

CERTIFICATES OF NEED FOR SOLID WASTE MANAGEMENT FACILITIES

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Procedure for Obtaining a Certificate of Need.

Subchapter 1

General.

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§1.01 Authority and Purpose

Ark. Code Ann. § 8-6-706 (Supp. 1999) requires all applicants for a Solid Waste landfill or transfer station permit to obtain a Certificate of Need from the Regional Solid Waste Management Board with jurisdiction over the proposed site prior to submitting the application to the Arkansas Department of Environmental Quality. The purpose of this Chapter is to establish standards and procedures for the issuance of Certificates of Need in the Pulaski County Regional Solid Waste Management District.

§1.02 Definitions

As used in this Chapter, the following definitions shall apply:

(a) “Certificate of Need” means a certificate issued by the Board to any Person proposing to obtain a permit for a solid waste management facility.

(b) “Certificate of Need Review” means review of the application for a Certificate of Need.

(c) “Interested Persons” means the applicant and any persons who submit public comments during the Public Comment period either in writing or verbally at the public hearing.

(d) “Landfill” means a permitted landfill under the Arkansas Solid Waste Management Act Arkansas Code §8-6-201 *et seq.* and does not include permitted landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry.

(e) “Solid Waste” means all putrescible and nonputrescible wastes in solid, 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 and

semisolid wastes resulting from industrial, commercial, agricultural, community, and residential activities, but does not include materials in the recycling process as the same are defined in Ark. Code Ann. § 8-6-702.

(f) “Solid Waste Facility” means a landfill or transfer station required to obtain a Certificate of Need from the Board pursuant to Ark. Code Ann. § 8-6-706.

§1.03 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 District must obtain a Certificate of Need from the Board prior to submitting the application to the Arkansas Department of Environmental Quality.

CHAPTER D: CERTIFICATES OF NEED FOR SOLID WASTE MANAGEMENT

Subchapter 2 Procedure for Obtaining a Certificate of Need.

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§2.01 Notice of Intent

At least fifteen (15) days prior to submitting an application for a Certificate of Need, the applicant must notify the District, in writing, of its intent to submit such an application. The Notice of Intent shall include the following information:

- (a) The name of the applicant;
- (b) The applicant’s address and telephone number; and
- (c) Whether the applicant is seeking a new or modified Solid Waste Facility permit and the classification of the permit sought.

§2.02 Application Procedure

Persons requesting a Certificate of Need from the Board must submit an application to the District. All applications for Certificates of Need shall include, at a minimum, the

following information:

- (a) The applicant's name, address and telephone number;
- (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 the legal owner;
- (c) The location of the proposed facility as shown on the applicable USGS topographic map(s);
- (d) The size of the proposed facility and capacity;
- (e) A description of the geo-political jurisdictions to be served, including population estimates by jurisdiction;
- (f) Documentation that the proposed Solid Waste Facility or modification complies with all of the criteria for evaluation in Section 2.07 of this Subchapter; and
- (g) Any other information deemed necessary to make a determination of need, or requested by the Board.

§2.03 Completeness Determination

Within fourteen (14) days of receipt of the initial application, the District staff will make a completeness determination of the application. Any additional information required by the District to make a decision on the need of the proposed facility will be requested within this time. If additional information is requested by the District, it will again make a completeness determination within fourteen (14) days of the receipt of the additional information.

§2.04 Public Notice

(a) When the District has determined that an application for a Certificate of Need is complete, it shall give at least thirty (30) days public notice prior to the Board's formal consideration of the Certificate of Need, during which period the public may review and comment on the application.

(b) The notice shall include a brief summary of the proposed Solid Waste Facility for which a Certificate of Need has been requested. The notice also shall state the date, time, and place of the public hearing on the Certificate of Need.

(c) The notice shall be mailed to any person specified by law and to all persons who shall have requested advance notice in writing of the Board's actions on Certificates of Need.

(d) Unless otherwise required by law, the notice shall be published in a newspaper(s) of general daily circulation selected by the District in its discretion,

§2.05 Public Comment

The District shall afford all interested persons reasonable opportunity to submit written data, views, or arguments, orally or in writing, during the thirty (30) day public notice period.

§2.06 Public Hearing

Prior to the Board's formal consideration of an application for Certificate of Need, the District shall hold a hearing to accept oral and written comments from the public concerning the application.

§2.07 Determination

(a) Before the Board may issue a Certificate of Need, it must determine 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 Board in the regional needs assessment or 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 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 United States Fish and Wildlife Service;
- (4) That the proposed Solid Waste Facility will not adversely impact Conservation Priority Sites (highest, high, and medium) identified in the District's most recently adopted edition of the Ecological Assessment of Pulaski County, AR.**
- (5) That the proposed Solid Waste Facility will not adversely affect the public use of any local, state or federal facility 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 regulations applicable to the location of the proposed facility; and

- (7) That the proposed Solid Waste Facility does not restrict the flow of the 100-year flood plain, reduce the temporary water storage capacity of the flood plain or result in a washout of solid waste so as to pose a hazard to human health or the environment.
- (8) If the application is for a transfer station that proposes to transfer waste outside of the 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. 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 regulation of the United States, or any state or political subdivision of a state, must demonstrate substantial compliance with such laws and regulations.
- (10) The location of the applicant's proposed Solid Waste Facility shall be consistent with the District's needs and its highway and road system.
- (11) If the application is for a landfill, the applicant must demonstrate a need based upon the District's excess projected capacity which is currently permitted for operation, but in no event shall the District's excess permitted projected capacity exceed thirty (30) years.

(b) At the next Board Meeting, following the close of the thirty (30) day public Notice period described in this Subchapter, the Board will take up for consideration the application for a Certificate of Need. The Director shall present a recommended action to the Board. Those supporting the issuance of the Certificate of Need and those opposing the issuance of the Certificate of Need will be provided with a total of ten (10) minutes for each side to address the Director's recommendation.

(c) The District shall issue a written decision setting forth its determination. The decision shall state the basis for issuing or denying the Certificate of Need. A copy of the decision will be sent to the following:

- (1) the applicant;
- (2) Arkansas Department of Environmental Quality; and
- (3) Any Interested Person who makes a written request for a copy of the decision.

§2.08 Appeal of Decision

Any interested Person shall have the right to appeal the issuance or denial of a Certificate of Need to the Director of the Arkansas Department of Environmental quality in accordance with Commission regulations governing such appeals.

§2.09 Continuing Effect

(a) 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 Arkansas Department of Environmental Quality, or the Certificate of Need shall become void.

(b) Upon receipt of a Certificate of Need, the applicant has six (6) months in which to file a permit application for a Solid Waste Facility permit with the Arkansas Department of Environmental Quality, or the Certificate of Need shall become void.

(c) Certificates of Need are issued to a specific Person and are not transferable under any circumstances.