

Statement of Basis and Purpose

The Arkansas Department of Environmental Quality maintains and administers a Voluntary Clean-Up program under the provisions of the Arkansas Hazardous Waste Management Act (A.C.A. §§ 8-7-201 et seq.), the Arkansas Remedial Action Trust Fund Act (A.C.A. §§ 8-7-501 et seq.), and the Arkansas Voluntary Clean-Up Act (A.C.A. §§ 8-7-1101 et seq.). Under the authority of the Voluntary Clean-Up Act, and using the provisions of the other two acts, the Arkansas Department of Environmental Quality (the Department) has established a *Brownfields* program to address abandoned properties which may have either real or perceived hazardous substance contamination. The Brownfields Program benefits all Arkansans by encouraging the clean up and re-use of these abandoned or underutilized properties while continuing to protect human health and the environment. The program is intended to accelerate the pace of clean ups, return unproductive, potentially contaminated properties back to beneficial use, to define the financial liabilities associated with a clean up early in the process and to ensure environmentally sound redevelopment in the future.

Individuals, companies and real estate developers who did not cause or contribute, through their acts or omissions, to the contamination at and who wish to purchase one of these abandoned or underutilized properties may enter into an agreement with the Department for the clean up (if required) and redevelopment of the property. Based on the terms of the agreement, the purchaser of the property will be able to define his or her financial obligations early in the process and, after approval from the Department, the purchaser will not be held responsible for fines or penalties related to past contamination identified in a comprehensive site assessment to be completed by the participant. Lending institutions will also be able to quantify financial risks associated with foreclosing on a contaminated property and will not be considered responsible parties after foreclosure if they did not participate in the prior management of a facility on the property.

By this program, the Department seeks to encourage the development of brownfields as a sustainable land use policy and to discourage the development of *Greenfields*, or pristine properties in the State of Arkansas.

The Arkansas Brownfields Act (Act 125 of 2005, as amended, and subsequently re-named as the Arkansas Voluntary Clean-up Act) was enacted in 1995 to address abandoned commercial, industrial, and agricultural properties where there was a known or perceived problem with environmental contamination. ADEQ began receiving federal funds from EPA to begin program development shortly afterward. In 1996 external and internal work groups were formed to develop clean-up standards, guidance and policy. In 1997 several amendments to the Brownfields Act (Act 1042 of 1997, as amended, Arkansas Code Annotated (A.C.A. §§ 8-7-1101 *et seq.*) were adopted by the Arkansas Legislature, with bipartisan support. These amendments, which became effective in August 1997, expanded the types of properties which qualified for the program, further limited financial liability for purchasers of Brownfields properties, and provided for the establishment of a low interest loan program for participants in the program. In 2001 the Brownfields Law was amended to allow property transactions to be completed, at the

discretion of the Director, prior to completion of the Implementing Agreement. This amendment allowed an applicant to submit a letter of intent that will set forth the applicant's desire to purchase the site and retain their eligibility for participation in the voluntary cleanup program.

As the Brownfields/Voluntary Clean-up program increased in public acceptance and popularity, several cases arose where a potential applicant was interested in the purchase and redevelopment of abandoned residential properties, which were excluded under the original statutory provisions. However, residential properties are eligible under the EPA guidelines established under the federal Small Business Liability Relief and Brownfields Revitalization Act, which establishes a brownfield site as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant." EPA's consideration of *real property* eligible for Brownfields assistance and redevelopment includes residential, as well as commercial and industrial properties.

Act 1164 of 2005 was enacted in order to clarify the inclusion of abandoned residential properties in eligibility for remediation and redevelopment under the provisions of the Arkansas Voluntary Clean-Up Act and the Arkansas Brownfields Program. This proposal incorporates the provisions of Act 1164 into Regulation No. 29, adding a definition of "residential property" and adding "abandoned residential properties" to the description of the types of sites eligible for participation in the Arkansas Brownfields Program. The resulting change will make the types of properties eligible under the State Voluntary Clean-Up Program equivalent to those addressed by the Federal Brownfields program.