

Arkansas Pollution Control and Ecology Commission

Draft Regulation Number 32



Environmental Professional Certification

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CHAPTER 1: PURPOSE & AUTHORITIES

Reg.32.101. Purpose.

To establish and implement a certification program to:

(A) Certify environmental consultants who perform Phase I Environmental Site Assessments;

(B) Certify environmental consultants who perform Comprehensive Site Assessments under the Arkansas Hazardous Waste Management Act of 1979, A.C.A. § 8-7-201 et seq., the Remedial Action Trust Fund Act, A.C.A. § 8-7-501 et seq., or the Voluntary Cleanup Act, A.C.A. § 8-7-1101 et seq.;

(C) Certify Response Action Contractors who undertake investigations and response actions, respectively, under the Arkansas Hazardous Waste Management Act of 1979, A.C.A. § 8-7-201 et seq., the Remedial Action Trust Fund Act, A.C.A. § 8-7-501 et seq., or the Voluntary Cleanup Act, A.C.A. § 8-7-1101 et seq.; and

(D) Require as a condition of certification that such contractors and consultants demonstrate that they have the qualifications required to undertake such activities.

Reg.32.102. Authority.

Arkansas Code of 1987, Annotated, §§ 8-7-1301, et seq. (Act 2141 of 2005) authorizes the Arkansas Pollution Control and Ecology Commission (“Commission”) to adopt rules and regulations necessary for the Arkansas Department of Environmental Quality (“Department”) to implement and effectuate the powers and duties of the Commission as established by the Act.

Reg.32.103. Definitions.

The following terms shall have the same meaning when used in this Regulation as established by the Act, unless the context otherwise requires:

(A) “Certificate” or “certification” means a certificate of competency issued by the Director to Phase I Environmental Site Assessment Consultants, Comprehensive Site Assessment Consultants, and Response Action Contractors who have met the requirements of the certification program set forth in this Regulation.

(B) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(C) “Comprehensive site assessment” or “CSA” means an assessment to determine the rate, extent, and characteristics of contamination at a site addressed under the Arkansas Hazardous Waste Management Act of 1997, § 8-7-201 et seq., or the Remedial Action Trust Fund Act, § 8-7-501 et seq., or the Voluntary Cleanup Act, § 8-7-1101 et seq.;

(D) “Comprehensive site assessment consultant” means a person that performs a comprehensive environmental site assessment for a fee or in conjunction with other services for which a fee is charged;

(E) “**Department**” means the Arkansas Department of Environmental Quality, or its successor;

(F) “**Director**” means the Director of the Arkansas Department of Environmental Quality;

(G) “**Environmental site assessment**” means a Phase I environmental site assessment or a comprehensive site assessment;

(H) “**Environmental Site Assessment Consultant**” means a person that performs a Phase I environmental site assessment or comprehensive environmental site assessment for a fee or in conjunction with other services for which a fee is charged;

(I) “**Hazardous substance**” means the same as set out in § 8-7-503;

(J) “**Hazardous waste**” means the same as set out in § 8-7-203;

(K) “**Person**” means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, state or federal government or agency, or any other legal entity however organized;

(L) “**Phase I environmental site assessment**” means a Phase I environmental site assessment as that term is used in the American Society for Testing and Materials standard;

(M) “**Phase I Consultant**” means a person who performs a Phase I environmental site assessment for a fee or in conjunction with other services for which a fee is charged.

(N) “**Public agency**” means any administrative body, department or agency of government which has official or quasi official status.

(O) “**Relevant experience**” as used in defining the qualifications of environmental site assessment consultants in this Regulation, means: participation in the performance of all appropriate inquiries investigations, environmental site assessments, or other site investigations that may include environmental analyses, investigations, and remediation which involve the understanding of surface and subsurface environmental conditions and the processes used to evaluate these conditions and for which professional judgment was used to develop opinions regarding conditions indicative of releases or threatened releases to the subject property.

(P) “**Response Action Contractor**” means a person that is required to obtain a contractor’s license pursuant to A.C.A. § 17-25-101, et seq., and is responsible for undertaking the physical removal, treatment, or disposal of hazardous substances or environmental media contaminated with hazardous substances associated with a response action at a site addressed under the Arkansas Hazardous Waste Management Act , § 8-7-201 et seq., or the Remedial Action Trust Fund Act, § 8-7-501 et seq., or the Voluntary Cleanup Act, § 8-7-1101 et seq.; for a fee or in conjunction with other services for which a fee is charged.

CHAPTER 2: CERTIFICATION PROGRAMS

Reg.32.201. Applicability.

(A) The Arkansas Department of Environmental Quality shall:

(1) Establish and administer the Environmental Site Assessment Consultant and Hazardous Substance Response Contractor Certification Program for response action contractors and Environmental Site Assessment consultants; and

(2) Issue, deny, revoke, condition, or suspend the certification of response action contractors and environmental site assessment consultants under the terms established in this Regulation.

(B) As of [*Insert date: Six (6) months after the adoption of this regulation by the Arkansas Pollution Control and Ecology Commission*], a person shall not provide services as a Environmental Site Assessment Consultant or a Response Action Contractor unless those services are performed under the direction and responsible charge of an individual who has obtained a certification under the provisions of this Regulation.

