

Special Report

Arkansas Legislative Audit

Review of Selected Policies, Procedures, and Transactions Six Regional Solid Waste Management Districts

For the Period July 1, 2021 through December 31, 2022



INTRODUCTION

This report is issued pursuant to Ark. Code Ann. § 8-6-704, which requires Arkansas Legislative Audit (ALA) to review selected policies, procedures, and transactions of Arkansas’s regional solid waste management districts (Districts). For this report, ALA randomly selected six Districts for review. The locations of the 19 Districts in the State are shown in **Exhibit I on page 2**.

OBJECTIVES

The objectives of this review were to determine if the Districts adhered to laws and regulations pertaining to Districts and their Boards of Directors (Boards); competitive bidding; payroll; landfill use; and transactions involving Board members, administrators, and employees. Other objectives were to assess internal control processes related to cash, revenues, receipting, and disbursements.

Objectives unique to the Ozark Mountain District were to determine the status of various ongoing legal matters involving the District, the default on bonds issued for acquisition of the Nabors Landfill, and an annual service fee assessed on all residential and business parcels within the District.

SCOPE AND METHODOLOGY

The review was conducted for the fiscal year ended June 30, 2022, for the Southeast Arkansas, Central Arkansas, and Ozark Mountain Districts and for the calendar year ended December 31, 2022, for the Mississippi County, Sebastian County, and Saline County Districts. For each District randomly selected, ALA staff reviewed minutes of Board meetings; pertinent policies, contracts, bank statements, journal entries, expenditure and payroll records, travel expense reimbursements, and credit card and purchasing card (P-card) payments to vendors; related party transactions; applicable Arkansas Code; and audit reports issued by private certified public accounting (CPA) firms. In addition, certain internal control procedures were assessed for adequacy, and key personnel were interviewed.

Several issues for the Ozark Mountain District revealed in a prior report¹ were reviewed and the current status determined, primarily for the period September 1, 2021 through August 30, 2024.

¹All references to a “prior report” indicate content contained in the Special Report – Review of Selected Policies, Procedure, and Transactions – Seven Regional Solid Waste Management Districts – For the Period July 1, 2018 through December 31, 2019 (SPRW001, 002, 003, 004, 006, 008, 009), which is available on the ALA website at www.arklegaudit.gov.

ARKANSAS LEGISLATIVE AUDIT
500 Woodlane Street, Suite 172, Little Rock, AR 72201
Phone: 501-683-8600 • Fax: 501-683-8605
www.arklegaudit.gov

Report ID: SPRW001, 04, 06, 08, 13, 16

Report Date: January 29, 2025



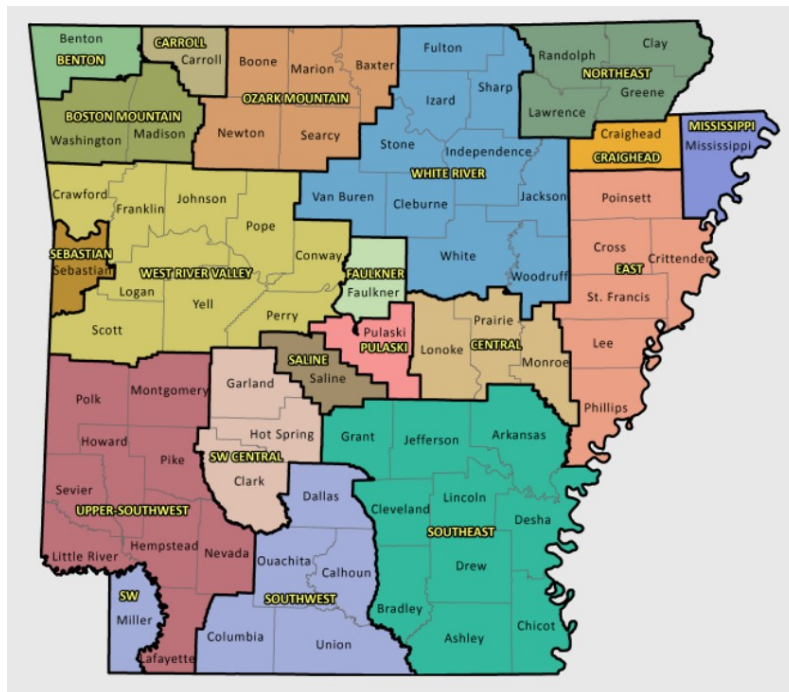
BACKGROUND

Establishment of Regional Solid Waste Districts

Act 870 of 1989 created eight “Regional Solid Waste Planning Boards” in the State, with their duties to include preparation of regional solid waste needs assessments and issuance of “certificates of need” to applicants for solid waste disposal facility permits within their jurisdiction. Act 752 of 1991 renamed the Planning Boards as “Regional Solid Waste Management Districts” and required that each District be governed by a Regional Solid Waste Management Board. This act also expanded the powers and duties of the Districts and allowed the boundaries of the Districts to be modified. Waste tires, composting, recycling, and hauler licensing requirements were included in the responsibilities added to the Districts as a result of Act 752 of 1991. Currently, the State has 19 Districts, as shown in **Exhibit I**.

