansas Pollution Control and Ecology Commission, Solid Waste Management Rules, 8 CAR 60.

#### (b) Application

(1) Applicants requesting a Certificate of Need from the Southwest Central Regional Solid Waste Management District Board of Directors' must submit an application to the Southwest Central Regional Management District which include, at minimum, the following information:

(A) The applicant's name, address and phone number; and



- (B) The name of the person having legal ownership of the land where the proposed facility will be located and documentation of applicant's right to develop such property as a solid waste facility from said legal owner; and
- (C) The location of the proposed facility as shown on the applicable United States Geological Survey topographic map or maps; and
- (D) The size of the proposed facility; and
- (E) The capacity of the proposed facility; and
- (F) A Description of the geopolitical jurisdictions to be served, including population estimates by jurisdiction; and
- (G) Documentation that the proposed solid waste facility or modification complies with all of the criteria for evaluation in **8 CAR § 332-XXX**; and
- (H) Any other information deemed necessary to decide of need or requested by the Southwest Central Regional Solid Waste Management District staff.

#### **8 CAR § 332-403. Completeness Determination.**

- (a) Within fourteen (14) days of receipt of the initial application, the Southwest Central Regional Solid Waste Management District staff will make a completeness determination of the application.
- (b) Any additional information required by the Southwest Central Regional Solid Waste Management District to decide on the need of the proposed facility will be requested during this time.
- (c) If additional information is requested by the Southwest Central Regional Solid Waste Management District staff, it will again make a completeness determination within fourteen (14) days of the receipt of the additional information.

#### **8 CAR § 332-404. Public Notice.**

- (a) When the Southwest Central Regional Solid Waste Management District staff has determined that an application for a Certificate of Need is complete, it shall give at least thirty (30) days' public notice to the Southwest Central Regional Solid

Waste Management District Board of Director's formal consideration of the Certificate of Need, during which the public may review and comment on the application.

(b) The public notice shall include all of the following:

(1) A brief summary of the proposed solid waste facility for which a Certificate of Need has been requested; and

(2) The date, time and place of the public hearing on the Certificate of Need.

(c) The notice shall be mailed to:

(1) Any person specified by law; and

(2) All person(s) who shall have requested advanced notice in writing of the Southwest Central Regional Solid Waste Management District Board of Directors' actions on Certificates of Need.

(d) Unless otherwise required by law, the notice shall be published in a newspaper, or newspapers of general daily circulation selected by the Southwest Central Regional Solid Waste Management District in its discretion.

#### **8 CAR § 332-405. Public Comment.**

The Southwest Central Regional Solid Waste Management District shall afford all interested person or persons a reasonable opportunity to submit written data, views or arguments, in writing, during the thirty-day Public Notice period.

#### **8 CAR § 332-406. Public Hearing.**

Prior to the Southwest Central Regional Solid Waste Management District Board of Director's formal consideration of an application for a Certificate of Need, the Southwest Central Regional Solid Waste Management District shall hold a hearing to accept oral or written comments from the public concerning the application.

## **8 CAR 332-407. Determination.**

(a) Before the Southwest Central Regional Solid Waste Management District Board of Directors' may issue a Certificate of Need, it must be determined that the applicant has demonstrated compliance with the following criteria:

\_\_\_\_\_ (1) That the proposed solid waste facility is consistent with the regional planning strategy adopted by the Southwest Central Regional Solid Waste Management District Board of Directors in the:

\_\_\_\_\_ (A) Regional Needs Assessment; or

\_\_\_\_\_ (B) Regional Solid Waste Management Plan.

\_\_\_\_\_ (2) That the proposed solid waste facility does not conflict with existing comprehensive land use plans of any local government entity;

\_\_\_\_\_ (3) That the proposed solid waste facility does not disturb:

\_\_\_\_\_ (A) any archeological site as recognized by the Arkansas Archeological Survey; and

\_\_\_\_\_ (B) A rare and endangered species habitat as recognized by the Arkansas State Game and Fish Commission or the United States Fish and Wildlife Service.