(C) All persons required to be certified under the provisions of this Regulation, must submit an application for certification to the Department a minimum of two (2) months prior to providing services that require certification under the provisions of this Regulation.

(D) After the certification program is implemented, the department shall develop and maintain a list of those Environmental Site Assessment Consultants and Response Action Contractors who have a certification under the provisions of this Regulation.

(E) The Department shall make available to the public the list required under paragraph (D) above.

(F) The provisions of this Regulation do not prohibit the engagement of an associate, apprentice or an assistant, or a subcontractor if an individual who is certified under this Regulation is in responsible charge of that associate, apprentice or assistant, or subcontractor and maintains responsibility for the work of that associate, apprentice or assistant, or subcontractor.

Reg.32.202. Activities That Do Not Require Certification.

(A) This Regulation does not apply to:

(1) Services provided by an employee of a business or public agency relative to hazardous substance or hazardous waste management, release investigation, or response responsibilities of his or her employer, exclusively, while the employee is acting in the course of his or her employment;

(2) Services provided by an employee of a public agency with the responsibility of regulatory enforcement, emergency response, or protection of public health, welfare, or the environment while the employee is acting in the course of that employment;

(3) Services provided by a person that is a transporter of hazardous wastes that are:

- (a) Designated as the specific responsibility of the transporter of hazardous wastes under the applicable state or federal regulations; or
- (b) Necessary to perform the service of transportation of hazardous waste in accordance with the applicable state and federal regulations; or
- (4) Services provided by a person to perform Comprehensive Site Assessments and Response Actions not taken pursuant to the Arkansas Hazardous Waste Management Act, § 8-7-201 *et seq.*, or the Remedial Action Trust Fund Act, § 8-7-501 *et seq.*, or the Voluntary Cleanup Act, § 8-7-1101 *et seq.*

Reg.32.203. Standards of Practice.

Each holder of a certificate issued by the Department pursuant to this Regulation shall:

(A) Have responsible charge over the work of other persons he or she employs, supervises, or directs;

(B) Provide services that are:

(1) Ethical;

(2) Meet the current standards of the practitioners; and

(3) Comply with applicable federal, state, and local laws and regulations concerning hazardous wastes and hazardous substances;

(C) Have a copy, reasonably accessible, or be able to provide proof of his or her certificate at the location where he or she is supervising work. Upon request of the Department, client, or potential client, a holder of a certificate shall present his or her certificate for inspection.

(D) Make a written report to their client within twenty-four (24) hours after the discovery of a release of a hazardous substance and advise the client that they may be subject to reporting requirements;

(E) Make an immediate verbal notification to their client after discovery of a circumstance that presents an imminent and substantial hazard to human health, public safety, and/or the environment;

(F) Secure the services of a qualified person to perform any part of his or her work that requires a level of service or skill that he or she is not qualified to perform;

(G) Make complete prior disclosure to his or her clients or potential clients of conflicts of interest or other circumstances that could influence his or her judgment or the quality of services he or she provides;

(H) Complete a Disclosure Statement with the application in accordance with the disclosure statement provisions of APC&EC Regulation No. 8. The Disclosure Statement shall also certify that neither the individual nor the individual's employer have been convicted of or plead guilty to an environmental crime or offense, or any related criminal offense;

(I) Not falsify or misrepresent:

(1) Data, interpretations, or conclusions in project documentation and reports submitted to clients or to the Department; or

(2) His or her:

(a) Education or experience;

(b) The degree of responsibility for previous assignments;

- (c) The complexity of previous assignments;
- (d) Relevant factors concerning employers, employees, associates, joint ventures; or
- (e) Past accomplishments.

Reg.32.204. Professional Registrations & Licenses.

This Regulation is not meant to supercede or replace any other required registrations or licenses.

(A) Any environmental site assessment activities or response actions performed by a person certified as an environmental site assessment consultant or response action contractor under this subchapter that would constitute the “practice of engineering” as defined in A.C.A. § 17-30-101 shall be performed under the responsible charge of and signed and sealed by a professional engineer registered in the State of Arkansas.

(B) Any environmental site assessment activities or response actions performed by a person certified as an environmental site assessment consultant or response action contractor under this subchapter that would constitute the “public practice of geology” as defined in A.C.A. § 17-32-102 shall be performed under the responsible charge of and signed and sealed by a professional geologist registered in the State of Arkansas.

(C) Any environmental site assessment activities or response actions performed by a person certified as an environmental site assessment consultant or response action contractor under this subchapter that would constitute a “contractor” as defined in A.C.A. § 17-25-101 shall be performed under the responsible charge of a company licensed by the State of Arkansas Contractors Licensing Board.

Reg.32.205 Certification categories.

(A) Categories of certification shall include:

- (1) Phase I Consultant;
- (2) Comprehensive Site Assessment Consultant;
- (3) Response Action Contractor; and
- (4) Comprehensive Site Assessment Consultant/Response Action Contractor.

(B) Certification as a Comprehensive Site Assessment Consultant shall serve as certification to perform both Phase I environmental site assessments and Comprehensive site assessments.

(C) Dual certification as a Comprehensive Site Assessment Consultant/Response Action Contractor requires the applicant to meet the criteria outlined in both § 32.401 *et seq.* and § 32.501 *et seq.*

(D) Certification pursuant to this Regulation must be obtained by an individual.

