BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

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

RESPONSIVE SUMMARY FOR REGULATION NO. 21, ARKANSAS ASBESTOS ABATEMENT REGULATION

Pursuant to Arkansas Code Annotated (Ark. Code Ann.) § 8-4-202(d)(4)(C) and Regulation[1] 8.815, the Arkansas Pollution Control and Ecology Commission (Commission, APC&EC) shall cause to be prepared a responsive summary, which groups public comments into similar categories and explains why the Commenters' rationale for each category is accepted or rejected.

On August 9, 2013, the Arkansas Department of Environmental Quality (Department, ADEQ) filed a Petition to Initiate Rulemaking to Amend Regulation No. 21, Arkansas Asbestos Abatement Regulation. A public comment period began on September 30, 2013. Administrative Law Judge Charles Moulton conducted a public hearing on September 30, 2013, and the public comment period ended on October 14, 2013. The following is a summary of the comments regarding the proposed amendments to Regulation No. 21 along with the Commission's response.

Comment 1: The Commenter suggests that the language at Reg. 21.201(C) "...to establish standards for response actions as provided by..." should be changed to "...to establish educational training standards as established by ASHARA [Asbestos School Hazard Abatement Reauthorization Act]." The Commenter states AHERA [Asbestos Hazard Emergency Response Act] has response actions; ASHARA does not.

Response: Reg. 21.201(C) has been modified and the text after "response actions" has been deleted.

Comment 2: Commenters state that the definitions of "Asbestos Contractor" and "Asbestos Consultant" are identical in both the [State] law and Regulation No. 21, and license fees and insurance requirements are also the same, but according to the Department's policy, the licensed activities for each agent are different. Commenters believe that the Asbestos Contractor should be limited to conducting abatement only and the Asbestos Consultant should be limited to

[1] All citations of and references to State environmental regulations contained in this document signify those regulations promulgated by the Arkansas Pollution Control and Ecology Commission.

EXHIBIT B

services such as inspections, designs, etc. As the definitions stand, one Commenter argues there is a conflict of interest with "Contractors being able to design their own work from the ground up," and the definition change to "RACM" will put Contractors in the role of inspector, making the determination if a material is friable or not. Therefore, the Commenter believes this matter could be addressed at Reg. 21.503 (B – inspections, C – management plans, D – designing) by stating that these activities must be conducted by a trained, licensed Consultant.

Response: As the Commenter pointed out, the definitions of "Asbestos Contractor" and "Asbestos Consultant" are identical under Arkansas law, specifically at Ark. Code Ann. § 20-27-1003(2) and (3). Also, Ark. Code Ann. §§ 20-27-1006(a) and 1007(1)(A) treat Contractors and Consultants synonymously. While ADEQ acknowledges the Commenter's concerns, these definitions cannot be updated until the language in Ark. Code Ann. §§ 20-27-1003, 1006, and 1007 is revised.

In order to be licensed as a Contractor under Regulation No. 21, the applicant must employ at least one qualified Contractor/Supervisor who has been certified by the Department in accordance with Regulation No. 21. The applicant must also show proof of liability insurance coverage suitable for the types of asbestos activities provided. A consultant need not employ a Contractor/Supervisor and their liability insurance need not cover contracting services.

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 3: The Commenter appreciates the clarification document released by the Department regarding activities by which floor tile would become RACM and suggests including the statement regarding floor tile in the Regulation (No. 21 Arkansas Asbestos Abatement Regulation). The Commenter suggests changing the Regulation definition of RACM at (E) to include the language found in the clarification document: "ACM resilient floor covering or the mastic used to attach it to the floor surface will be regulated as RACM if it is removed by scraping,.....or reduced to powder."

Response: The intent of the change to the definition of RACM was to make it consistent with the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) and to bring back the language to the way it was written prior to the 2011 revisions. Further amending the definition will defeat this purpose. ADEQ would also like to point out that a Notice of Intent (NOI) will now be required for all floor tile jobs over a threshold amount, allowing the Department to determine if methods of removal result in the ACM becoming RACM.

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 4: The Commenter believes Regulation No. 21 should contain a standard for laboratory accreditation and analytical method for analysis of bulk samples, as is the case for final clearance air samples in Chapter 9 of the Regulation. The Commenter disagrees with the Department's proposed deletion of the last sentence at Reg. 21.501, and instead suggests replacement of the word "recommends" with "requires," so that the Regulation reads: "The Department requires that all bulk samples collected from school or public and commercial buildings be analyzed by a laboratory accredited under the NVLAP program of NIST."

