

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 21, ARKANSAS ASBESTOS) DOCKET NO. 13-009-R
ABATEMENT REGULATION)

STATEMENT OF BASIS AND PURPOSE
FOR REGULATION NO. 21, ARKANSAS ASBESTOS ABATEMENT REGULATION

The Arkansas Pollution Control and Ecology Commission (Commission) is given the power and responsibility to promulgate rules and regulations. Pursuant to Ark. Code Ann. § 8-1-203(b)(1), the Commission is granted the power and responsibility to promulgate rules and regulations implementing the substantive statutes which are administered by the Arkansas Department of Environmental Quality (hereinafter ADEQ or Department).

On August 9, 2013, ADEQ filed a Petition to Initiate Rulemaking to Amend Regulation No. 21, Arkansas Asbestos Abatement Regulation. The revisions to Regulation No. 21 are necessary to incorporate stakeholder input in order to clarify Regulation No. 21. The Department also proposes some additional language that will clarify requirements for record keeping, training provider licenses; documents required for certifications or renewal of licenses and correct the Occupational Safety and Health Administration Asbestos Construction standard citation. Other proposed changes include additional language to clarify and update Regulation No. 21 as well as to correct typographical errors. Adoption of the proposed revisions to Regulation No. 21 will help to clarify requirements to stakeholders.

ADEQ is proposing revisions to Regulation No. 21 in order to incorporate public input after several public workgroup meetings.

Substantial revisions to Regulation No. 21 include the following:

- 1) Chapter 4, in the definition of “Regulated asbestos-containing material (RACM),” deleting the word “breaking;”
- 2) Reg. 21.501, deleting the sentence: “The Department recommends that all bulk samples collected from school or public and commercial buildings be analyzed by a laboratory accredited under the NVLAP administered by NIST;”
- 3) Reg. 21.603 changes were made to clarify the list of Notice of Intent (“NOI”) requirements for renovation projects the owner or operator shall submit to the Department prior to beginning any activity related to renovation projects;
- 4) Adding language for activities related to resilient floor covering renovation in Reg. 21.603(B), and after public comment further clarification of the section to include “and/or associated mastic” before the word “covering;”
- 5) Adding item (F) under “Changes to the NOI,” under Reg. 21.609: “A change in owner;” and under Reg. 21.610 replacing “result in” with “require;”
- 6) Reg. 21.701, Reg. 21.703, and Reg. 21.704, changes are made to clarify storage and submission of on-site documents. These changes include revising a list of on-site document requirements regarding copies which are required to be kept on the job site by the owner or operator, by deleting the current provisions of previous items (A) and (B) under Reg. 21.701 and items (A) through (D) under Reg. 21.703 and adding “owner and” before “operator” and “from the date the regulated activity ended” after “two years” under Reg. 21.704. After the public comment period, Reg. 21.701 was revised by adding “report” after “inspection” and language was changed to read “... including results of any bulk sample analysis and any air monitoring data,” to make it clear that this data might not exist. Additionally, Reg. 21.701(D) was revised to clarify that copies of required certifications and licenses were acceptable in lieu of originals;
- 7) Deleting “Asbestos” before “demolition” and adding “involving RACM, and” after “response actions,” to clarify RACM, and deleting “or may be conducted by permanent employees of the family owner, provided such permanent employees have been trained and certified for asbestos abatement in accordance with these regulations” and replaced it “unless expressly excluded by this regulation.” under Reg. 21.801;
- 8) Adding “including school districts” and removing “and permanent employees of a school district” in Reg. 21.1205(A) and adding “A facility owner shall not require a license to conduct demolition, renovation, or response actions on the owner’s facility provided such actions are conducted by permanent employees of the facility owner” in Reg. 21.1205(B);