(E) Each certificate issued by the Department to a successful applicant shall clearly state:

- (1) The name of the applicant;
- (2) The number of the certificate;
- (3) The date of expiration of the certificate; and

(4) The specific classification of the certification.

Reg.32.206. Examinations.

(A) Examinations will be given for the following applicant categories:

- (1) Phase I Consultant
- (2) Comprehensive Site Assessment Consultant
- (3) Response Action Contractor

(B) Written examination sessions will be offered, at a minimum, annually at times and places designated by the Department.

(C) Applicants required to take an examination to become certified under the provisions of this Regulation shall submit an application to the Department, on forms provided by the Department, no less than sixty (60) days prior to the examination.

(D) Representatives of the Department will review all applications within thirty (30) days of receipt of the application. The Department may request additional information. On the basis of all formally submitted information, supplemented by information obtained by request, the Department will either admit or deny the applicant to the examination.

(E) The Department will notify all applicants of admittance or denial at least fifteen (15) days prior to the examination. If an applicant is denied entry to the examination, the Department shall indicate the reason for the denial and allow one opportunity for the applicant to submit supplemental documentation to the Department on a timeframe specified by the Department.

(F) The applicant must receive a minimum passing grade of 70%. If the applicant receives a failing grade the applicant may be re-admitted to subsequent examinations upon payment of the examination fees.

(G) The Department shall grade all examinations and notify the applicants of the results within thirty (30) days of the date of the examination.

(H) Should the applicant desire to sit for the next scheduled examination the applicant must notify the Department in writing by the application cutoff date prior to the scheduled examination.

(I) Examinations, blank or completed, are the property of the Department, and shall remain confidential and shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(J) Examination papers will not be returned to applicants, but may be reviewed by applicants at the Department's central offices.

(K) For applicants that must take an examination under § 32.301, § 32.401, or § 32.501 to become certified under this Regulation, ADEQ will require the applicants to submit their applications and fees to the Department per the requirements of this Regulation. However, ADEQ may provisionally certify the applicant until such time as ADEQ can offer an examination to the applicant.

CHAPTER 3: PHASE I CONSULTANTS

Reg.32.301. Certification Criteria for Phase I Consultants.

(A) An applicant seeking certification as a Phase I Consultant shall submit an application on forms provided by the Department and shall pay the applicable application fees.

(B) Persons seeking certification as a Phase I Consultant shall possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases on, at, in, or to a property, sufficient to meet the objectives and performance factors for all appropriate inquiries set forth in 40 CFR 312.20; and shall demonstrate this by meeting at least one of the following combinations of education and experience:

(1) Hold a current Professional Engineer's or Professional Geologist's license or registration from the State of Arkansas; and have the equivalent of three (3) years of full-time relevant experience within the last five (5) years; *or*

(2) Have a Bachelor's or higher degree from an accredited institution of higher education in a relevant discipline of engineering or science and the equivalent of five (5) years of full-time relevant experience within the last (7) years; *or*

(3) Have a high school diploma or general equivalency diploma and at least ten (10) years of full-time relevant experience within the last twelve (12) years; *or*

(4) Provide proof of certification or licensing by another state, tribe, U.S. territory, or organization recognized by the Department in § 32.603 or § 32.604 as substantially equivalent for performing Environmental Site Assessments, and having the equivalent of three (3) years of full-time relevant experience within the last five (5) years; *or*

(5) Demonstrate competence by achieving a passing score on an examination administered by the Department pursuant to the provisions of this Regulation and having the equivalent of three (3) years of full-time relevant experience within the last five (5) years.

(C) Relevant experience shall be demonstrated by the submittal, with the application for certification, of a portfolio documenting the applicant's experiences and qualifications as set forth in § 32.302 below.

(D) Applicants shall also submit, as part of the application for certification, a Disclosure Statement in accordance with the disclosure statement provisions of APC&EC Regulation No. 8. The Disclosure Statement shall also certify that neither the individual nor the individual's employer have been convicted of or plead guilty to an environmental crime or offense, or any related criminal offense.

(E) The Department may request and review additional relevant information about the applicant or application in order to properly process the application.

(F) Upon demonstration of compliance with the criteria, the applicant shall be eligible for certification as a Phase I Consultant under this subchapter.

Reg.32.302. Required Relevant Experience for Phase I Consultants.

(A) Professional and Technical Standards for Certification of Phase I Consultants. These standards are to demonstrate the management and technical competence of the applicant based upon previous experience and professional judgment to develop conclusions regarding the presence of releases or threatened releases to the land, water or air at a property. Applicants must have a proven track record in managing or overseeing projects which meet the goals and objectives of the Phase I Environmental Site Assessment (ESA) “all appropriate inquiry” displayed in the American Society for Testing and Materials (ASTM) standard or satisfy the requirements of the Arkansas Brownfields Program Users Guide, Comprehensive Site Assessment (CSA) Phase I.

(B) Project Examples and Case Histories. The applicant shall list five (5) Phase I project examples completed within the last five (5) years, with no more than two (2) currently underway. Examples of environmental projects managed or overseen shall include:

(1) Project name, type of property, dates the project was conducted, and description of activities involved in the project.