The Commenter states this was EPA's intention as is presented in the 1994 clarification document pertaining to flooring bulk analysis and NESHAP/AHERA. In this document, transmission electron microscopy (TEM) is identified as the "best method" for bulk analysis of flooring related to NESHAP, and EPA states that "thorough inspection" is required using the best analytical method (TEM for flooring). While AHERA focused on ACM management rather than renovation/demolition and did not require schools to re-inspect flooring with TEM, the Commenter points to EPA's clarification regarding NESHAP as the basis for the suggested revision.

Response: The Department's proposed revision at Reg. No. 21.501, deleting the last 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;" was based on feedback from stakeholders and the fact that a "recommendation" cannot be considered an enforceable measure. In addition, the Department cannot replace the word "recommends" with "requires," as suggested by the Commenter, because such requirement is not found in current federal regulations. If the Department were to include this provision as a requirement, Arkansas's regulatory language would be more stringent than federal rules. According to the requirements listed in the Commission's regulations and in Ark. Code Ann. § 8-4-311, in promulgating a proposed rule that is more stringent than federal law, "the Commission shall duly consider the economic impact and environmental benefit of such rule or regulation." ADEQ finds no reasonable justification for entities regulated under this State rule to be subjected to a more stringent requirement, as there is no significant environmental benefit from implementing a more stringent provision in this instance. Additionally, in the case of considering a more stringent requirement due to a Comment, another rulemaking might have to be initiated since it was not proposed in the current docket and the public was not notified of the more stringent language during public comment period.

For further clarification, the Department would like to mention that EPA did issue a Notice of Advisory document on July 21, 1994, allowing the use of TEM in lieu of polarized light microscopy (PLM); however, in that document EPA specifically states: "[T]here is no modification of the AHERA requirements at this time and results obtained by following the 1982 protocol and the AHERA sampling rules meet the AHERA legal requirements...." The federal rule was not revised - 40 C.F.R. § 61.141 still references the test method as PLM (in the definition of "resilient floor covering"). Had EPA intended to require bulk samples be analyzed at a laboratory accredited under the NVLAP program of NIST, a corresponding change would have been made in the federal regulations.

The federal rule does not contain a definition of "thorough inspection." Regulation No. 21 does, and it requires the use of a "documented sampling methodology."

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 5: The Commenter states that the proposed language at Reg. 21.1808(F) should be deleted. The Commenter believes this section is a duplication of the same requirements included in Chapter 14 (Reg. 21.1401 Initial Licenses) regarding initial training licenses, in Chapter 18

(Training) regarding course content, and for each course listed in Chapter 19 (Training Course Content). Therefore, the Commenter does not see the purpose for also including this requirement at Reg. 21.1808(F). It is also the Commenter's opinion that this requirement will result in unnecessary costs "borne by the trainer." The Commenter explains that it is costly to print the certificates and states: "I paid a printing company to develop the 'film' and then print the certificates for five different disciplines...Currently my certificates contain all the information listed in 21.1808 except a statement that section 21.907 was taught. For me, this means paying the printer to modify the 'film' and then print copies of certificates for five different disciplines just to add this statement." Therefore, the Commenter states, this proposed language will be unnecessarily costly because it "serves no purpose."

Response: As the Commenter pointed out, Arkansas-licensed training providers are required to teach Arkansas awareness information. However, throughout the stakeholder process the Department received many comments regarding the two-hour Arkansas Awareness course requirements. An Arkansas-based training provider felt there was a problem with individuals receiving training from Arkansas-licensed out-of-state training providers who were not teaching Arkansas-specific information. Some wanted the Regulation to require out-of-state training providers to teach Arkansas regulations in their classes while others wanted out-of-state trainers to assert on the training certificate that Arkansas regulations were taught. Concerns were raised regarding the training requisites covered by a training provider who was physically located and licensed in another state, and also licensed in Arkansas. Specifically, Arkansas-based training providers believed these out-of-state trainers, when teaching students seeking certification in another state, would not teach the Arkansas-specific requirements, but rather the requirements of the state the students initially sought certification. If these students later sought certification in Arkansas, because an Arkansas-licensed training provider trained them, a "loophole" may take place whereby these students would not be required to take the two-hour awareness course specific to Arkansas licensure.