Exhibit I

Arkansas’s Regional Solid Waste Management Districts



Note: Carroll County was part of the Ozark Mountain District until October 2019, when it formed its own District.

Source: Arkansas Department of Energy and Environment website:
<https://www.adeq.state.ar.us/> (unaudited by Arkansas Legislative Audit)

Private Audit Reports

Ark. Code Ann. § 8-6-704 requires the Districts to obtain an annual audit of their financial statements from a private CPA firm.

The audit reports for the Saline County and Sebastian County Districts, for the calendar year ended December 31, 2022, contained no findings.

The audit report for the Mississippi County District, for the calendar year ended December 31, 2022, contained one finding relating to lack of segregation of duties due to limited resources. No response from the District was provided in the report.

The audit reports for the Central Arkansas and Southeast Arkansas Districts, for the fiscal year ended June 30, 2022, contained no findings. These Districts were included in the annual audit of the Central Arkansas Planning and Development District (CAPDD) and the Southeast Arkansas Economic Development District (SEAEDD), respectively.

The audit report for the Ozark Mountain District, for the fiscal year ended June 30, 2022, contained one finding relating to lack of segregation of duties due to limited resources. The Ozark Mountain District responded that the Board of Directors will monitor financial results monthly to help alleviate the segregation of duties issue. This audit excluded the assets, liabilities, and contingencies of the Nabors Landfill, which is part of legal proceedings discussed on **page 6**.

RESULTS OF REVIEW

The sections that follow provide brief background information for each of the six Districts randomly selected for review, as well as reportable findings, where applicable. Findings 1 and 2 for the Mississippi County District were referred to the Second Judicial District Prosecuting Attorney and the Attorney General for further review, as required by Ark. Code Ann. § 10-4-419.

Exhibit II provides a summary of the findings by both private CPA firms and ALA for the Mississippi County, Ozark Mountain, and Southeast Arkansas Districts. There were no findings issued for the Central Arkansas, Saline County, and Sebastian County Districts by a private CPA firm or by ALA.

Exhibit II

Summary of Findings for the Regional Solid Waste Management Districts Selected for Review

Regional Solid Waste Management District	Private Audit Findings (Note 2)	Arkansas Legislative Audit Findings		
	Lack of Segregation of Duties	Conflicts of Interest	Violations of Arkansas Code (Note 3)	Internal Control Issues (Note 4)
Mississippi County (Note 1)	✓	✓	✓	
Ozark Mountain	✓		✓	✓
Southeast Arkansas				✓

Note 1: Two findings for Mississippi County, one regarding a conflict of interest and one regarding a violation of Arkansas Code, will be referred to the Second Judicial District Prosecuting Attorney.

Note 2: The audit reports for the Districts were completed for various fiscal year-ends.

Note 3: These findings involve noncompliance with Arkansas Code sections related to the composition of District Boards of Directors, lack of Board meetings, lack of review of audit reports, lack of solicitation of competitive bids, and lack of full and complete audits.

Note 4: These findings involve prenumbered receipts not being used, commingled bank accounts, and lack of timely deposits.

Source: Reports from District audits conducted by private certified accounting firms (unaudited by Arkansas Legislative Audit) and Arkansas Legislative Audit review

DISTRICTS WITH FINDINGS

Mississippi County Regional Solid Waste Management District (Mississippi County District)

Board Composition

The Mississippi County District provides services to Mississippi County and the cities within it. The Board is comprised of the Mississippi County Judge; the Mayors of the cities of Blytheville, Manila, Osceola, and Gosnell; various employees from the aforementioned entities; and one member from the general public. The Mississippi County District pays the Mississippi County Finance Director/Solid Waste Management Coordinator (an employee of Mississippi County) for administrative services and a District Board Member for recycling education services on a contract labor basis since it has no employees.

Sources and Uses of Funds

The Mississippi County District received two types of revenue, including a recycling grant and hauler permits. The Mississippi County District directly operates recycling and waste disposal programs and pays expenditures associated with these programs, including waste disposal program and administrative costs.