(2) A description of the applicant’s involvement in the total project scheme, including position title, name of employer, duties, and degree of responsibility.

(3) A letter of reference by a client Environmental Manager or Officer of the Company, peer, or employer for each project example.

(4) General case histories demonstrating the applicant’s ability in assessing information in light of all other relevant site-specific information about a property and developing sound opinions and conclusions regarding the environmental conditions at a property and the potential presence of a release or threatened release on a property.

(5) Final outcomes for finished projects and whether additional investigation was recommended or required.

(C) Technical Proficiency of the Applicant. Project examples managed or overseen by the applicant will be considered for the type and complexity of the Phase I projects.

CHAPTER 4: COMPREHENSIVE SITE ASSESSMENT CONSULTANTS

Reg.32.401. Certification Criteria for Comprehensive Site Assessment (CSA) Consultants.

(A) An applicant seeking certification as a Comprehensive Site Assessment (CSA) Consultant shall submit an application on forms provided by the Department and shall pay the applicable application fees.

(B) Persons seeking certification as a Comprehensive Site Assessment Consultant shall possess sufficient specific education, training, and experience necessary to develop plans and implement investigative techniques and procedures to determine the nature and extent of contamination at and from a site due to releases or threatened releases on, at, in, or to a property and exercise professional judgment to develop opinions and conclusions based on data gathered sufficient to meet the objectives and performance factors for all appropriate inquiries set forth in 40 CFR 312.20. Applicants must demonstrate a proven track record in managing projects which meet the goals and objectives of the Comprehensive Site Assessment (CSA) displayed in the Arkansas Brownfields Program Users Guide, Comprehensive Site Assessment (CSA) Phase II, Appendix E, (Steps VI – XI), and shall meet at least one of the following combinations of education and experience:

(1) Hold a current Professional Engineer's or Professional Geologist's license or registration from the State of Arkansas; and have the equivalent of three (3) years of full-time relevant experience within the last five (5) years; *or*

(2) Have a Bachelor's or higher degree from an accredited institution of higher education in a relevant discipline of engineering or science and the equivalent of five (5) years of full-time relevant experience within the last seven (7) years; *or*

(3) Have a high school diploma or general equivalency diploma and at least ten (10) years of full-time relevant experience within the last twelve (12) years; *or*

(4) Any person who provides proof of certification or licensing by another state, tribe, U.S. territory, or organization recognized by the Department in § 32.603 or § 32.604 as substantially equivalent for performing Comprehensive Site Assessments, and having the equivalent of three (3) years of full-time relevant experience within the last five (5) years; *or*

(5) Any person who demonstrates competence by achieving a passing score on an examination administered by the department pursuant to the provisions of this Regulation and having the equivalent of three (3) years of full-time relevant experience within the last five (5) years.

(C) Relevant experience shall be demonstrated by the submittal, with the application for certification, of a portfolio documenting the applicant's experiences and qualifications as set forth in § 32.402 below.

(D) Applicants shall also submit, as part of the application for certification, a Disclosure Statement in accordance with the disclosure statement provisions of APC&EC Regulation No. 8. The Disclosure Statement shall also certify that neither the individual

nor the individual's employer have been convicted of or plead guilty to an environmental crime or offense, or any related criminal offense.

(E) The Department may request and review additional relevant information about the applicant or application in order to properly process the application.

(F) Upon demonstration of compliance with the criteria, the applicant shall be eligible for certification as a Comprehensive Site Assessment Consultant under this subchapter.

(G) Certification as a Comprehensive Site Assessment Consultant shall serve as certification to perform both Phase I environmental site assessments and Comprehensive site assessments.

Reg.32.402. Required Relevant Experience for Comprehensive Site Assessment Consultants.

(A) Professional and Technical Standards for Comprehensive Environmental Site Assessment Consultants These standards are to demonstrate the management and technical competence of the Consultant based upon previous experience and technical approaches to previous projects. Applicants must have a proven track record in managing or overseeing projects which substantially meet the goals and objectives of the Comprehensive Site Assessment (CSA) displayed in the Arkansas Brownfields Program Users Guide, Comprehensive Site Assessment (CSA).

(B) Project Examples and Case Histories. The applicant shall list five (5) CSA project examples completed within the last five (5) years, with no more than two (2) currently underway. Examples of environmental projects managed or overseen shall include:

(1) Project name, type of property, dates the project was conducted, and description of activities involved in the project.

(2) A description of the applicant's involvement in and contribution to the total project scheme, including position title, name of employer, duties, and degree of responsibility.

(3) A letter of reference by a client Environmental Manager or Officer of the Company, peer, or employer for each project example.

(4) General case histories describing the purpose and results of each project.

(5) Special problems encountered, if applicable, and how they were overcome together with unusual explanations for site specific data or phenomena. The narratives provided should demonstrate the applicant's comprehension of objectives, technical methods, and rationale for various or unique approaches which the applicant has undertaken.

(6) Final outcomes must be listed for finished projects and the most recent status reported to the client must be listed for ongoing projects.