The stakeholder group discussed this issue at great length, seeking resolution without violating the interstate commerce clause of the U. S. Constitution. The solution was the inclusion of the language now found in Reg. No. 21.1808(F). Removal of this proposed language would discard all the time spent by stakeholders and the Department to reach a remedy, and further, would leave this entire issue unresolved.

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 6: Commenters suggest for accuracy OSHA reference in Regs. 21.1902(I)(4) and 21.1903(L)(2) and 21.1904(H)(1) and 21.1905(C)(2) and 21.1905(S)(5) should read 1926.1101.

Response: The suggested change has been made.

Comment 7: The Commenter appreciates the Arkansas Department of Environmental Quality (ADEQ) Clarification Memorandum (2013-03) (see ADEQ's website at http://www.adeq.state.ar.us/air/asbestos/asbestos.htm) describing activities that would cause floor tile to become RACM. The Commenter is particularly thankful for the statement: "ACM resilient floor covering....removed by scraping, sanding, etc." and other Commenters support the

Department's proposal to remove the term "breaking," found at (E) of the definition and recommend removal of the quotes regarding "breaking of floor tile" from the clarification memo.

The Commenter also supports the remaining language on Page 1 of the memo, with the exception of the sentence: "...determination of whether floor tile is RACM is largely dependent on a case-by-case basis." The Commenter believes this statement causes confusion and should be removed. The Commenter points out that the Clarification Memo originated as a justification for removing the word "breaking" from the definition of RACM and various quotes from EPA were cited to support that decision. Another Commenter, therefore, concludes: "Now that the term 'breaking' will be removed from the regulatory language the lengthy quotes regarding 'breakage' of floor tile are no longer relevant and should be removed from the clarification document. Likewise the reference to case-by-case determination should be removed."

Response: This Comment did not address any specific proposed revision. ADEQ appreciates the Commenter's desire to avoid case-by-case determinations to the extent possible; however, determining when floor tile will be RACM is largely dependent on the specific facts of each situation. Therefore, the decision must be made on a case-by-case basis. Removing that statement would cause the memo to be inaccurate. ADEQ would also like to point out that a NOI will now be required for all floor tile jobs over a threshold amount, allowing the Department to determine if methods of removal result in the ACM becoming RACM.

ADEQ also does not intend to remove the background information found in the memo as the Department believes it provides further clarification.

See also Response to Comment 3.

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 8: The Commenter does not believe that it was the Department's intent to imply that "each of the removal methods – scraping, sanding, chipping, grinding, etc. – must be evaluated on a case-by-case basis as to the degree of damage before that activity results in the floor tile becoming RACM," when using EPA's quotes in the clarification memo, which references extensively damaged flooring. The Commenter states: "These EPA quotes applied specifically to the degree of breakage of flooring, not other activities such as sanding. However, determination of RACM is now interpreted as applying to the degree of damage of each action such as sanding, grinding, etc." The Commenter believes that these quotes are leading to the interpretation that sanding would only cause flooring to become regulated if the damage was extensive, but cutting would not if there was only minimum damage. Therefore, the Commenter concludes: "activities listed as resulting flooring to become regulated (sanding, grinding, etc.) should be considered as regulated activities without the application of case-by-case basis."

Response: This Comment did not address any specific proposed revision. Determinations on whether or not a floor tile is ACM or RACM must be made on a fact-specific or case-by-case basis. In situations where the facts of the work sites are the same, the answer should be the same as well.

See also Responses to Comments 3 and 7.

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 9: The Commenter believes that if the Department keeps EPA's quotes included in the clarification memo (referenced in Comment 8), containing what activities would cause flooring to become regulated and application of a case-by-case basis, then "equal space should be given supporting the use of the terms drilling, cutting, chipping: NESHAP preamble p. 48412 includes reference to 'resilient floor covering containing ACM that will be has been removed by sanding, grinding, or abrading (including, drilling, cutting, chipping.)" The Commenter also cites NESHAP Common Questions (1990) p. 11: "Also if you sand, grind, abrade, drill, cut or chip any non-friable material, including category I materials, you must treat the material as friable." The Commenter suggests deleting the quotes related to breakage of flooring from Pages 2, 3 and 4 of the clarification memo. Also, "the non-regulated removal methods such as heat, dry ice, etc. are listed on page one, paragraph four and should be removed [as a duplication] from p. 3."

