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Proposed Rulemaking

Title

Promulgated by:

Upper Southwest Regional Solid Waste Management District
Title 8. Environmental Law.

Chapter XVIII. Upper Southwest Regional Solid Waste Management District
Subchapter A. Generally
Part 370. Rules of the Upper Southwest Regional Solid Waste Management District
Subpart 1. Generally

8 CAR § 370-101. Description.

(a)(1) The Upper Southwest Regional Solid Waste Management Board is the designated board to conduct the solid waste planning and management responsibilities mandated in Arkansas Code § 8-6-704., as amended.

(2) The board has been duly designated under the terms and conditions prescribed in Arkansas Code § 8-6-703, as applicable, and its jurisdictional boundaries include those areas assigned to it by the Arkansas Pollution Control and Ecology Commission.

(b) Arkansas Code § 8-6-704, provides that the board shall have the following powers and duties:

(1) Collect data, study, and evaluate the solid waste management needs of all localities within the jurisdiction, as provided in Arkansas Code § 8-6-716, and publish findings as a regional needs assessment;

(2) Evaluate on a continuous basis the solid waste needs of the jurisdiction

and thereby update the regional needs assessments at least biennially or as required by the Division of Environmental Quality;

(3) Formulate recommendations to all local governments within the jurisdiction on solid waste management issues and formulate plans for providing adequate solid waste management;

(4) Issue or deny certificates of need to any applicant for a solid waste ~~disposal~~ facility permit within the jurisdiction;

(5) Adopt such rules as necessary to assure:

(A) Consistency of review and decision-making procedures and criteria among the members of the board, and

(B) Public notice and participation in any findings or rulings of the board; and

(6) Carry out all other powers and duties conferred by Arkansas Code § 8-6-704.

Subpart 2. Certificates of Need

8 CAR § 370-201. Definitions.

As used in this subpart:

(1) "Affected persons" means:

(A) The applicant;

(B) The Division of Environmental Quality;

(C) 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 ~~disposal~~ facility is to be located;

(D) RSWMBs and SWSABs having jurisdiction in contiguous areas to the location;

(E) 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

(F) Solid waste ~~disposal~~ facility permittees having a permitted solid waste ~~disposal~~ facility site in the RSWMD or SWSA in which the disposal facility is proposed to be located;

(2)(A) "Certificate of need" means a certificate issued by the Upper Southwest Regional Solid Waste Management Board to an individual or organization proposing to obtain a permit for a solid waste ~~disposal~~ facility.

(B) The certificate recognizes that such solid waste ~~disposal~~ facility, when available, will be needed by those for whom it is intended.

(C)(i) A certificate of need is a condition of application for a solid waste ~~disposal~~ facility permit under the Arkansas Pollution Control and Ecology Commission's Solid Waste Management Rules, 8 CAR pt. 60.

(ii) The ~~commission~~ Division of Environmental Quality may deny any permit based upon the denial of a certificate of need by the Upper Southwest Regional Solid Waste Management Board;

(3) "Certificate of need review" means review of petitions for certificates of need where the solid waste ~~disposal~~ facility, if permitted, will be located in the jurisdictional area of the Upper Southwest Regional Solid Waste Management District;

(4) "Household hazardous waste storage or processing center" shall have the meaning prescribed in Arkansas Code § 8-6-203;

(5) "Interested party" includes:

(A) The ~~Executive~~ Director of the ~~Upper Southwest Regional Solid Waste Management District~~ Division of Environmental Quality or his or her designee;

(B) The Upper Southwest Regional Solid Waste Management Board;

(C) The person making application to the Upper Southwest Regional Solid Waste Management Board; or

(D) Any person submitting written comments on the application within the public comment period;

(6) "Landfill" means a permitted landfill under the Arkansas Solid Waste

Management Act, Arkansas Code § 8-6-201 et seq., as amended, except those permitted landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry;

(7) "Solid waste" means all putrescible and nonputrescible wastes in solid, ~~or~~ semisolid, or liquid form, including, but not limited to, yard or food waste, waste glass, waste metals, waste plastics, wastepaper, waste paperboard, and all other solid ~~or~~and semisolid wastes resulting from industrial, commercial, agricultural, community, and residential activities, but does not include materials in the recycling process as defined in this section or post-use polymers and recovered feedstocks;

(8) "Solid waste facility" means any facility that:

(A) Holds or should hold a facility permit issued by the division; and

(B) Requires the issuance of a certificate of need from the RSWMB;

(9) "Solid waste recovery facility" has that same meaning ascribed to it under the Solid Waste Management Rules, 8 CAR pt. 60; and

(10) "Transfer station" means any facility used to manage the removal, segregation, processing, and transfer of solid waste from collection vehicles and containers and from other private and commercial vehicles to greater capacity transport vehicles.