(C) Technical Proficiency of the Applicant. Project examples managed or overseen by the applicant will be considered for the type and complexity of projects. The following types of projects are important:

(1) Environmental investigation and assessment;

(2) Cost effective techniques relative to site investigations, and risk evaluations;

(3) Geologic and hydrologic surveys, analysis, and site characterization;

- (4) Hazardous substance and/or imminent hazard abatement;
- (5) Environmental, ecological and human health assessments.

CHAPTER 5: RESPONSE ACTION CONTRACTORS

Reg.32.501. Certification of Response Action Contractors.

(A) An individual seeking certification as a Response Action Contractor shall submit an application on forms provided by the Department and shall pay the applicable application fees.

(B) Persons seeking certification as a Response Action Contractor shall provide all of the following:

(1) A valid license issued by the Arkansas Contractor's Licensing Board;

(2) Three letters of reference from individuals with experience in the services of that classification attesting to the applicant's moral character and competence in that classification;

(3) Demonstration to the Department that he or she meets one of the following qualifications:

(a) A Bachelor's or higher degree from an accredited institution of higher education in a relevant discipline of engineering or science and the equivalent of five (5) years of full-time relevant experience within the last seven (7) years;

(b) A relevant professional registration or certification recognized by the Department and at least three (3) years of relevant hazardous waste experience within the last five (5) years;

(c) A high school diploma or general equivalency diploma and at least ten (10) years of relevant hazardous waste experience within the last twelve (12) years;

(d) Certification or licensing by another state, tribe, U.S. territory, or organization recognized by the Department in § 32.603 or § 32.604 as substantially equivalent for performing Response Actions and having the equivalent of three (3) years of full-time relevant experience within the last five (5) years.

(4) Relevant experience shall be demonstrated by the submittal, with the application for certification, of a portfolio documenting the applicant's experience as set forth in § 32.502 below.

(5) Pay the application fees; and

(6) Pass an examination administered by the Department pursuant to A.C.A. § 8-7-1307 (d)(2)(D)(i).

(C) Applicants shall also submit, as part of the application for certification, a Disclosure Statement in accordance with the disclosure statement provisions of APC&EC Regulation No. 8. The Disclosure Statement shall also certify that neither the individual nor the individual's employer have been convicted of or plead guilty to an environmental crime or offense, or any related criminal offense.

(D) The Department may request and review additional relevant information about the applicant or application in order to properly process the application.

Reg.32.502. Required Relevant Experience for Response Action Contractors.

(A) Relevant Experience. The applicant must submit the evidence required below demonstrating that he/she has each of the following:

(1) Applicants shall list five (5) hazardous substance remediation projects in which they substantially participated or provided oversight within the last five (5) years, with no more than two (2) currently underway, including the dates of participation, the locations of the projects, the dates the projects were conducted, and the environmental agency under whose oversight the projects were conducted. For each referenced project, applicants must provide a list of reference contacts and a brief description of the specific activities they conducted with respect to the project. The submitted project descriptions must demonstrate that the applicant was employed full time on a substantially continuous basis for all of the sixty (60) months prior to the date of application.

(2) Proof of attendance and completion of recognized courses on the Technical Requirements for Site Remediation (technical guidance for conducting all phases of the site remediation process).

(3) Proof of attendance and completion of the minimum OSHA environmental health and safety education and training pursuant to 29 CFR 1910.120(e).

(4) Proof of participation in a medical monitoring program as required by OSHA.

CHAPTER 6: ADMINISTRATION

Reg.32.601. Certification Renewal.

(A) A Certificate issued under the provisions of this Regulation to an individual shall be valid for two (2) years (or portion thereof) from July 1st of the year the Department issues the certificate.

(B) June 1 of the expiration year of a Certificate issued under the provisions of this Regulation, the holder must re-apply to the Department for its renewal.

(C) A holder of a certificate who wishes to renew his or her certification shall:

(1) Demonstrate to the Department that he or she continues to meet all qualifications and performance requirements of the applicable Chapter of this Regulation;

(2) Submit an application for renewal of the certificate to the Department on forms provided by the Department;

(3) Submit a nonrefundable fee in the form of a money order, cashier's check, or other payment method determined by the Department in the amount set forth at § 32.606 for the level of certification(s) held;

(4) Complete and submit documentation of continuing education training of the type and amount as set forth at § 32.605 of this Regulation; and

(5) Submit an updated Disclosure Statement in accordance with APC&EC Regulation No. 8. The Disclosure Statement shall also certify that neither the individual nor the individual's employer have been convicted of or plead guilty to an environmental crime or offense, or any related criminal offense.

Reg.32.602. Lapsed Certifications.

(A) Late penalty for renewals shall be ten percent (10%) of annual renewals, in addition to the renewal fee, for the first sixty (60) days after expiration of the Certificate. After sixty (60) days, the applicant must reapply to the Department in the same manner as for initial certification.

(B) Certifications revoked, suspended, or conditioned shall be subject to the terms outlined in the Director's final decision as specified in § 32.703(F).

Reg.32.603. Certification by Other States or Organizations.

(A) The Department may issue a comparable certification under the provisions of this Regulation, without additional examination, to any applicant who holds a current, equivalent certification in any state, territory, or possession of the United States or any country, provided that the licensing requirements under which that person was certified do not conflict with the provisions of this Regulation and are of an equal or greater standard.