Response: See Responses to Comments 3, 7, and 8.

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 10: The Commenter appreciates the definition of "Containment," but finds it very vague and with no consistency regarding the nature of structure and raises the following questions: "Is plastic over the criticals sufficient? Must there be negative air? Is two feet plastic on the walls (up from floor) sufficient?" The Commenter believes that review of the clarification memo 2013-01 (ADEQ website at http://www.adeq.state.ar.us/air/asbestos/asbestos.htm) describing containment is not helpful. The Commenter realizes that a definition of containment applying to every abatement job (roof vs. pipes vs. floors, etc.) is difficult to craft and, therefore, requests consistency among the ADEQ inspectors during site visits and when providing information to Contractors and Consultants. Because the determination regarding construction of containment is often tied to final clearance, consistency on this matter is necessary to ensure fairness for Contractors and consultants during the bid process.

Response: This Comment did not address any specific proposed revision. Changes to the definition of "containment" were not proposed in Regulation No. 21. ADEQ appreciates the Commenter's observation that the proposed guidance memo could be improved and will consider any specific suggestions to improve it. ADEQ would like to point out that Regulation No. 21 requires certain actions to be performed if containment is used, which triggers the need for a definition of "containment," but Regulation No. 21 does not state when containment must be used.

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 11: The Commenter points out that in Regulation No. 21, Chapter 6, regarding NOI submissions, the Department needs to clarify the NOI requirement regarding projects in which RACM is removed (renovation) followed by building demolition. The Commenter explains that often there are two Contractors for these activities, and questions: "if both activities are listed on the same NOI which contractor should sign the document and what fee is required: renovation fee or demolition fee, or both?"

Response: This Comment did not address any specific proposed revision. Rather, this Comment is directed toward issues of Asbestos Abatement Program operation. In the situation described in the Comment, it is usually the general Contractor who submits and signs the NOI along with the appropriated fee(s). It is also permissible to submit two NOIs, one for the renovation and one for the demolition.

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 12: The Commenter points out that Reg. 21.1501 (Certification) requires that persons seeking initial certification to submit a photograph; however, the Commenter questions the reason the Department now requires a photograph for subsequent years (renewals), when policy has historically been to require a photograph for only the initial certification.

Response: The Department practice is to require photos for individuals seeking new certification after September 23, 2011, but not for renewals.

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 13: The Commenter states that the Table of Contents has not been revised to reflect changes in paragraph headings in Chapters 18 and 22.

Response: The Table of Contents has been updated.

Comment 14: The Commenter requests clarification on Reg. 21.603(B) as to whether the notification requirements apply when the resilient floor covering is not ACM but the mastic is ACM, since the mastic is adhered to the flooring.

Response: This Comment did not address any specific proposed revision. Rather, this Comment is directed toward issues of Asbestos Abatement Program operation. Mastic and floor covering are considered as a unit, therefore, the notification requirements would apply in the situation described by the Commenter. To clarify this issue, ADEQ added the words "and/or associated mastic" to Reg. 21.603(B).

Comment 15: The Commenter suggests the addition of the word "report" or "record" after "inspection" at Reg. 21.701(A).

Response: The suggested change has been made.

Comment 16: The Commenter states that because the collection and analysis of bulk samples and air monitoring are not required parts of an asbestos inspection, at Reg. 21.701(A), language should be 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.

Response: The suggested change has been made.

Comment 17: The Commenter points to Reg. 21.701(D), which requires the owner or operator to keep at the site "Certification and licenses of personnel participating in demolition, renovation, or response actions," and asks if a contracting or a consulting firm must also have their original license on site? Because (D) includes the term "licenses," it implies application of the rule to firms, and the Commenter requests clarification if this is the Department's intent. Specifically, the Commenter asks what to do in a situation where the firm might be working on more than one project (multiple sites)?

Response: The requirement to keep certifications and licenses on site is not new. It has been in Regulation No. 21 for at least 16 years. The Department has always accepted copies of licenses and certificates. For further clarification, the words "A copy of" have been added to Reg. 21.701(D).