8 CAR § 370-202. Purpose and applicability.

(a) The Upper Southwest Regional Solid Waste Management Board will administer the certificate of need review program, which:

(1) Applies to the offering of a new solid waste facility or increased permitted capacity of an existing landfill 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 the procedures and rules herein.

8 CAR § 370-203. Generally.

(a) The Upper Southwest Regional Solid Waste Management Board will administer

a certificate of need review program.

(b) Only the board will issue or deny certificates of need for solid waste facilities within its jurisdictional boundaries.

(c) In issuing or denying certificates of need, the board will take into account the:

(1) Findings enumerated in the regional needs assessment applicable to the area where the solid waste facility is proposed; and

(2) Criteria enumerated in this subsection, subsections (d) and (e) of this section, and 8 CAR § 370-209.

(d) 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 documented evidence clearly indicating that the proposed solid waste facility:

(1) Is consistent with the regional planning strategy adopted by the board 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:

(A) An archaeological site as recognized by the Arkansas Archeological Survey, or

(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; ~~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 and rules or federal laws 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 floor, 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; and

(7) If the transfer station proposes to transfer waste outside of the regional solid waste management district 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 of the geographical limits of this state.

(f) The decision of the board to issue or deny a certificate of need shall not be based on any technical merits related to the proposed or existing solid waste facilities.

8 CAR § 370-204. Scope of program.

(a) The Upper Southwest Regional Solid Waste Management Board will conduct reviews for applicable solid waste facilities to be located or proposed to be located in the Upper Southwest Regional Solid Waste Management District service area and which are subject to review under the certificate of need review program.

(b) The following are the only types of permits that are reviewable under the certificate of need review program:

(1) Permits for new:

(A) Landfills;

(B) Transfer stations;

(C) Household hazardous waste storage or processing centers; and

(D) Solid waste recovery facilities;

(2) Expansion of the permitted capacity of an existing landfill;

(3) Transfer of existing landfill permits;

(4) Reclassification of existing landfill permits; and

(5) Any other facility that requires a certificate of need under Arkansas law or rule.

8 CAR § 370-205. Notice of intent.

(a) Before any person submits a petition for a certificate of need, the person must notify the Upper Southwest Regional Solid Waste Management Board at least thirty (30)

days prior to the submission of said petition via a notice of intent.

(b) The information required in the notice of intent shall include:

(1) The name of the applicant;

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

(3) The contact person of the applicant and their telephone number and email address;

(4) Whether the applicant is seeking a new or modified solid waste facility permit and the classification of the permit sought;

(5) The site of the proposed or existing solid waste facility, including precise legal description and total acreage;

(6) A description of the geopolitical jurisdictions to be served by the solid waste facility, including population estimates by jurisdiction;

(7) For landfills, confirmation from the Division of Environmental Quality that the applicant has requested a statement concerning the current and projected landfill capacity respective to the area and landfill class being proposed; and

(8) Any other information deemed necessary by the board.

8 CAR § 370-206. Enforcement.

Under the certificate of need review program:

(1) No certificate of need application will be accepted nor will a certificate of need be issued to any applicant where the landfill capacity for the respective area and class or classes of permit under review exceeds twenty-five (25) years at the time of submission of the notice of intent described in 8 CAR § 370-205;

(2) No certificate of need application will be accepted for review unless a notice of intent has been filed in accordance with 8 CAR § 370-205; and

(3) The Upper Southwest Regional Solid Waste Management Board will only issue a certificate of need for applications that are found to be needed.