(B) An individual holding a certification from another state or an organization recognized by the Department may request certification under this Regulation. If such a

request for certification is made, the Department will review the certification to determine if the certification is substantially the same, or more stringent than, the provisions of this Regulation. The certification criteria must contain, at a minimum, the following provisions:

(1) The individual is required to furnish proof of their professional license, education, and/or experience or take an exam to demonstrate competency;

(2) The individual is required to receive a minimum of 1.5 continuing education credits annually;

(3) The certification has an expiration that requires, upon renewal, the applicant to furnish proof of continuing education credits and retention of applicable licenses; and

(4) The certification includes provisions for disciplinary actions and revocation of the certification.

(C) The Department will maintain a list of state and organization certifications that the Department has recognized as comparable certifications to this Regulation.

(D) An individual who is certified as an environmental site assessment consultant, response action contractor, or an equivalent certification by another state or an organization recognized by the Department as a comparable certification may be certified if he or she submits to the Department:

(1) An application on a form provided by the Department;

(2) A nonrefundable fee for the review of the application pursuant to § 32.606;

(3) A Disclosure Statement in accordance with APC&EC Regulation No. 8. The Disclosure Statement shall also certify that neither the individual nor the individual's employer have been convicted of or plead guilty to an environmental crime or offense, or any related criminal offense.

(4) Proof of the applicant's certification by another state or organization recognized by the Department for the category of certification for which the applicant is applying in Arkansas.

(E) The Department will not issue a certificate under this Regulation based upon a certification or registration issued by another state or organization if the requirements of that state or organization with regard to background, relevant experience, and training requirements, are not substantially equivalent to the requirements for certification in Arkansas.

Reg.32.604. Reciprocity Agreements.

(A) The Department will seek a reciprocity agreement from those states or organizations that the Department has determined are comparable and request that the state or organization extend reciprocity privileges to consultants and contractors certified by the State of Arkansas in accordance with the provisions of this Regulation.

(B) An individual who is certified as an environmental site assessment consultant, response action contractor, or an equivalent certification by another state or an organization which has signed a Reciprocity Agreement with the Department may be certified under this Regulation if he or she submits to the Department:

(1) An application on a form provided by the Department;

- (2) A nonrefundable fee for the review of the application pursuant to § 32.606;
- (3) A Disclosure Statement in accordance with APC&EC Regulation No. 8. The Disclosure Statement shall also certify that neither the individual nor the individual's employer have been convicted of or plead guilty to an environmental crime or offense, or any related criminal offense.; and
- (4) Proof of the applicant's certification by another state or organization recognized by the Department for the category of certification for which the applicant is applying in Arkansas.

Reg.32.605. Continuing Education Requirements.

(A) Environmental site assessment consultants and remedial action contractors shall remain current in their field through participation in continuing education or other activities.

(B) Definitions. As used in this Subsection, the following terms are defined as follows:

(1) Professional Development Hours (PDH) – A contact hour (nominal) of instruction or presentation. The common denominator for other units of credit.

(2) Continuing Education Unit (CEU) – Unit of credit customarily used for continuing education courses. One continuing education unit equals ten (10) hours of classroom experience in an approved education course.

(3) College/Unit Semester/Quarter Hour – Credit for an approved college course.

(4) Course/Activity – Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the certified contractor or consultant's field of practice.

(C) Requirements – Every certified contractor or consultant is required to report a cumulative of fifteen (15) PDH units per year for each renewal period. If a registrant exceeds the annual requirement in any renewal period, a maximum of fifteen (15) PDH units may be carried forward into the subsequent renewal period.

(D) PDH units may be earned as follows:

(1) Successful completion of college courses.

(2) Successful completion of continuing education courses.

(3) Successful completion of correspondence, televised, videotaped, audiotape, and other short courses/tutorials.

(4) Presenting or attending qualifying seminars, in-house courses, work shops, or professional, technical, or managerial presentations made at meetings, conventions, or conferences.

(E) Units – The conversion of other units of credit to PDH Units are as follows:

(1) 1 College or unit semester course — 30 PDH

(2) 1 College or unit quarter course — 15 PDH

(3) 1 Continuing Education Unit — 10 PDH

(4) 1 Hour of professional development in course work, seminars, or professional, or management, or technical presentations made at meetings, conventions or conferences: — 1 PDH

(5) For teaching items 1 through 4 above, apply a multiple of 2 (teaching credit is valid for teaching a course or seminar for the first time only).

(F) Determination of Credit – The Department has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit.

(1) Credit for college or community college approved courses will be based upon credit established by the college.

(2) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(3) The types of training and continuing education required by this Chapter which may be eligible for approval include instructional courses, seminars or conferences sponsored by the Department, the Environmental Protection Agency, educational institutions, independent professional or trade associations, manufacturers, or firms engaged in environmental site assessment or hazardous substance management or remediation.

(4) Course content must be related to work performed by persons performing environmental site assessment or hazardous substance management or remediation.

(G) **Training Records.** The responsibility of maintaining records to be used to support credits claimed is the responsibility of the certificate holder. Records required include, but are not limited to:

(1) A log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; or

(2) Attendance verification records in the form of completion certificates, or other documents supporting evidence of attendance furnished by the organization sponsoring the approved training or continuing education.

