

**EXHIBIT F:**

**ECONOMIC IMPACT STATEMENT:  
REGULATORY FLEXIBILITY**

# ECONOMIC IMPACT STATEMENT OF PROPOSED RULES OR REGULATIONS

EO 05-04: Regulatory Flexibility

**Department:** Dept. of Environmental Quality

**Division:** Hazardous Waste

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**Title or Subject:** APC&EC Regulation No. 30 (Arkansas Remedial Action Trust Fund Hazardous Substances Site Priority Lists)

## Benefits of the Proposed Rule or Regulation

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.

This rulemaking proposal is not driven by public complaint. The Department and Commission are required under provisions of the Arkansas Remedial Action Trust Fund Act (Ark. Code Ann. § 8-7-509(f)(1)) to review and update the status of hazardous substance sites on the state priority list on an annual basis. Regulation 30 was last updated in January 2012.

The amendment adds one site (Cedar Chemical Company, in Helena, Phillips County) to the National Priority List section of the Regulation, authorizing the expenditure of state funds from the Arkansas Remedial Action Trust Fund in support of Federal investigative and remedial actions at that site. While initial site characterization and remedial design are fully federal-funded, actual clean-up costs will require a 10% match from state funds, and long-term care for the site after clean-up is completed must be fully funded by either the state or any identified responsible parties. Additionally, six sites (including Cedar Chemical) are nominated for deletion from the State Priority List section of the regulation, indicating that health risks from these sites have been controlled and clean-up activities under the State's responsibilities have been completed; or in the case of Cedar Chemical, the site has been approved for addition to the federal National Priority List for address under the federal Superfund program.

2. What are the top three benefits of the proposed rule or regulation?

- Authorizes state funding for the long term stewardship and care of Superfund sites in the state where remedial action has been completed and long-term responsibilities for maintenance and upkeep of the remedies have reverted to the state and/or designated responsible parties.
- Authorizes payment of the 10% State match for the costs of federal remedial actions at Superfund sites (e.g., Cedar Chemical Company).
- Authorizes state funding from the Remedial Action Trust Fund to investigate and clean up hazardous substance contamination from sites which did not score high enough to qualify for federal cleanups under the U.S. EPA's Superfund.

3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?

One site is proposed for listing in order to confirm the State's agreement for sharing costs of clean-up and long term care for the Cedar Chemical Company site in Helena-West Helena, Phillips County, seeking to protect the health and well-being of citizens in that community. This commitment is required for the site to be eligible for federal investigative and remediation funding through the federal Superfund program. Absent the availability of Superfund funding, the state would be unable to afford the costs of the necessary cleanup at the site.

Potentially unacceptable risks to human health or the environment at the other five sites proposed for deletion from the State Priority List have been removed or controlled through remedial actions or institutional controls. However, retention of these sites on the State Priority List for abandoned hazardous substance sites would serve as a disincentive for the redevelopment and beneficial re-use of these properties.

4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting these alternatives.

None considered. At most sites addressed under these lists, there are no viable remaining responsible or potentially responsible parties to address the contamination and health risks posed by these sites. At sites where viable responsible parties have been identified, ADEQ is working either cooperatively or under the conditions of an enforcement order with those parties to ensure that the sites are sufficiently characterized to identify the threats posed by contamination and/or perceived contamination, to design an appropriate remedy, and carry out the necessary remedial actions and long-term stewardship for the sites.

#### **Impact of Proposed Rule or Regulation**

5. Estimate the cost to state government of collecting information, completing paperwork, filing, recordkeeping, auditing and inspecting associated with this new rule or regulation.

Average costs of carrying out long term stewardship and maintenance activities at sites listed on the National Priority and State Priority lists are approximately \$1.4 million per calendar year. Staff oversight and support equates to approximately \$0.4 million per calendar year. Remediation costs at the Cedar Chemical site alone have been estimated at up to \$37 million, approximately four times the current balance of the Arkansas Remedial Action Trust Fund. Remediation of the Cedar Chemical site through the Superfund program will reduce the State's environmental liability for abandoned site cleanup by approximately \$33 million.

6. What types of small businesses will be required to comply with the new rule or regulation? Please estimate the number of small businesses affected.

Regulation No. 30 is a listing of hazardous substance sites where state funds are authorized for the investigation and cleanup of hazardous substance contamination in order to address a threat to the public health or the integrity of the environment. It does not pose any requirements for small businesses other than the encouragement of good environmental management and waste disposal practices to avoid placing themselves in a situation where they are subject to being placed on this list. Regulation No. 30 lists the geographic location of abandoned hazardous substance sites, not individuals, small businesses, or other persons.

7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.

No.

8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.

None.

9. State whether the regulation contains different requirements for different-sized entities, and explain why this is, or is not, necessary.

Placement on either of the state priority lists contained in Regulation No. 30 is based upon the degree of threat that contamination or perceived contamination at a listed site poses to human health and the environment, and not the size of the business that caused or may be held liable for the costs of investigation and cleanup of such contamination.

10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.

No changes are proposed which affect small businesses.

11. How does this rule or regulation compare to similar rules or regulations in other states or the federal government?

Liability for hazardous substance contamination at sites in Arkansas is determined by the Arkansas Remedial Action Trust Fund Act (RATFA), the state's counterpart to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, commonly known as the "Superfund" law. Like CERCLA, liability for contamination and cleanup under the RATFA is assigned to responsible parties, starting with the landowner, as well as any former owners, facility operators, or any other persons whose acts contributed or may have contributed to the contamination or environmental problems at the site. Unlike CERCLA, where such liability is joint and several, liability under RATFA is proportional, depending on the potentially responsible party's degree of culpability and contribution to the conditions at the hazardous substance site.

This proposal adds one site for addition to the National Priority List section, where the U.S. Environmental Protection Agency will serve as the lead agency for overseeing cleanup and remediation. The liability of any responsible parties to EPA and the federal government is joint and several; not proportional as would be provided under State law.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

ADEQ has previously entered into a Consent Administrative Order with the PRPs, conducted a thorough site investigation, and issued a remedial action decision document with full notice and disclosure to the community, general public, and the responsible parties. The responsible parties declined to carry out the actions set forth in the remedial action decision, resulting in the site being referred to the U.S. EPA for cleanup.