8 CAR § 370-207. Adoption and public notice of review procedure.

(a)(1) Before the Upper Southwest Regional Solid Waste Management Board

adopts this part, or any revisions to this part, persons will be given the opportunity to offer written comments on the part.

(2) The board will mail a copy of the proposed revisions to the Division of Environmental Quality at the time notice is provided pursuant to subsection (b) of this section.

(b) The board will publish, in one (1) or more newspapers of general circulation in the area of jurisdiction, a notice stating:

(1) That this part, or revisions to the same, has been proposed for adoption and are available at the board office for inspection and copying; and

(2) The date of the public hearing referred to in subsection (c) of this section.

(c)(1) Prior to the adoption of this part and any revisions to this part, the board shall conduct a public hearing not less than twenty (20) days before the effective date of adoption.

(2) The public hearing will be held in the county where the administrative office of the board is located.

8 CAR § 370-208. Procedures for review of certificates of need.

(a) **Notification of the beginning of a review.**

(1) Timely written notification of the beginning of a review of an application for a certificate of need shall be sent to all affected persons and to any person who has requested their name on the Upper Southwest Regional Solid Waste Management Board mailing list maintained by the board.

(2) The date of notification of the completeness of the petition will be considered the start of the review period.

(3) Notification will include the:

(A) Proposed review period under subsection (b) of this section;

(B) Date or dates of any scheduled or anticipated meetings and the public hearing to be held during the course of review; and

(C) Location where information related to the request for a certificate of need may be reviewed.

(4) For purposes of this subsection, 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.

(5) Written notification to affected persons will be made by fax, mail, or email, and notification to members of the public will be provided through a newspaper of general circulation and public information channels in the RSWMD, whichever is applicable.

(b) **Review period.** The board will establish a review period, which will include the:

(1) Date of the public hearing to be held in the county where the proposed solid waste landfill is to be located; and

(2) Date of the final board finding, normally sixty (60) days or less from the date of notification.

(c) **Public comment period.** The board will accept written comments regarding an application for the period from the date of notification through the close of business on the date of the public hearing regarding the application for which notification was made.

(d) **Information requirements.**

(1) The form, manner, and content of a petition for a certificate of need shall include:

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

(B) A contact person and telephone number;

(C) The name of the individual or entity having legal ownership of the land where the proposed site or existing landfill is located;

(D) A description of geopolitical 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 8 CAR §370-203(e);

(F) The amount of landfill capacity being proposed, stated in years, and a

description of how the capacity was calculated; and

(G)(i) Other information deemed necessary to make a determination of need.

(ii) This information will be specified to and requested of the applicant within two (2) weeks of receipt of the initial application.

(iii) The beginning of the review period will not commence until all information is on file with the board.

(2) An application for a certificate of need will not be placed under review, nor will notification of beginning of review be made, until or unless the application:

(A) Contains the information specified herein; and

(B) Has been determined to be complete.

(e) **Written findings and conditions.**

(1)(A) Written findings which state the basis for any final decision made by the board are required.

(B) When a certificate of need is to be issued, these findings will include a specific finding of need.

(2) The board will not make its final decision subject to any condition unless the condition directly relates to criteria established under 8 CAR § 370-203(c) – (e), 8 CAR § 370-209, or criteria prescribed by the rules of the board in accordance with an authorization under state law.

(f) **Public hearing in the course of review.**

(1) The board will provide a public hearing during the course of review on each certificate of need application and before the board makes its decision.

(2) 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 this section.

(g)(1) **Ex parte contacts.** After the commencement of a public hearing, and before a decision is made, there shall be no ex parte contacts between any person:

(A) Acting on behalf of the applicant; and

(B) On the board who exercises any responsibility respecting the

application or withdrawal.

(2) For purposes of this subsection, 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.**

(1) An applicant for a certificate of need will specify:

(A) The time the applicant will make an application for a solid waste facility permit to the Division of Environmental Quality; and

(B) A time that if and when a permit is issued by the same, that construction will be completed and operation of the permitted facility is to begin.

(2) 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 report the same to the division and permit holder.

(3)(A) If on the basis of this review, the board determined 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.

(B) In the withdrawal of a certificate of need, the board will follow the procedures outlined in this section.