- 9) Adding “or who received training by an Arkansas licensed training provider where the items listed in Reg. 21.1907 were not taught” under Reg. 21.1806;
- 10) Adding “any document referenced by the resume” and deleting “the documents approving each instructor issued by either EPA or the Department. Instructors must be approved by either EPA or the Department before teaching courses for accreditation purposes” under Reg. 21.1807(B). After the public comment period, language was added to the section to clarify that a bibliographic citation could be provided in lieu of an original publication;
- 11) Adding Reg. 21.1808 “Accreditation Certificates” describing information to be included in the accreditation certificate that a successful individual who completes the requirements of a training course shall receive;
- 12) Deleting the title “Demolition – 5,001 Square/Linear to 10,000 Square/Linear Feet of RACM” and the following sentence “Any NOI involving demolition of a facility as described in Reg. 21.601 and Reg. 21.602 which contains between 5001 square/5001 linear and 10,000 square/10,000 linear feet of RACM shall be accompanied by a fee of \$375.” and adding “RESERVED” on Reg. 21.2216; and
- 13) Deleting the title “Demolition – Greater than 10,000 Square/Linear Feet of RACM” and the following sentence “Any NOI involving demolition of a facility as described in Reg. 21.601 and Reg. 21.602 which contains greater than 10,000 square/10,000 linear of RACM shall be accompanied by a fee of \$750,” and adding “RESERVED” on Reg. 21.2217.

The following non-substantive revisions also proposed for clarification and consistency purposes or for correction of typographical errors throughout Regulation No. 21 are:

- 1) Reg. 21.101 added “Arkansas Code Annotated (Ark. Code Ann.)” in place of “A.C.A.”;
- 2) Reg. 21.201(B), removing “the Asbestos School Hazard Abatement Reauthorization Act (ASHARA [MAP]), 40 CFR Part 763” and adding “Removal of Asbestos Material Act Ark. Code Ann. § 20-27-1001 *et seq.*,” in Reg. 21.201(C), deleting the word “friable” and replacing it with “regulated” before “asbestos-containing,” and after the public comment period, adding “the Asbestos Hazard Emergency Response Act (AHERA).”
- 3) Reg. 21.301, removing the word “asbestos” before “response actions” and adding “as defined herein” after it;
- 4) Adding a hyphen on “asbestos-containing” in Reg. 21.301, Chapter 4, under the definition of “Nonfriable asbestos containing material,” Reg. 21.603 and Reg. 21.1101(D);
- 5) Deleting “ten percent” and the parenthesis between “10,” under the definition of

- “Friable asbestos material,” in Reg. 21, Chapter 4;
- 6) Reg. 21.503(F) changes are made to clarify the requirements of a person conducting air monitoring activities related to asbestos, by adding “as defined in Chapter 4” after “air monitoring,” deleting “prescribed” and replacing it with “required by,” removing “in this,” and adding “Reg. 21.901 of this” before “regulation.” Also adding a sentence in the last paragraph: “A person need not to be certified under this regulation to conduct monitoring activities not required by this regulation;”
 - 7) Reg. 21.601, deleting “ten” and adding “10;”
 - 8) Adding item (S) under “NOI Requirements” under Reg. 21.606: “the appropriate fee pursuant to Chapter 22 of this regulation;”
 - 9) Deleting “or” under Reg. 21.609(D) and adding on 21.609(E);
 - 10) Adding “working” before “days” in Reg. 21.611(B)(4), deleting “ten,” and adding “working” before “days” in Reg. 21.611(C);
 - 11) Deleting “greater than” and adding “at least” before “80 linear meters” on Reg. 21.901(G), and replaced the letters H, I, J, K, and L, with 1, 2, 3, 4, and 5, and renumbering (J)(1) and (J)(2) to (G)(3)(a) and (G)(3)(b);
 - 12) Replacing “sampling” by “sample” in Reg. 21.901(G)(2) and deleting “(II)(B)(17) (AHERA)” before “Appendix A” on Reg. 21.901(G)(5);
 - 13) Adding “from the date the regulated activity ended” in Reg. 21.1001(C)(4)(c);
 - 14) Adding “calendar” after “days” in Reg. 21.1102(B) and (C), Reg. 21.1104(D), (E),(K) and (L), and adding “from the date of disposal” in (H);
 - 15) Capitalizing “Provider” on Reg. 21.1201, Reg. 21.1202, Reg. 21.1204;
 - 16) Adding the letter “(B)” after “in Reg. 21.1205” in the first sentence of Reg. 21.1206;
 - 17) Deleting “appropriate license must be paid” and replacing with “person must be under the supervision of a Contractor or Consultant licensed pursuant to this regulation” in Reg. 21.1206(B);
 - 18) Adding “Initial” before “License” and “application” and removing “and Renewal” after “Application” and “or renewal” after “license” in the title and first sentence of Reg. 21.1301;
 - 19) Adding “as such” and “accordance with this regulation” and deleting “the appropriate disciplines,” in Reg. 21.1301(C), and adding “pursuant to APC&EC Reg. 8.204” on (D), and adding “working” before “days” on (E)(2);
 - 20) Adding the word “Initial” before “License” and “application” in the title and first sentence of Reg. 21.1401;
 - 21) Deleting “and” on Reg. 21.1401(E), “for new applicants,” and “Government agencies and public institutions of higher learning are exempted from this requirement” and adding “pursuant to APC&EC Reg. 8.204” and “and” in Reg. 21.1401(F);