Comment 18: The Commenter suggests that Reg. 21.1001(B) should either include the new OSHA Asbestos Sign wording (optional now, required by June 1, 2016) as an option for the signs required by this (and any other) section or that the sign requirement should be changed to reference 29 C.F.R. 1926.1101 rather than repeating the requirements in this section. The Commenter believes this will avoid the need to revise the regulations again in 2016 [for this matter].

Response: The Commenter is correct in stating that OHSA requirements regarding new sign language that will take effect in 2016; however, the language in Reg. 21.1001(B) is required by 40 C.F.R. Part 61. Until Part 61 has been revised, the language in Regulation No. 21 will remain unchanged.

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 19: The Commenter suggests removing the requirement to use the OSHA standards in effect on December 12, 2008, and argues that the asbestos standards were revised in 2012, to comply with the new OSHA Hazard Communication Standard. The Commenter also suggests the regulation requires the use of the "current version" rather than one of a specific date.

Response: When an Arkansas regulation adopts a federal regulation by reference, it must adopt it as of a date certain. In 1995, the Arkansas Attorney General issued an opinion which specifically addresses adopting future legislation, rules, regulations or amendments by reference. The opinion states that doing so would run afoul of the constitutional separation of powers doctrine. Ark. Const. art. 4, §§ 1 and 2. Therefore, to use language such as "current version," would violate the prohibition of prospective rulemaking in Arkansas.

See also Response to Comment 18.

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 20: The Commenter points out that the requirement at Reg. 21.1807(B) to keep copies of any document referenced by a training instructor's résumé will be burdensome for those résumés that reference journal publications, etc. Therefore, the Commenter requests that the Department clarify what documents it wants maintained.

Response: If an individual wishes to list journal publications or other such documents on their résumé, thus taking credit for that body of work, it is not unreasonable to expect the individual to provide access to those documents. However, for published documents, a bibliography citation will be sufficient. Regulation 21.1807(B) has been changed to read "...any document referenced by the résumé or, for published documents, a bibliography citation sufficient to allow for the document to be located."

Comment 21: The Commenter states that at Reg. No. 21.1808 - Accreditation Certificates - the requirements (A)-(F) for a training certificate do not correspond with the requirements for a training certificate in Reg. 21.1402(I)(1)-(9). Therefore, the Commenter recommends that these two lists of requirements be identical.

Response: Reg. 21.1402(I) will be modified to be consistent with Reg. 21.1808. No changes were proposed to Reg. 21.1402(I) in the public notice; however, one stated purpose of this rulemaking was to "clarify requirements for...training provider licenses...." Thus, making these two sections consistent is a logical outgrowth of notice and comment procedure.

Comment 22: The Commenter suggests to changing the reference at Reg. 21.1903(L)(3) to the Friable Asbestos in Schools Rule to Subpart E, not Subpart F. Subpart F does not exist at this time.

Response: The suggested change has been made.

Comment 23: The Commenter states that the phrase "Subpart G;" on Reg. 21.1904(H)(3) and (4), belongs at the end of (3), not the beginning of (4).

Response: The suggested change has been made.

Comment 24: The Commenter states that at Reg. 21.1905(S)(6), 1910.59 should be replaced with 1926.59.

Response: The suggested change has been made.

Comment 25: The Commenter stated that the definition of RACM in Regulation No. 21, Chapter 4, needs to be clarified. The Commenter expressed the need as a Consultant of having a clear regulation in order to tell the client what is regulated or not in regards to floor tile activities. In reference to ADEQ's Clarification Memorandum (2013-03), the Commenter stated that the definition of RACM using a "case by case" basis does not make it clear what is a regulated or unregulated floor tile activity for specific scenarios and recommends a different guidance document. The Commenter gave an example of a guidance document from the state of Minnesota that has several clarifications, e.g., what is "significant breakage," versus "non-regulated activity," or "removal intact."

Response: See Responses to Comments 3, 7, and 8.

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 26: The Commenter requests clarification regarding the Notification of Intent (NOI) and the required fee that must accompany the notice involving flooring activities. The Commenter says that in Reg. 21.603(B) "for flooring, even if it's ACM and not RACM, not regulated, that you must file a notice of intent." The Commenter points that in the introduction

paragraph [in Reg. 21.603] says "You must file a notice and the accompanied fee." The Commenter questions, since this is considered a non-regulated activity, why is the state is asking for a fee [to be submitted with the NOI] and a 10-day waiting period [to begin activities]? The Commenter suggests that since a NOI and a fee is being required for such floor tile activity, why not make it a regulated activity (RACM)?