(i) **Availability of reports — Methods of obtaining public access.**

(1) The board will provide upon request:

(A) Notification of the status of the review of proposals;

(B) Findings made in the course of the reviews; and

(C) Other appropriate information respecting all reviews.

(2) The board will maintain and keep on file, and will provide access to the general public all:

(A) Applications reviewed by the board; and

(B) Other written materials essential to any review.

8 CAR § 370-209. Criteria for review of certificate of need applications.

The Upper Southwest Regional Solid Waste Management Board will utilize the following criteria in its review of petitions for certificates of need:

(1) The criteria outlined in 8 CAR § 370-203(c) – (e);

(2) The information provided by the applicant in the petition;

(3) The requirements and considerations of any needs assessments prepared pursuant to Arkansas Code § 8-6-706;

(4) The location of the applicant's proposed solid waste facility based on jurisdiction needs and its highway and road system;

(5) For landfills:

(A) The need for the solid waste landfill based upon the jurisdiction's excess projected capacity which is currently permitted for operation; and

(B)That the approval of the certificate of need and resulting increase in landfill capacity for the respective class does not cause the jurisdiction's excess projected capacity for that class to exceed thirty (30) years;

(6) In the case of existing or previously permitted landfills, the quality of operation and compliance by those facilities in the past; and

(7) Any solid waste management system plan promulgated and approved pursuant to the Arkansas Solid Waste Management Act, and the extent the plan conforms to the overall regional planning strategy.

8 CAR § 370-210. Continuing effect of a certificate of need.

(a)(1) When the Upper Southwest Regional Solid Waste Management Board grants a certificate of need, the obligation for such approval shall be the submission of a preapplication to the Division of Environmental Quality within sixty (60) days of the date of the certificate of need.

(2) If after sixty (60) days a preapplication has not been submitted to the division, then the certificate of need shall be deemed withdrawn.

(b)(1) 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 of need was issued is pending and active with the division.

(2) In the event a permit application is denied or approved by the division, 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.

8 CAR § 370-211. Application process.

(a) The following is a summary of the process for submitting and the progression of an application for a certificate of need.

(b) Each step in the process must be completed prior to issuing or denying a certificate of need:

(1) **Notice of intent.**

(A) A notice of intent is required for every proposal to be reviewed.

(B) A potential applicant must submit a notice of intent to the Upper Southwest Regional Solid Waste Management Board prior to submission of an application;

(2) **Submission of application to the Division of Environmental Quality.** 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;

(3) **Determination of completeness.**

(A) The board will determine the completeness of an application, and within two (2) weeks of receipt of a petition, notify the applicant of any additional information necessary for completion of the application.

(B) If no request for additional information is 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 review;

(4) **Beginning of review.** The initiation of the sixty-day review period begins on the date of notification by the board by letter to the applicant of the completeness of the application and the beginning of the review or the date that public notice appears in

the newspapers, whichever is later;

(5) **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;

(6) **Public hearing during course of review.** The board will provide a public hearing during the course of review; and

(7) **Board findings.**

(A) 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.

(B) Such findings will be sent to:

(i) The applicant;

(ii) The division; and

(iii) Others upon request.

8 CAR § 370-212. Appeals of decision of the board.

Any interested party to a certificate of need determination by the Upper Southwest Regional Solid Waste Management Board may appeal the decision to the ~~Executive~~ Director of the Division of Environmental Quality, pursuant to procedures adopted by the Arkansas Pollution Control and Ecology Commission, Administrative Procedures 8 CAR pt. 11.

Subpart 3. Waste Hauler Program

8 CAR § 370-301. Licensing of solid waste haulers.

(a) Any person engaged in the business of hauling solid waste within the Upper Southwest Regional Solid Waste Management District must obtain a license if the person or entity is engaged in the:

(1) Collection of solid waste within the jurisdictional boundaries; or

(2) Transportation of solid waste for the disposal or storage in the jurisdictional boundaries.

(b) A license shall not be required for an individual hauling their own household waste to a permitted disposal facility.

(c)(1) A license shall be issued only to:

(A) An individual;

(B) A partnership;

(C) A corporation;

(D) An association;

(E) A political subdivision of the state;

(F) An improvement district;

(G) A sanitation authority; or

(H) Another solid waste management district.