These records must be maintained for a period of three (3) years or in compliance with any applicable state requirements, and copies may be requested by the Department for audit verification purposes.

(H) **Exemptions.** A certificate holder may be exempt from the professional development education requirements for one of the following reasons:

(1) Newly certified persons by way of examination, acceptance of other state or organization certification, or reciprocity shall be exempt for their first renewal period.

(2) A certificate holder serving on temporary active duty in the Armed Forces of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining professional development hours required during that year.

(3) Certificate holders experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the Department may be exempt. Supporting documentation must be furnished to the Department.

(I) **Noncompliance.** The certification of a person who does not satisfy the continuing education requirements at renewal time will be suspended and the certificate holder notified of that status. The Consultant or Contractor will have six (6) months from the renewal date to satisfy that condition or his or her certification will be revoked.

Reg.32.606. Fees.

(A) Any person who applies to the Department for certification as a Phase I Consultant, Comprehensive Site Assessment Consultant, or Response Action Contractor shall submit as part of that application a money order, cashiers check, or other payment method determined by the Department in the amount of two hundred dollars (\$200.00) payable to the Department for an initial application fee.

(B) Any person who applies to the Department for dual certification as a Comprehensive Site Assessment Consultant/Response Action Contractor shall submit as part of that application a money order, cashiers check, or other payment method determined by the Department of three hundred dollars (\$300.00) payable to the Department for the initial application fee.

(C) Any person who applies to the Department for renewal of their certification as a Phase I Consultant, Comprehensive Site Assessment Consultant, or Response Action Contractor shall submit as part of that renewal a money order, cashiers check, or other payment method determined by the Department of one hundred dollars (\$100.00) payable to the Department for the biennial renewal fee.

(D) Any person who applies to the Department for renewal of a dual certification as a Comprehensive Site Assessment Consultant/Response Action Contractor shall submit as part of that renewal a money order, cashiers check, or other payment method determined by the Department of one hundred fifty dollars (\$150.00) payable to the Department for the biennial renewal fee.

(E) Renewal applications received after July 1 of the renewal year will be subject to the late fees as outlined in § 32.602.

(F) Any person who applies to the Department to take an examination to receive certification as a Phase I Consultant, Comprehensive Site Assessment Consultant, or Response Action Contractor shall submit as part of that application a money order, cashiers check, or other payment method determined by the Department of one hundred dollars (\$100.00) payable to the Department for the examination fee. The examination fee is in addition to the application fees addressed at § 32.606(A) and (B) above.

(G) Applications or renewals will not be processed by the Department without payment of the fee.

(H) Examinations will not be given without payment of the fee.

(I) Fees will be reviewed biennially for potential adjustment to cover the costs of administering the Environmental Professional Certification Program.

(J) The Department will not issue refunds for any fees paid pursuant to this Regulation.

Reg.32.607. Certification Statement.

(A) All documents, reports, or correspondence created pursuant to activities addressed by this Regulation, whether submitted to the Department or to a client, shall include:

(1) The following certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information.

- (2) The signature of the certified consultant or contractor; and
- (3) The certificate number of the certified consultant or contractor.

Reg.32.608. Records Review.

(A) The Department may inspect any records required to be kept under this Regulation during normal business hours including, but not limited to, the following:

- (1) A copy of the Certificate issued to the individual;
- (2) Written or electronic records of projects requiring certification that are the subject of a disciplinary action under § 32.701 et seq.;
- (3) Written or electronic records of projects examples cited in an application for certification;
- (4) Copies of professional licenses, if applicable;
- (5) Copies of certificates or licenses from another state, tribe, U.S. territory, or organization recognized by the Department under § 32.603 or § 32.604 as substantially equivalent, if applicable; and
- (6) Documentation of continuing education requirements pursuant to § 32.605.

(B) The Department may establish requirements concerning the information that shall be included in the records.

CHAPTER 7: DISCIPLINARY ACTIONS

Reg.32.701. Disciplinary Actions.

(A) It is unlawful for any person to:

- (1) Make any false statement or representation in any application for certification;
- (2) Render inaccurate any certification issued under this subchapter; or
- (3) Solicit or perform the services for which a certification under this subchapter is required without holding a current and valid certification under this subchapter.

(B) A holder of a certificate issued under the provisions of the Regulation may be subject to disciplinary action, or the certificate may be subject to suspension, condition or revocation if he or she:

- (1) Engages in activities subject to licensure under this Regulation and is no longer entitled to the certification by reason of his or her failure to maintain the license or certification on which the certification was issued;
- (2) Demonstrably fails to produce acceptable work for specific activities for which the Response Action Contractor or the Environmental Site Assessment Consultant has been certified under this Regulation.
- (3) Practices fraud or deception;
- (4) Does not exercise reasonable care, judgment, or the application of knowledge in the performance of the consultant's or contractor's responsibilities;
- (5) Is incompetent, unable, or unwilling to perform their responsibilities;
- (6) Fails to pay renewal fees;
- (7) Does not meet continuing education requirements; or
- (8) Fails to meet any provision of this Regulation.