The Mississippi County District is also a party to an Inter-District Waste Tire Management Program Tire Collection and Processing Contract between a waste tire contractor and eight Districts. The contract stipulates that the program be managed by the Pulaski County Regional Solid Waste Management District (Pulaski County District); therefore, all waste tire grant revenues allocated to the Mississippi County District are deposited directly with the Pulaski County District, which processes the expenditures.

Findings

Finding 1: A District Board member was paid \$8,250 to serve as “District Educator” without Board approval in the form of an ordinance or resolution, in noncompliance with Ark. Code Ann. § 21-8-1001.

Management Response: *Any Board member that is receiving compensation will be approved by Board resolution.*

Finding 2: The District Board has not held open, public meetings since January 2021, in noncompliance with Ark. Code Ann. §§ 8-6-703, 25-19-106 and District bylaws. As a result, the Board did not select a chair each year. Additionally, the Board did not evaluate the District’s solid waste needs on a continual basis for the purpose of updating the regional needs assessment at least biennially, as required by Ark. Code Ann. § 8-6-704 and confirmed in Op. Att’y Gen. no. 1996-330.

Management Response: *Meetings will be held twice annually to meet Arkansas Code, at a minimum. A chair will be selected annually.*

Finding 3: The District Board is comprised of 11 members. This Board composition appears contrary to Ark. Code Ann. § 8-6-703, which states, in part, “Each board shall have a minimum of five members. If the number of members serving...is less than five (5), additional members necessary to make the total number equal five (5) shall be appointed by mutual agreement of the other board members and shall represent the general public....” The Board contains members authorized in the District’s bylaws rather than Ark. Code Ann. § 8-6-703. A similar finding was noted in a prior report.

Management Response: *Board members will be restructured to meet Arkansas Code.*

Finding 4: The audit report was not reviewed by the District Board and documented in the minutes, in noncompliance with Ark. Code Ann. § 8-6-704. Additionally, a contract to update the District's solid waste management plan was not approved by the Board, in noncompliance with Ark. Code Ann. §§ 8-6-703, -704 and District bylaws. A similar finding was noted in a prior report.

Management Response: *Audit reports will be discussed next meeting and contracts will be voted on.*

Findings 1 and 2 were forwarded to the Second Judicial District Prosecuting Attorney and the Attorney General, as required by Ark. Code Ann. § 10-4-419.

Ozark Mountain Regional Solid Waste Management District (Ozark Mountain District)

Board Composition

The Ozark Mountain District provides services to Baxter, Boone, Marion, Newton, and Searcy Counties and the cities within them. The Board is comprised of the County Judge of each county and the Mayor of each city entitled to a representative in the District (i.e., all first-class cities, all cities with a population over 2,000, and the largest city of each county). The Ozark Mountain District contracts out all management and accounting functions since it has no employees.

Sources and Uses of Funds

The Ozark Mountain District received several types of revenue, including grants for waste tires and recycling; tipping fees of \$2 per ton of solid waste disposed; and hauler permits. The District directly operates the programs and pays expenditures related to the Nabors Landfill, including contract services, recycling program costs, and legal and other expenses.

Findings

Finding 1: Competitive bids were not solicited for cost of collection and disposal of electronic waste, totaling \$37,423, in noncompliance with Ark. Code Ann. §§ 8-6-704, 14-22-104. A similar issue was noted in a prior report. Additionally, no contract identifying services to be rendered and cost of those services could be provided by the Ozark Mountain District.

Management Response: *The District will seek competitive bids for any services that reach the monetary threshold that requires such process.*

Finding 2: Accepted accounting practices provide that all income be deposited timely. Some receipts were noted as being deposited up to two months after the date of the receipts.

Management Response: *The District does understand the need for timely deposits for funds received and will in the future make sure that all deposits are done in a timely manner.*

Finding 3: The audit obtained by the District did not include activities related to the Nabors Landfill, in noncompliance with the requirement provided in Ark. Code Ann. § 8-6-704(d)(5) that a full and complete audit be obtained. A similar finding was noted in a prior report.

Management Response: *The District will in the future comply with Ark. Code Ann. § 8-6-704 (d)(5) as it pertains to the landfill.*

Legal Proceedings

As noted in a prior report, the Ozark Mountain District (District) is involved in multiple ongoing legal matters related to the Nabors Landfill. In 2013, Baxter County Circuit Court case number 03CV-13-32 was filed by the Arkansas Department of Environmental Quality (ADEQ) against the District for violations of environmental law and regulations. Pulaski County Circuit Court case number 60CV-14-4479 was filed in 2014 after the District defaulted on its payment obligations for bonds issued for acquisition of the Nabors Landfill.

