

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



REGULATION NO. 29

ARKANSAS BROWNFIELDS REDEVELOPMENT

REVISED MARK-UP DRAFT

**Submitted to the Pollution Control and Ecology Commission
on October 20, 2014**

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CHAPTER 1: TITLE AND PURPOSE.

Reg.29.101.

The following rules and regulations of the Arkansas Pollution Control and Ecology Commission, adopted pursuant to the provisions of the Arkansas Hazardous Waste Management Act of 1979 (Act 406 of 1979, as amended, Arkansas Code Annotated (A.C.A.) § 8-7-201 *et seq.*), the Arkansas Remedial Action Trust Fund Act of 1985 (Act 479 of 1985, as amended, A.C.A. § 8-7-501 *et seq.*), and the Arkansas Voluntary Clean-Up Act (Act 1042 of 1997, as amended, A.C.A. § 8-7-1101 *et seq.*), shall be known as APC&EC Regulation No. 29, (Brownfields Redevelopment).

Reg.29.102.

It is the purpose of this Regulation and it is hereby declared to be the policy of this Commission:

(A) To encourage and facilitate the redevelopment of abandoned industrial, commercial, or agricultural sites, or abandoned residential property as a sound land use management policy to prevent the needless development of prime farmland, open spaces, and natural and recreation areas and to prevent urban sprawl;

(B) To encourage and facilitate the redevelopment of abandoned sites so that these sites can be safely returned to useful, tax producing properties to protect existing jobs and provide new job opportunities;

(C) To provide persons interested in redeveloping abandoned sites with a method of determining what their legal liabilities and clean-up responsibilities will be as they plan the reuse of abandoned sites;

(D) To establish incentives to encourage prospective purchasers to voluntarily develop and implement clean-up plans of abandoned sites without the need for adversarial enforcement actions by the Arkansas Department of Environmental Quality;

(E) To determine, through permitting policies, administrative orders, or memoranda of agreement as appropriate, when contamination will and will not pose unacceptable risks to public health or the environment, and that equivalent concepts are used in establishing clean-up policies for abandoned sites;

(F) To ensure that parties and persons responsible under law for pollution at abandoned sites perform remedial responses which are fully consistent with existing requirements;

(G) As an incentive to promote the redevelopment of abandoned industrial sites, persons not responsible for preexisting pollution at or contamination on industrial sites should meet alternative clean-up requirements if they acquire title after the nature of conditions at the site have been disclosed and declare and commit to investigate, remediate as necessary, and limit the property to a specified future land use of the subject site; and

(H) Property transactions at times necessitate title acquisition prior to completion of the actions contemplated at § 8-7-1104(b)-(d) by persons not previously involved with the site or otherwise considered responsible parties for environmental conditions at a site. These persons should not be foreclosed from participation under the procedure enacted

under the Voluntary Clean-Up Act. Therefore, these persons, at the discretion of the director, may submit a letter of intent that will set forth the persons' desire to purchase the site and retain their eligibility for participation in the voluntary cleanup program established by this regulation.

CHAPTER 2: AUTHORITY:

Reg.29.201:

This regulation is promulgated pursuant to the Arkansas Voluntary Clean-Up Act (Act 1042 of 1997, as amended, A.C.A. §§ 8-7-1101 *et seq.*)

CHAPTER 3: DEFINITIONS

Reg.29.301.

As used in this Regulation, unless the context otherwise requires:

(A) “**Abandoned site**” means a site on which industrial, commercial or agricultural activity occurred and for which no responsible person can reasonably be pursued for a remedial response to clean up the site or when the department determines it is in the best interest of the citizens of Arkansas to promote redevelopment under this subchapter while continuing to pursue the responsible party or parties;

(B) “**Department**” or “**ADEQ**” means the Arkansas Department of Environmental Quality.

(C) “**Implementing agreement**” means a plan, order, memorandum of agreement, or other enforceable document issued by the Arkansas Department of Environmental Quality under provisions of the Arkansas Hazardous Waste Management Act (A.C.A. § 8-7-201 *et seq.*), or the Arkansas Remedial Action Trust Fund Act (A.C.A. § 8-7-501 *et seq.*) or the Arkansas Voluntary Clean-Up Act (A.C.A. § 8-7-1101 *et seq.*), to implement the voluntary cleanup process described in § 8-7-1104;

(D) “**Industrial, commercial, or agricultural activity**” means commercial, manufacturing, agricultural or any other activity done to further either the development, manufacturing, or distribution of goods and services, as well as soil cultivation, crop or livestock production, including, but not limited to, research and development, warehousing, shipping, transport, remanufacturing, repair, and maintenance of commercial machinery and equipment;

(E) “**Property**” means property and improvements, including:

(1) A “facility” as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980. 42 U.S.C. § 9601(9); and

(2) A “site” as defined in the Arkansas Hazardous Waste Management Act of 1979, A.C.A. § 8-7-203(11);

(F) “**Prospective purchaser**” means a person who expresses a willingness to acquire an abandoned site and is not responsible for any preexisting pollution at or contamination on the site;

(G) “**Remedy**” means the selected actions necessary to effect permanent control, abatement, prevention, treatment, and/or containment of contaminants of concern at a site; including the removal of hazardous substances from the environment as necessary to protect public health and the environment and to attain the agreed clean-up levels specified in the enforceable agreement with the prospective purchaser.

