

## Memorandum

**TO:** Arkansas Pollution Control & Ecology Commission

**FROM:** Mike Bates, Chief, Hazardous Waste Division

**DATE:** October 11, 2005

**SUBJECT:** Responsive Summary: APC&EC Regulation No. 30, Arkansas Hazardous Substances Remedial Action Trust Fund Priority List Annual Update, Docket No. 05-002-R

The Arkansas Pollution Control and Ecology Commission initiated a proposal to revise APC&EC Regulation No. 30, *Arkansas Hazardous Substances Remedial Action Trust Fund Priority List*, at its regular meeting on June 24, 2005, under docket number 05-002-R.

A public hearing was held at Little Rock on August 10, 2005 to receive comments on the proposed revisions. No comments were received at the public hearing, however one party submitted written comments prior to the close of the comment period on August 24, 2005.

The following provides the Department's response to comments on these proposals made on the administrative record.

**Comment 1:**

"The 'AP&L/Easter Property, 1400 W. Fourth Street, Pine Bluff, Jefferson County' (the 'Site'), is among those sites proposed for listing on the State Priority List. The Petition to Initiate Rulemaking, Docket No. 05-002-R, filed by the ADEQ Hazardous Waste Division, proposes that this Site 'be added to the Investigative category of the State Priority List in order to identify the nature and extent of health and other environmental risks which may be posed' at the Site. Petition at p. 2. Presumably, this means that the Site is proposed for listing at APC&EC Reg. 30, § 30.302(A) 'where investigatory activities are required to determine the extent and degree (if any) of the release or threat of release of a hazardous substance at the site and any scientific or engineering studies deemed necessary by the Director to determine available alternatives for remediation.' APC&EC Reg. 23, § 26(h).

Representatives of ADEQ have indicated that this listing is proposed in connection with a Brownfields application and Letter of Intent, and that ADEQ has no present intent to seek cost recovery related to this Site. Entergy has no objection to listing the Site at Reg. 30, § 30.302(A) for investigative purposes. Entergy asserts that insufficient information is included in the Petition and related Notice to demonstrate that any release or threatened release of a hazardous substance has occurred that would require remediation, or that any material threat to human health or the environment is present at the Site.

Furthermore, Entergy specifically objects to the inclusion of 'AP&L' in the name of the Site for listing purposes. Naming an 'abandoned' site for a former business occupant gives the connotation that the business has been unable or unwilling to deal with potential environmental issues at the property. ADEQ has never requested that Entergy investigate or remediate this site and Entergy is unaware of any basis for conducting an investigation or remediation related to AP&L's former activities at this time. Entergy respectfully requests that the Site be renamed to exclude any reference to AP&L.

If further regulatory action is taken or contemplated at this Site, Entergy reserves the right to review technical information and provide comments on any appropriate subject or action. Entergy has been unable to locate any records indicating the truth or accuracy of the factual assertions in the Petition regarding the History or Possible Threats at the Site, and reserves the right to present evidence in the future, should it be necessary, to contradict the factual assertions or provide additional information.

Entergy commends ADEQ for its efforts to assist in redevelopment of appropriate Brownfields properties in the State of Arkansas. These comments are provided out of an abundance of caution due to the lack of supporting information available to Entergy at this time. Thank you for this opportunity to comment."

#### **ADEQ Response to Comment 1:**

The Commenter addresses two concerns on the proposed listing of a former electrical power generation plant to the Investigative category of the State Priority List (SPL). First, the Commenter asserts that the Petition to Initiate Rulemaking does not contain sufficient information to support an assertion that the site poses a specific threat to human health or the environment that would require remediation. Second, the Commenter objects to the use of the term "AP&L," a former owner of the site, in referring to the site and in its listing on the SPL.

Act 125 of 1995 established the Arkansas Brownfields Program, which was subsequently amended by the Arkansas Voluntary Cleanup Act, Act 1042 of 1997. These statutes, found in the Arkansas Code of 1987, Annotated, § 8-7-1011, et seq., allow and encourage the reuse and redevelopment of abandoned or underutilized properties, or "brownfields" when a prospective purchaser will acquire said property, address any contamination found, and redevelop the property. As used in the Arkansas Brownfields Program, the term "Brownfield" refers to real property (including industrial, commercial, agricultural, and residential properties) whose expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."

Individuals, companies, or real estate developers who are not potentially responsible parties for any contamination at a particular property and wish to purchase one of these abandoned or underutilized properties may enter into a voluntary agreement with ADEQ for the investigation, cleanup (if required), and redevelopment of the property. Based on the terms of this agreement, upon completion of any needed cleanup the purchaser, or Brownfields participant may be released from CERCLA and RATFA liability for any past contamination at the property

identified in a comprehensive site assessment and subsequently addressed in the property's cleanup and redevelopment plan.

Once a Brownfields Certificate of Completion is issued, the State of Arkansas assumes responsibility for any further liability for historical contamination at the property which was identified in the comprehensive site assessment and approved as having been adequately addressed in the Participant's remedial actions. Completion of a comprehensive site assessment is thus a key step in fulfilling a purchaser's participation in the Brownfields program.