After the District defaulted on debt payments to the Trustee for the bondholders and ADEQ filed suit against the District for violations of environmental law and regulations, the District filed a petition for Chapter 9 bankruptcy in January 2014. Subsequently, in August 2014, the bankruptcy court dismissed the District's petition.

In December 2014, the Trustee for the bondholders filed suit against the District in Pulaski County Circuit Court (case number 60CV-14-4479) for nonpayment of principal and interest on bonds issued in 2005 and requested appointment of a Receiver. The Court appointed a Receiver, who subsequently made recommendations that were ordered by the Court, including selling personal and real property and paying ADEQ the actual cost of the Nabors Landfill remediation and closure, which was estimated at \$16.5 million (not including interest).

The Receiver also recommended assessing an annual service fee of \$18 on all residential and business parcels within the District to pay the bondholders, ADEQ claim, and certain obligations at the Nabors Landfill. In 2018, taxpayers filed six separate illegal exaction² lawsuits in Circuit Courts in Baxter, Boone, Carroll, Marion, Newton, and Searcy Counties regarding assessment of the \$18 fee. During 2020, judges in all six cases ruled that the \$18 fee was an illegal exaction. Proceedings in each Circuit Court regarding distribution of financial award to the plaintiffs continued subsequent to the 2020 ruling. As of report date, these cases remained open. Additionally, during a meeting of the Joint Budget Committee of the General Assembly on April 9, 2020, a motion was adopted for ADEQ to forgive the amount owed by the District related to closure of the Nabors Landfill.

It should be noted that, in July 2022, taxpayers filed a petition for writ of prohibition with the Arkansas Supreme Court (case number CV-22-428) seeking to prohibit the Pulaski County Circuit Court from distributing the funds at issue and directing said funds to the registries of the illegal exaction courts from which they were collected for disposition pursuant to the illegal exaction courts' orders. This petition was denied by the Supreme Court in September 2022.

Southeast Arkansas Regional Solid Waste Management District (Southeast District)

Board Composition

The Southeast District provides services to Arkansas, Ashley, Bradley, Chicot, Cleveland, Desha, Drew, Grant, Jefferson, and Lincoln Counties. The Board is composed of the County Judges; Mayors of the cities that are County seats; and the Mayors of Crossett, Dermott, Eudora, Dumas, McGehee, and White Hall. All of the Board members are on the Board of the Southeast Arkansas Economic Development District (SEAEDD), which performs all management functions since the Southeast Arkansas District has no employees. The Board has a Memorandum of Understanding (MOU) with SEAEDD for services to be provided; however, no rate of compensation is specified. The Southeast District reimburses SEAEDD for actual expenses incurred.

²Two types of illegal exaction cases can arise pursuant to the Arkansas Constitution: (1) "public funds" cases, where the plaintiff contends that public funds generated from tax dollars are being misapplied or illegally spent and (2) "illegal-tax" cases, where the plaintiff asserts that the tax itself is illegal. The plaintiffs in the six cases mentioned here alleged that the District could not levy and collect a tax; therefore, the \$18 fee was illegal (Ark. Const. art. 16, § 13, and *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992)).

Sources and Uses of Funds

The Southeast District receives several types of revenue, including grants for waste tires and recycling; tonnage fees from haulers; and hauler permits. Entities within the Southeast District apply for a portion of each year's grant funds for specific purposes. Payments are made by the Southeast District either directly to the vendors or on a reimbursement basis to the entity. The Southeast District also pays for disposal of solid waste directly to the disposal companies on behalf of the entities. Additionally, the Southeast District owns and maintains shredding equipment used by the Jefferson County Waste Tire Processing Facility to shred waste tires into tire-derived aggregate and maintains a contract with the disposal company for disposal of the aggregate.

Findings

Finding 1: Accepted accounting practices provide that all income be formally receipted by use of receipts prenumbered by a printer or an electronic receipting system that accomplishes the same purpose as prenumbered receipts. The District did not issue prenumbered receipts for all income received. A similar finding was noted in a prior report.

Management Response: *The Southeast Regional Solid Waste Management Board will immediately begin to use prenumbered receipts for all income received.*

Finding 2: During the engagement, ALA staff noted that the District's bank accounts were in the name of and under the TIN/EIN of the Southeast Arkansas Economic Development District (SEAEDD). As a result, grant funds paid by the State for solid waste programs were in the name of SEAEDD. A similar finding was noted in a prior report.