(2) The Upper Southwest Regional Solid Waste Management District may engage in the hauling or collection of solid waste within the Upper Southwest Regional Solid Waste Management District without licensure, but shall comply with all other applicable requirements.

8 CAR § 370-302. Classification of haulers.

Classification of haulers shall be as follows:

(1) A Type I hauler hauls all categories of nonhazardous solid waste as identified in the Solid Waste Management Rules, 8 CAR pt. 60, with the exception of waste tires; and

(2) A Type II hauler hauls only process waste and special materials as identified in the Solid Waste Management Rules, 8 CAR pt. 60, with the exception of waste tires.

8 CAR § 370-303. Financial responsibility.

Any person applying for a license to haul solid waste must establish financial responsibility.

8 CAR § 370-304. Contents of application.

Any application for a solid waste hauler license must contain:

(1) The name, address, and telephone number of the person hauling waste;

(2) A description of the waste handled;

(3) The name and address of the disposal facility;

(4) The make, model, and year of vehicle, last four (4) digits of the vehicle identification number, load capacity, internal vehicle identification number, if applicable, license plate number, and the name of the registered vehicle owner;

(5) Proof of liability insurance; and

(6) The sizes of loads hauled.

8 CAR § 370-305. License number.

A license number will be assigned to each truck as the applications are reviewed and the hauler will be notified of this number.

8 CAR § 370-306. Renewal or amendment of licensing information.

(a) Each holder of a solid waste hauler license within the Upper Southwest Regional Solid Waste Management District must:

(1) Update its licensing information at least annually; and

(2) Amend its information as needed throughout the year.

(b) Information that must be updated or amended includes the:

(1) Addition of another vehicle; or

(2) Addition or deletion of a driver.

8 CAR § 370-307. Transportation of waste.

All vehicles utilized by solid waste haulers in the course of their duties:

(1) Must be equipped with leak-proof containers to avoid run out of liquids; and

(2) Shall be covered to prevent the loss of garbage or other solid waste

material onto the roadways.

8 CAR § 370-308. Fees.

(a) Each applicant is responsible for the disposal fees named in the Rules for Solid Waste Disposal Fees – Landfill Post-Closure Trust Fund – Solid Waste Management and Recycling Fund Distribution – Recycling Grant Programs, 8 CAR pt. 61.

(b)(1) If the waste is transported to the Upper Southwest Regional Solid Waste Management District facility for disposal, the tipping fees will be included in the district's quarterly report that is paid to the Division of Environmental Quality by the facility.

(2) If the waste is hauled out of the State of Arkansas, the hauler is responsible for the quarterly reports and fees.

Subpart 4. Waste Flow Control

8 CAR § 370-401. Authority

(a) Arkansas Code § 8-6-701 et seq. designates each regional solid waste management board as the governmental entity primarily responsible for providing a solid waste management system for each regional solid waste management district.

(b) Each regional solid waste management district is responsible for evaluating the solid waste management needs of and developing solid waste management plans for the regional solid waste management district.

(c) Additionally, the regional solid waste management districts are authorized to require by rule that solid waste generated or collected within the boundaries of each regional solid waste management district be delivered to a particular location for disposal, treatment, or other handling.

8 CAR § 370-402. Purpose.

(a) The Upper Southwest Regional Solid Waste Management District operates a permitted regional municipal solid waste landfill in Howard County to serve the needs of the district.

(b) Continued operation of the landfill is financed primarily by revenue bonds, repayment of which depends on the volume of waste delivered to the landfill.

(c) The efficient and cost-effective operation of the landfill depends on a consistent, reliable source of waste delivered to the landfill for disposal.

8 CAR § 370-403. Definitions.

As used in this subpart:

(1) "Landfill" or "regional landfill" means the permitted regional solid waste landfill located in Howard County; and

(2) "Solid waste" means all putrescible and nonputrescible wastes which are permitted by law to be accepted for disposal at the permitted regional solid waste landfill to be located in Howard County.

8 CAR § 370-404. Waste flow.

All solid waste collected, treated, or otherwise handled by any county, city, or other municipality within the Upper Southwest Regional Solid Waste Management District shall be delivered to the district for treatment or disposal at the regional landfill unless specifically excepted in this subpart.

