

Statement of Basis and Purpose

Act 2141 of 2005 requires the Arkansas Pollution Control and Ecology Commission to adopt regulations for the administration and implementation of a certification program for contractors and consultants that provide certain environmental assessments, investigations, responses, and remedial actions. Regulation No. 32, Environmental Professional Certification, sets forth this certification program. The background, purpose, and specific need are discussed below.

Why was this Regulation needed?

Environmental investigations and cleanups require specialized knowledge and experience. Until Act 2141 of 2005 was passed, no criteria existed that addressed the qualifications needed to perform these services. Information and data that is collected during the early phases of investigation are used to determine what, if anything needs to be done to protect health, safety, and the environment. Inaccurate or incomplete information can lead to poor decisions which may jeopardize public health and safety or result in exacerbation of damage to the environment. It can also increase the financial burden to properly address the problem, lengthen review and approval timeframes for projects, and cause an “innocent” party to become a “liable” party. Many consumers of these services do not have the knowledge to adequately evaluate the qualifications of prospective contractors or consultants.

What does this Regulation do?

Regulation No. 32, Environmental Professional Certification, seeks to fix the above-mentioned problems by establishing a competency-based certification program for contractors and consultants that provide certain environmental services. This Regulation sets minimum qualification standards and continuing education requirements for the contractors and consultants along with a demonstration of knowledge and experience. It allows for non-certified apprentices/assistants to gain practical experience under the responsible charge of a certified individual. This Regulation establishes a “level playing field” for all service providers in these areas. This Regulation also provides the public and consumers assurance of the technical capabilities of service providers in the specialized area of environmental investigation and remediation. This regulation also provides for disciplinary actions for consumer protection.

What specific services are covered by this Regulation?

This applicability of this Regulation is limited to certain environmental services. Those persons that provide the following services are required to be certified under this Regulation:

1. Phase I site assessments
2. Comprehensive site assessments performed at a site addressed pursuant to the Arkansas Hazardous Waste Management Act of 1997, § 8-7-201 et seq., the Remedial Action Trust Fund Act, § 8-7-501 et seq., or the Voluntary Cleanup Act, § 8-7-1101 et seq.

3. Investigations and response actions undertaken pursuant to the Arkansas Hazardous Waste Management Act of 1997, § 8-7-201 et seq., the Remedial Action Trust Fund Act, § 8-7-501 et seq., or the Voluntary Cleanup Act, § 8-7-1101 et seq.

What categories of certification does this Regulation create?

This Regulation creates four categories of certification:

1. Phase I Consultant
2. Comprehensive Site Assessment Consultant
3. Response Action Contractor
4. Comprehensive Site Assessment Consultant/ Response Action Contractor

How do you become certified?

This Regulation sets forth the procedures for submitting an application to the Department. For Phase I Consultants and Comprehensive Site Assessment Consultants, the application will require demonstration of a combination of education and experience consistent with the definition of an Environmental Professional in the All Appropriate Inquiries Rule. Arkansas Registered Professional Engineers and Geologists will be required to submit an application and demonstrate appropriate experience. For those applicants that do not have the required combination of education and experience, they may demonstrate competency by providing proof of relevant experience and passing an examination administered by the Department. Applicants may also demonstrate that they have obtained certification from an organization, tribe, or state certification program that has been determined to be substantially equivalent with this Regulation. For Response Action Contractors, in addition to the above education and experience, the application will require a valid license issued by the Arkansas Contractors Licensing Board, training and medical monitoring required by the Occupational Health and Safety Administration for handling hazardous substances, and passing a competency examination administered by the Department.

Who will be required to take an examination?

This Regulation requires all Response Action Contractors to take an examination. Phase I Consultants and Comprehensive Site Assessment Consultants only have to take an examination if they do not have the designated education and experience.

How much will this Regulation cost a consultant or contractor?

Persons who perform services covered by this Regulation will be required to pay fees to cover the administration of the program. The fees include an application fee in the amount of \$200 for a single certification or \$300 for dual certification; an examination fee in the amount of \$100, and a biennial renewal fee in the amount of \$100 for a single certification and \$150 for a dual certification. Certifications are good for two years from July 1 of the year in which certification is obtained. This Regulation also requires the certificate holder to participate in continuing education training. The cost to the consultant or contractor in time and money varies depending upon the type of continuing education training selected to fulfill the requirement.

How does this Regulation address disciplinary actions?

This Regulation establishes due process procedures for disciplinary actions regarding certificate holders. It incorporates Professional Registration/Licensing Boards reviews as part of the process and provides for peer review, if requested.

What does this Regulation *not* do?

This Regulation does not replace or supercede existing state law requirements for persons practicing engineering or geology to obtain a Professional Registration. This Regulation does not create an undue burden on contractors and consultants providing these specialized services. This Regulation does not require services provided by employees of a business or public agency relative to hazardous substance or hazardous waste management, release investigation, or response responsibilities of their employer to become certified if they are acting in the course of their employment.

Compliance with Executive Order 05-04

Regulation No. 32 addresses certification of environmental professionals and therefore the provisions of this Regulation ultimately affect small businesses in Arkansas. The regulations substantially codify existing State statute. As such, they are not subject to the provisions of Sections 3-5 of Executive Order 05-04.

Respectfully:
Arkansas Department of
Environmental Quality

Ryan Benefield