Management Response: *The Southeast Regional Solid Waste Management Board will consult with the Board's legal representation for guidance on the need to establish a separate TIN/EIN.*

DISTRICTS WITH NO FINDINGS

Central Arkansas Regional Solid Waste Management District (Central Arkansas District)

Board Composition

The Central Arkansas District provides services to Lonoke, Monroe, and Prairie Counties. The Board is composed of the County Judges, as well as the Mayor of each city entitled to a representative in the District (i.e., all first-class cities, all cities with a population over 2,000, and the largest city of each county) or their designee. A portion of the Board members are on the Board of the Central Arkansas Planning and Development District (CAPDD), which performs all management and accounting functions since the Central Arkansas District has no employees. There is no written contract for services between the District and CAPDD.

Sources and Uses of Funds

The Central Arkansas District received several types of revenue, including grants for recycling, license fees from haulers, permits, a host fee of \$1.00 per ton of waste collected either inside or outside the District and disposed of within the District, and a host fee of \$2.00 per ton of waste collected inside the District and disposed of outside the District. The Central Arkansas District operates recycling and waste disposal programs and pays expenditures associated with these programs.

The Central Arkansas District is also party to an Inter-District Waste Tire Management Program Tire Collection and Processing Contract between a waste tire contractor and eight Districts. The contract stipulates that the program be managed by the Pulaski County District; therefore, all waste tire grant revenues allocated to the Central Arkansas District are deposited directly with the Pulaski County District, which processes the expenditures.

Findings

ALA issued no findings for the Central Arkansas District.

Saline County Regional Solid Waste Management District (Saline County District)

Board Composition

The Saline County District provides services to Saline County and the cities within it. The Board is comprised of the Mayors of Bryant, Haskell, and Alexander, as well as representatives for the Saline County Judge and the Mayors of Benton and Shannon Hills. The District operates as an independent entity with its own management and employees.

Sources and Uses of Funds

The Saline County District received several types of revenue, including grants for recycling, hauler permits, landfill coupon sales, and royalty income based on tonnage received at the landfill. In February 2011, the District sold to Republic Services its Class 1 and Class 4 landfill and all assets and properties used in connection with the operation of the landfill. The Saline County District directly operates recycling programs and pays expenditures associated with these programs, including salaries and wages, employee benefits, program costs, professional fees, and other related expenditures.

The Saline County District is also a party to an Inter-District Waste Tire Management Program Tire Collection and Processing Contract between a waste tire contractor and eight Districts. The contract stipulates that the program be managed by the Pulaski County District; therefore, all waste tire grant revenues allocated to the Saline County District are deposited directly with the Pulaski County District, which processes the expenditures.

Findings

ALA issued no findings for the Saline County District.

Sebastian County Regional Solid Waste Management District (Sebastian County District)

Board Composition

The Sebastian County District provides services to Sebastian County and the cities within it. The Board is composed of six residents of Fort Smith, appointed by the Mayor of the City of Fort Smith, who are confirmed by the governing body of Fort Smith. Additionally, three Board members who reside outside of Fort Smith are appointed by the Sebastian County Judge and confirmed by the Quorum Court.³ The Sebastian County District operates as an independent entity with its own management and employees.

³The Board is not comprised of members as outlined in Ark. Code Ann. § 8-6-703 because the District was formed under an interlocal agreement, as allowed under Ark. Code Ann. § 8-6-723.

Sources and Uses of Funds

The Sebastian County District received several types of revenue, including recycling grants, tonnage fees at the Fort Smith landfill, and hauler permits. The Sebastian County District directly operates recycling programs and pays expenditures associated with these programs, including salaries and wages, employee benefits, recycling program costs, professional fees, and other related expenditures.

The Sebastian County District is also party to an Inter-District Waste Tire Management Program agreement with the West River Valley Regional Solid Waste Management District (West River Valley District). The agreement stipulates that the program be managed by the West River Valley District; therefore, all waste tire grant revenues allocated to the Sebastian County District are deposited directly with the West River Valley District, which processes the expenditures.

Findings

ALA issued no findings for the Sebastian County District.

SUMMARY

ALA staff review of six randomly-selected regional solid waste districts revealed conflicts of interest, violations of Arkansas Code, and internal control deficiencies, as summarized in **Exhibit II on page 3**.

Findings 1 and 2 for the Mississippi County District have been referred to the Second Judicial District Prosecuting Attorney and the Attorney General for further review, as required by Ark. Code Ann. § 10-4-419. Additionally, legal proceedings surrounding the Ozark Mountain District are ongoing.