8 CAR § 370-405. Exceptions.

(a) **Class 4 Waste.** Inert, nonputrescible wastes which may be legally disposed of in a Class 4 landfill, as further described in the Solid Waste Management Rules, 8 CAR pt. 60, are not subject to this subpart and may be collected, treated, or otherwise handled in any manner allowed by law.

(b) **City of Hope.** Solid waste generated by the City of Hope, Arkansas, or generated within the corporate boundaries of the City of Hope may be collected, treated, or otherwise handled as directed by the City of Hope, including ultimate disposal at the municipal landfill operated by the City of Hope.

8 CAR § 370-406. Prohibitions.

Except as specifically provided in this subpart:

(1) The disposal of solid waste generated within the Upper Southwest Regional Solid Waste Management District at any other place or in any other manner except at the regional landfill is prohibited; and

(2) No other landfill shall operate within the district for the purpose of accepting solid waste generated within the district, and no other landfill shall accept solid waste generated within the boundaries of the district.

8 CAR § 370-407. No restriction of sources.

Nothing in this subpart shall be construed to prohibit or restrict the Upper Southwest Regional Solid Waste Management District from accepting solid waste from any source allowable by law.

8 CAR § 370-408. Private industry landfills not affected.

Nothing in this subpart shall be construed to prohibit or restrict the disposal of solid waste generated by a private industry in a permitted landfill where the private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry.

8 CAR § 370-409. Class 4 landfills not affected.

Nothing in this subpart shall be construed to prohibit or restrict:

(1) The disposal of Class 4 waste, as defined in the Solid Waste Management Rules, 8 CAR pt. 60, in a permitted Class 4 landfill facility other than the regional landfill; and

(2) Another permitted Class 4 landfill from operating within the Upper Southwest Regional Solid Waste Management District for the purpose of accepting solid waste which may legally be disposed of at a Class 4 landfill.

8 CAR § 370-410. Recyclable materials.

Nothing in this subpart shall prohibit:

(1) A municipality or county from constructing or operating a facility or project to process and market recyclable materials for use as fuel; and

(2) Any county, city, municipality, business, person, or other entity from collecting, transporting, or processing recycling materials from the solid waste stream that can be recovered for reuse in present or reprocessed form, provided that such recycling activities are conducted in compliance with a plan or project approved in advance by the Upper Southwest Regional Solid Waste Management Board.

8 CAR § 370-411. Responsibility for lost revenues.

(a) Any county, city, municipality, business, person, or other entity which generates, collects, transports, or accepts solid waste and which causes or allows said solid waste to be disposed of at a place or in a manner prohibited by this subpart shall be liable to the Upper Southwest Regional Solid Waste Management District for all costs and fees which would have been due to the district had the solid waste been disposed of at the regional landfill.

(b) Any person or other entity liable to the district for lost revenue shall reimburse the district for all damages, costs, and expenses, including attorneys' fees, expended by the district in the collection of said lost revenue.

8 CAR § 370-412. Rents, fees, and charges.

(a) Rents, fees, and charges associated with the collection, handling, or disposal of solid waste by the Upper Southwest Regional Solid Waste Management District shall be set by the Upper Southwest Regional Solid Waste Management Board and may be changed from time to time at the discretion of the board.

(b) The Executive Director of the Upper Southwest Regional Solid Waste Management Board may establish haul fees and waste container fees on a case-by-case basis, depending on each job's time requirement and distance from the regional landfill.

8 CAR § 370-413. Pledging of revenues.

The revenue stream generated by solid waste to be collected, handled, or disposed of by the Upper Southwest Regional Solid Waste Management District as described herein shall be pledged in connection with the issuance of bonds, notes, or other evidence of indebtedness, which will be issued to fund construction and operation of the regional landfill.

8 CAR § 370-414. Irrevocability.

This subpart shall remain in full force and effect and shall be enforced so long as any bonds, notes, or other evidence of indebtedness remain outstanding, the repayment of which has been secured by a pledge of the revenue stream as described herein.

8 CAR § 370-415. Severability.

If any provision of this subpart or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the subpart which can be given effect without the invalid provision or application, and to this end, the provisions of this subpart are declared to be severable