Response: The actual regulatory language at issue states: "Such notice must be accompanied by the required fee which is described in Chapter 22 of this regulation." In the case of renovations involving floor tile that is not RACM, no fee is required in the fee schedule in Chapter 22. Therefore a fee would not be required to be submitted along with the (floor tile renovation) NOI required by Reg. 21.603(B).

No change to the Regulation as proposed is necessary as a result of this comment.

Comment 27: The Commenter requests clarification, in case the Department's proposed deletion of the term "breakage" from the definition of RACM goes forward, therefore, making it a "deregulated" activity, whether the contractors need to be licensed and the workers certified? In addition, the Commenter requests clarification on who is responsible for filing the NOI, the owner of the facility or the operator? In the Commenter's opinion, this creates a requirement for a "non-regulated community," and raises the question: "How will the Department get the information to them to let them know they are supposed to file the NOI?"

Response: This Comment did not address any specific proposed revision. Rather, this Comment is directed toward issues of Asbestos Abatement Program operation. The Commenter is not correct in their statement that removing the word "breaking" from the definition of RACM will cause floor tile removal (renovation) to become a "deregulated" activity. To the contrary, floor tile jobs greater than 160 square feet will now require a NOI even if no RACM is impacted. These NOIs will be treated as any other NOI and may be submitted by the owner or operator.

The Department will make every effort to publish the new requirement for floor tile NOIs, including posting such information under the Asbestos section on the ADEQ's website.

See also Responses to Comments 3, 7, and 8.

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 28: The Commenter states that OSHA has a trade-specific eight-hour training (including flooring materials), and therefore, requests clarification on whether or not the Department will allow individuals who are not certified through OSHA's trade training to do this

trade-specific type of activity. The Commenter suggests that this issue should be covered under the Regulation No. 21 definition, notification and licensing sections.

Response: The OSHA training requirements are separate and distinct from the requirements of Regulation No. 21. ADEQ has no authority to enforce OSHA requirements.

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 29: The Commenter points to the proposed language included in Reg. 21.1808 (Accreditation Certificates) which contains the list of information to be included in the training certificate. The Commenter is aware of the concerns regarding the out-of-state trainers, who have a blank certificate and a blank class and, although are certified to train in Arkansas, are not held accountable for covering Arkansas regulations. The Commenter expresses his concern about adding items in the certificates for specific sections required in the regulation. Therefore, the Commenter suggests adding a simple statement (in the certificate) that "it covered Arkansas Regulation 21."

Response: See Response to Comment 5.

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 30: The Commenter appreciates the clarification on the proposed language at Reg. No. 21.2214 which states: "There is no fee for a NOI involving demolition of a facility that contains one square/one linear foot of ACM or less." However, the Commenter asks for clarification regarding the fees at Reg. 21.2215 which states (proposed language included) "Any NOI involving demolition of a facility as described in Reg. 21.601 and Reg. 21.602 which contains 160 square/260 linear feet or more of RACM shall be accompanied by a fee of $375." The Commenter notes that "the divisions of how much RACM is remaining in that structure to be demolished has been taken out" and wants to clarify whether there is a flat fee (regardless of how much ACM has been removed).

Response: Yes, there is now a flat fee of $375 for demolitions involving RACM.

No change to the Regulation as proposed is necessary as a result of this Comment.

Comment 31: The Commenter requests clarification on Regulation No. 21, Chapter 22 (Fee Assessment) for non-regulated asbestos-containing floor tile fees. The Regulation mentions the 10-day waiting period and a fee for non-regulated, non-friable floor tile but does not list what the fee is, as it does for RACM fees and, therefore, the Commenter asks the Department to include fee-specific information in that Chapter.

Response: The regulation, as proposed, does not require a fee for the submittal of a renovation NOI which does not involve RACM. However, if during the course of the activity the floor tile becomes RACM, a revised NOI and fee, based on the amount of RACM, will be necessary.

No change to the Regulation as proposed is necessary as a result of this Comment.

Prepared by:
Arkansas Department of
Environmental Quality

By: _____
Mike Bates, Chief, Air Division