(C) If the Director has sufficient evidence that a Response Action Contractor, professional engineer, professional geologist, or other Environmental Site Assessment Consultant licensed by a state board should be subject to disciplinary action under this Regulation or have his or her certification suspended, conditioned or revoked, the Director shall submit the evidence to the licensing board of the contractor or professional involved.

- (1) The licensing board involved may investigate the matter and take such action as it finds to be appropriate and report its findings to the Director.
- (2) If the licensing board finds, following its procedures for resolving disciplinary proceedings and licensing matters, that action is necessary, the board shall provide appropriate information regarding the actions taken to the Director.
- (3) If the licensing board finds that the issue presented is not within the licensing board's jurisdiction or otherwise elects not to pursue the matter, the licensing board shall notify the Director and the peer review procedures outlined in § 32.702 shall apply.
- (4) The Director shall consider the information, if any, presented by the licensing board to determine appropriate action on the certificate holder.

(D) If the Department has sufficient evidence that a Response Action Contractor or Environmental Site Assessment Consultant who does not have a professional license

issued by a state board should have his or her certification suspended, conditioned or revoked, the Director shall provide notice of a proposed action to the certificate holder of his or her right to a peer review and a hearing in accordance with § 32.702.

(E) The Director's decision shall be subject to adjudication before the Commission in accordance with administrative procedures adopted by the Commission.

(F) Certifications revoked, suspended, or conditioned shall be subject to the terms outlined in the Director's final decision as specified in § 32.702(F).

Reg.32.702. Disciplinary Hearing and Peer Review.

(A) The procedure described in this subsection shall apply for disciplinary action or suspension, condition, or revocation of the certification of an Environmental Site Assessment Consultant or Response Action Contractor who does not have a professional license issued by a state board, or if the appropriate licensing board gives notice to the Director under § 32.701(B)(3) that the issue presented is not within the licensing board's jurisdiction or otherwise elects not to pursue the matter.

(B) If the Department has sufficient evidence that a Response Action Contractor or Environmental Site Assessment Consultant should have his or her certification suspended, conditioned or revoked, the Director shall provide notice of a proposed action and advise the person of his or her right to a peer review and/or a hearing before the Director within sixty (60) days.

(C) After receiving notice from the Director in accordance with § 32.702(B), the Response Action Contractor or Environmental Site Assessment Consultant shall have fifteen (15) days to submit a request for a peer review and hearing to the Director. If a request for peer review and/or hearing before the Director is made, the Response Action Contractor or Environmental Site Assessment Consultant shall maintain all written or electronic records of projects that are the subject of or germane to the disciplinary action.

(D) Biennially the Commission shall appoint twelve (12) certified Response Action Contractors and twelve (12) Environmental Site Assessment Consultants, in good standing under this Regulation, to serve as peer review members. The Commission shall instruct the Director to select, in accordance with § 32.702(E)(1), from those appointed not less than three (3) certified individuals for a peer review committee for each timely request for peer review and/or hearing that is received.

(E) If a request for peer review is made within the allotted timeframe, the Director shall select members for a peer review committee within five (5) days of the request. The peer review committee shall serve without compensation or stipend.

(1) The peer review committee shall be comprised of at least three (3) Response Action Contractors or Environmental Site Assessment Consultants certified under this Regulation and in good standing at the time of the request. The peer review committee shall be selected by lottery from those members biennially appointed by the Commission. Response Action Contractors shall only peer review Response Action Contractors. Environmental Site Assessment Consultants shall only peer review Environmental Site Assessment Consultants.

(2) The peer review committee shall be provided the information brought before the Director and conduct an investigation.

(a) The peer review committee shall have authority to request additional information from the Department and the Response Action Contractor or Environmental Site Assessment Consultant or others regarding the disciplinary action.

(b) The peer review committee shall take into consideration the nature of the disciplinary action, the work product produced, and any other factors germane to the disciplinary action or complaint in making their decision.

(3) The peer review committee shall submit a report to the Director and to the consultant or contractor within thirty (30) days of being convened. The report shall include, at a minimum, the following:

(a) The recommendation(s) of the peer review committee regarding the proposed disciplinary action, and

(b) The facts that were considered by the review committee in making their recommendation.

(F) The Director shall hold a hearing if requested in accordance with 32.702(C). The Director shall take the peer review committee's report and any relevant evidence into consideration in making his final decision.

(G) If the Department has sufficient evidence that a Response Action Contractor or Environmental Site Assessment Consultant should have his or her certification suspended, conditioned or revoked, the Director shall provide notice of a final decision under applicable rules of the Commission. The Director's final decision shall specify the terms of the suspension, condition, or revocation of the certification as a result of the disciplinary actions under this Regulation.

(H) The Director's decision shall be subject to adjudication before the Commission in accordance with administrative procedures adopted by the Commission.

Reg.32.703. Appeals.

A certificate holder or other party with standing may appeal the Director's final decision to the Commission. Such an action shall be conducted as provided for in Arkansas Code Annotated § 8-4-202 et seq. and in accordance with the Commission's regulations on administrative procedures.

CHAPTER 8: SEVERABILITY

Reg.32.801. Severability.

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

CHAPTER 9: EFFECTIVE DATE

Reg.32.901. Effective Date.

This Regulation shall be in full force and effect ten (10) days after it is filed with the Secretary of State except as expressly stated in § 32.206(K).