(H) “**Residential property**” means any real property used as a dwelling or property with four (4) or fewer dwelling units used exclusively for residential use.

(I) “**Site assessment**” means the site assessment to establish the baseline level of existing contamination on a site.

(1) The assessment shall identify, at a minimum, the location and extent of contamination, the quantity or level of contamination, the type of contamination, the probable source of contamination, and the risk or threat associated with the contamination as described in A.C.A. § 8-7-1104.

The assessment also shall include a description of the intended land use of the site.

Reg.29.302.

Any other terms of this Regulation not expressly defined shall have the same definitions as provided in ~~the~~ A.C.A. §§ 8-7-203, 8-7-304, 8-7-403, 8-7-503, or the Commission's Regulation No. 23 (Hazardous Waste Management) unless manifestly inconsistent with the provisions and remedial intent of this Regulation.

CHAPTER 4: ELIGIBILITY

Reg.29.401.

(A) This Regulation applies to a person who:

- (1) Is a prospective purchaser of an abandoned industrial, commercial, or agricultural property with known or suspected contamination, or who is a prospective purchaser of abandoned residential property;
- (2) Did not, by act or omission, cause or contribute to any release or threatened release of a hazardous substance on or from the identified abandoned site or is otherwise considered to be a responsible party pursuant to A.C.A. § 8-7-512(a)(2)-(4); ~~and or~~ and
- (3) Will reuse or redevelop the property for industrial, commercial, agricultural, or residential uses which will sustain or create employment opportunities or otherwise augment the local and/or state economy and tax base, or both; or

(B) This Regulation applies to a person who:

- (1) Is not a responsible party pursuant to A.C.A. § 8-7-512(a)(2)-(4);
- (2) Submits a Letter of Intent to Participate as provided for under Section 29.604; and
- (3) Subsequently acquires title to an abandoned site prior to completion of an implementing agreement as set forth in A.C.A. § 8-7-1104(d).

(C) This Regulation shall not apply to a person who:

- (1) Is a current owner or operator; or
- (2) Is a responsible party pursuant to A.C.A. § 8-7-512(a)(2)-(4); or
- (3) Has demonstrated a pattern of uncorrected noncompliance.

Reg.29.402.

The following types of sites shall **not** be eligible for participation in the Brownfields Redevelopment process:

- (A) Sites identified on the federal National Priorities List (NPL);
- (B) Sites that have been submitted by ADEQ to the U.S. Environmental Protection Agency to be ranked for consideration of placement on the NPL;
- (C) Sites that are covered by a hazardous waste management (RCRA) permit;
- (D) Sites that operate under Interim Status authority pursuant to APC&EC Regulation No. 23 (Hazardous Waste Management); and
- (E) Sites subject to a federal order under CERCLA or RCRA.

CHAPTER 5: PUBLIC PARTICIPATION

Reg.29.501.

The public shall be provided notice of the proposed remedy at a Brownfields site and given the opportunity to comment and request a public hearing prior to the ADEQ making a final remedy determination.

Reg.29.502.

ADEQ shall follow APC&EC Regulation No. 8 ~~Section 2.1~~ in providing for public participation and input on the remedy selection.

CHAPTER 6: PROCESS

Reg.29.601-

The Department shall follow the process set forth in A.C.A. § 8-7-1104 in evaluating and assisting the redevelopment of sites under the Voluntary Cleanup Act.

Reg.29.602-

In evaluating and approving plans and remedial designs under this Regulation, the Department shall have use of all its powers and authorities as assigned under the provisions of the Arkansas Hazardous Waste Management Act of 1979 (Act 406 of 1979, as amended, A.C.A. § 8-7-201 *et seq.*), the Arkansas Remedial Action Trust Fund Act of 1985 (Act 479 of 1985, as amended, A.C.A. § 8-7-501 *et seq.*), and APC&EC Regulation No. 23 (Hazardous Waste Management).

Reg.29.603-

In using these authorities, the Department shall strive to simplify and streamline redevelopment of the property while ensuring that contamination and associated remediation wastes are managed and/or disposed of in a manner that is protective of human health and the environment.

Reg.29.604-

Property transactions at times necessitate title acquisition prior to completion of the actions contemplated at § 8-7-1104(b)-(d) by persons not previously involved with the site or otherwise considered responsible parties for environmental conditions at a site. These persons, at the discretion of the director, may submit a letter of intent that will set forth the persons' desire to purchase the site and retain their eligibility for participation in the voluntary cleanup program established by this regulation.

CHAPTER 7: SEVERABILITY

Reg.29.701.

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 8: EFFECTIVE DATE

Reg.29.801.

This Regulation ~~shall be in full force and~~ is effective ten (10) days after ~~it is filinged~~ with the Secretary of State, the State Library, and the Bureau of Legislative Research.