- 22) Adding Reg. 21.1401(G): “A statement that each discipline course complies with the minimal course content required at Chapter 19 of this regulation;”
- 23) Adding under Reg. 21.1402 “in addition to the information required by Reg. 21.1401(A), (B), (C), (D), (E), (F) and (G),” and removing “also.” After the public comment period, (I)(1) through (I)(9) were removed from the section, and replaced with a reference to Reg. 21.1808, where the same requirements are listed;
- 24) Adding “disclosure statement pursuant APC&EC Reg. 8.204 on a form provided by the Department” and deleting “Disclosure Statement form pursuant to Arkansas Pollution Control and Ecology Regulation No. 8” to Reg. 21.1501(E);
- 25) Adding “full” to Reg. 21.1501(D)(1);
- 26) Adding “Except as provided in Reg. 21.1205” and “as a Contractor or Consultant” under Reg. 21.1502;
- 27) Deleting “and” on Reg. 21.1601(B) and adding to the end of (C); deleting the same on Reg. 21.1602(A) and (B);
- 28) Adding “A completed disclosure statement pursuant APC&EC Reg. 8.204 on a form provided by the Department” under Reg. 21.1601(D) and Reg. 21.1602(C);
- 29) Deleting “approved by the Department” and added “licensed as a Training Provider pursuant to this Regulation” under Reg. 21.1801;
- 30) Adding “initial” before “training course” and “the course content as outlined at Chapter 19 of the regulation and” under Reg. 21.1802;
- 31) Adding “unless otherwise specified herein” to Reg. 21.1803;
- 32) Under Reg. 21.1807(D)(6), adding “initial” before “course” and “The photo is not required for Refresher Courses required at Chapter 20 of this regulation” at the end of the sentence;
- 33) Adding “including but not limited to the items listed in Reg. 21.1907” in Reg. 21.1901(I), Reg. 21.1903(L)(4), Reg. 21.1904(H)(5);
- 34) Correcting the Code of Federal Regulations citation in Reg. 21.1902(I)(4), Reg. 21.1903(L)(2), Reg. 21.904(H)(1) and Reg. 21.1905(C)(2) and Reg. 21.905(S)(5), deleting “1910.1101” and adding “1926;” after the public comment period, further specification was made to the citation: “1926.1101.” After the public comment period, a reference citation at Reg. 21.1903(L)(3) was corrected from Subpart F to Subpart E and at Reg. 21.904(H)(4) citation language was moved to the end of (H)(3) where it belongs, and (H)(5) was renumbered to (H)(4);
- 35) Adding “the items listed in Reg. 21.1907” to Reg. 21.1902(I)(6) and Reg. 21.1905(S), and after public comment, at Reg 21.1905(S)(6), the reference cited as “1910.59” was corrected to “1926.59;”
- 36) Adding “including but not limited to the items listed in Reg. 21.1907” and deleting “and differences between Federal and State requirements where they apply” in Reg. 21.1903(L)(4);

- 37) Deleting “provided” and adding “provider” on Reg. 21.1907;
- 38) Adding “There is no fee for NOI involving demolition of a facility that contains one square/one linear foot of ACM or less” to Reg. 21.2214;
- 39) Deleting “to 5,000 Square/Linear” and adding “Feet or More” on the title and first sentence of Reg. 21.2215, and also changing the fee amount from “225” to “375” dollars;
- 40) Adding “accordance with” and “Department” and deleting “state of Arkansas” and adding “in accordance with” before “this regulation,” to Reg. 21.2401(A);
- 41) Deleting “state of Arkansas” before “Department,” and deleting “Section” and adding “Reg.” before “21.201(B)” on Reg. 21.2401(B);
- 42) Deleting “ten” and the parenthesis between “10” on Reg. 21.2701;
- 43) Replacing the word “resume” with “résumé” throughout the document after the public comment period; and
- 44) Updating the Table of Contents.

The Commission finds that the proposed revisions to Regulation No. 21 incorporate clarifying language and are of public interest.

Prepared by:
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By: 
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