In order to relieve a significant portion of the expense in revitalizing these properties, ADEQ has acquired federal funding from the U.S. Environmental Protection Agency to offer technical assistance for site assessments to qualified Brownfields Program participants belonging to either the non-profit or public sector – typically municipalities, local governments and affiliated community planning and development organizations, and qualified non-profit organizations. Targeted Brownfields Assessments (TBA) are designed to help minimize the uncertainties of contamination often associated with brownfields. A TBA may encompass one or more of the following activities:

- A screening (Phase I) assessment, including a background and historical investigation and a preliminary site inspection; and
- A comprehensive site assessment (Phase II), including sampling activities to identify the types and concentrations of contaminants and the areas of contamination to be cleaned up.

TBA funding may only be used at sites as authorized by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986. The site must be contaminated or suspected to be contaminated with hazardous substances. Sites contaminated only with petroleum products are typically not eligible for TBA funding.

Due to high demand for TBA assistance and the limited availability of Federal funding, ADEQ took action to secure funding for the completion of these assessments at eight Arkansas Brownfields sites using monies from the Hazardous Substance Remedial Action Trust Fund. Pursuant to the Arkansas Remedial Action Trust Fund Act, monies from the fund may not be expended for non-emergency investigative or remedial actions at a site unless the site has been placed on a State priority list, currently published as Regulation No. 30. Therefore, seven (7) of the proposed Brownfields TBA sites were proposed for listing under this Petition (Docket No. 05-002-R); the eighth site, R&P Electroplating in Fayetteville, was already listed as a result of a previous Department response at this site. ADEQ's intent in this petition is to secure funding for committed TBAs in the event that investigative costs exceed the amount of available federal funding for these assessments.

On May 30, 2002, Isaiah Easter and Easter Plumbing Company filed a Notice of Intent to Purchase and an Arkansas Brownfields Application Form for a former electrical power plant located at 1400 West Main Street in Pine Bluff. Easter was found upon review of the application to be an eligible Brownfields participant pursuant to A.C.A. § 8-7-1104(a), and the site was approved for participation in the Arkansas Brownfields Program. Easter subsequently acquired

title to the property. On September 6, 2002, the City of Pine Bluff requested that ADEQ conduct a Targeted Brownfields Assessment – both Phase I and Phase II – at the Easter property in support of its community development plans. ADEQ accepted this request on September 9, 2002.

ADEQ funded a Phase I Environmental Site Assessment for the property, which was completed on June 20, 2003. The Phase I investigation found a history of past oil storage and management, electrical transformer and power generation equipment maintenance and repair, as well as potential plating operations, and recommended that the investigation proceed to Phase II to confirm or rule out any suspected contamination from these indicators and survey for asbestos-containing materials. A Phase II investigation for the property is currently anticipated for the winter of 2005.

ADEQ will strive to accomplish its TBA commitments within the amount of available federal funding to the greatest extent possible, and will use RA Trust Fund monies only as necessary. The Commenter stated that they have no objection to listing this site for investigative purposes, however, they also state that the Petition for Rulemaking does not contain sufficient information that would require remediation at the site. We recognize these comments and would point out that the Proposed Rule lists the site only for investigation purposes – the Proposed Rule does not list the site for consideration of remediation funding. No change is required in regard to this comment.

In regard to the Commenter's second concern, that of using the former occupant's name in identification of and references to the Site, ADEQ concurs. Site listing and further identification will be maintained in the name of the current landowner, i.e., the "I. Easter Property." This change has been made in the appropriate sections of the final draft of the proposed regulation.

# PERKINS & TROTTER, PLLC

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August 24, 2005

Doug Szenher  
Customer Services Division  
Arkansas Department of Environmental Quality  
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Little Rock, AR 72219-8913

and

*via email to:*  
[reg-comment@adeq.state.ar.us](mailto:reg-comment@adeq.state.ar.us)

**Re: Comment on Proposed Change to Regulation No. 30; listing of  
“AP&L/Easter Property, 1400 W. Fourth Street, Pine Bluff, Jefferson County”**

Dear Mr. Szenher:

Please accept these comments provided on behalf of Entergy Arkansas, Inc. (“Entergy”). On July 1, 2, and 3, 2005, the Arkansas Department of Environmental Quality (“ADEQ”) issued a Notice of Public Hearing on Proposed Changes to Regulation No. 30, which would add certain sites to the State Priority List.

The “AP&L/Easter Property, 1400 W. Fourth Street, Pine Bluff, Jefferson County” (the “Site”), is among those sites proposed for listing on the State Priority List. The Petition to Initiate Rulemaking, Docket No. 05-002-R, filed by the ADEQ Hazardous Waste Division, proposes that this Site “be added to the Investigative category of the State Priority List in order to identify the nature and extent of health and other environmental risks which may be posed” at the Site. Petition at p. 2. Presumably, this means that the Site is one proposed for listing at APC&EC Reg. 30, § 30.302(A) “where investigatory activities are required to determine the extent and degree (if any) of the release or threat of release of a hazardous substance at the site and any scientific or engineering studies deemed necessary by the Director to determine available alternatives for remediation.” APC&EC Reg. 23, § 26(h).

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Sincerely,

PERKINS & TROTTER, PLLC

A handwritten signature in black ink, appearing to read "G. Alan Perkins", written in a cursive style.

G. Alan Perkins

GAP/scr