\_\_\_\_\_ (4) That the proposed solid waste facility will not adversely impact local ecological conservation efforts including, but not limited to, those known and unknown to the applicant;

\_\_\_\_\_ (5) that the proposed solid waste facility will not adversely affect the public use of any local, state or federal facilities including, but not limited to, parks and wildlife management areas;

\_\_\_\_\_ (6) that the proposed solid waste facility does not conflict with the requirements of State or Federal laws and rules applicable to the location of the proposed facility;

\_\_\_\_\_ (7) that the proposed solid waste facility does not restrict the flow of the hundred-year floodplain, reduce the temporary water storage capacity of the floodplain, or result in a washout of solid waste so as to pose a hazard to human health or the environment;

(8)(A) if the application is for a transfer station that proposes to transfer waste outside of the Southwest Central Regional Solid Waste Management District, the applicant must document that the District to which waste will be transferred has been notified and that the Board of the transferee-District has approved the receipt of such waste.

(8)(B) this provision does not apply if the waste is being transported for disposal outside the geographic limits of Arkansas.

(9) The applicant's detailed history and record, with respect to violations of Environmental Laws and Rules of the United States, or any State or Political Subdivision of a State, must demonstrate substantial compliance with such laws and rules;

(10) the location of the applicant's proposed solid waste facility shall be consistent with the Southwest Central Regional Solid Waste Management District's Needs and its Highway and road system; and

(11) If the application is for a landfill, the applicant must demonstrate a need based upon the Southwest Central Regional Solid Waste Management District's excess projected capacity that is currently permitted for operation, but in no event shall the Southwest Central Regional Solid Waste Management District's excess permitted projected capacity exceed thirty (30) years.

(b) At the Next Southwest Central Regional Solid Waste Management District Board of Directors' meeting, following the close of the thirty-day Public Notice period, as described in 8 CAR § 332-404. Public Notice, the Southwest Central Regional Solid Waste Management District Board of Directors will take up for consideration the application for a Certificate of Need.

(c) The executive director and/or administrative staff of the Southwest Central Regional Solid Waste Management District will decide on whether the applicant has met all requirements of the District's Certificate of Need Issuance policy and advise the Board accordingly.

(d) Person(s) supporting the issuance of the certificate of need and those opposing the issuance will be provided with a total of ten (10) minutes for each side to address the

staff's recommendation, which time may be extended equally by the Southwest Central Regional Solid Waste Management District Board of Directors when further presentation would aid the Southwest Central Regional Solid Waste Management District Board of Director's decision.

#### **8 CAR § 332-408. Board decision.**

(a) The Southwest Central Regional Solid Waste Management District shall issue a written decision setting forth its determination.

(b) the decision shall state the basis for issuing or denying the Certificate of Need.

(c) a copy of the written decision will be sent to the following:

(1) the applicant,

(2) the Arkansas Department of Environmental Quality (ADEQ), and

(3) any interested person or persons who makes a written request for a copy of the decision.

#### **8 CAR § 332-409. Appeal of decision.**

Any interested person or persons shall have the right to appeal the issuance or denial of a certificate of need to the Secretary of the Department of Energy and Environment in accordance with Arkansas Pollution Control and Ecology Commission rules governing such appeals.

#### **8 CAR § 332-410. Continuing effect.**

(a)(1) upon receipt of a certificate of need, the applicant has sixty (60) days in which to file a pre-application for a solid waste facility permit with the Department of Environmental Quality or the certificate of need shall become void.

(a)(2) upon receipt of a certificate of need, the applicant has six (6) months in which to file a permit application for a solid waste permit facility with the Department of Environmental Quality or the certificate of need shall become void.

(b) Certificates of need are issued to a specific person or persons and are not transferrable under any circumstances.