

## **EXHIBIT C:**

# **Revised Regulation for Adoption**



# Arkansas Pollution Control and Ecology Commission

## Regulation Number 32



## Environmental Professional Certification

Submitted to the Pollution Control & Ecology Commission in October 2007

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## CHAPTER 1: PURPOSE & AUTHORITIES

### Reg.32.101. Purpose.

To establish and implement a certification program to:

(A) Maintain a list of Phase I consultants who meet the minimum qualifications for an environmental professional who undertakes a Phase I environmental site assessment, referred to as “all appropriate inquiry” under the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, as it exists on January 1, 2007, or a Phase I environmental site assessment under the American Society for Testing and Materials standard E1527-05 as in effect on January 1, 2007; and

(B) Require that such consultants demonstrate that they have the qualifications required to undertake such activities.

### Reg.32.102. Authority.

Arkansas Code of 1987, Annotated, §§ 8-7-1301, *et seq.* (Act 1018 of 2007) authorizes the Arkansas Pollution Control and Ecology Commission (“Commission”) to adopt rules and regulations necessary for the Arkansas Department of Environmental Quality (“Department”) to implement and effectuate the powers and duties of the Commission as established by the Act.

### Reg.32.103. Definitions.

The following terms shall have the same meaning when used in this Regulation as established by the Act, unless the context otherwise requires:

(A) “**Certification and listing**” means the review and approval of an individual’s education and relevant experience as prescribed at § 32.301(B) of this Regulation and the placement of that individual’s name on the list of certified environmental professionals as required by § 32.101(A) of this Regulation.

(B) “**Commission**” means the Arkansas Pollution Control and Ecology Commission;

(C) “**Department**” means the Arkansas Department of Environmental Quality, or its successor;

(D) “**Director**” means the Director of the Arkansas Department of Environmental Quality;

(E) “**Person**” means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, state or federal government or agency, or any other legal entity however organized;

(F) “**Phase I environmental site assessment**” means an assessment defined as “all appropriate inquiry” under the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, and the rules promulgated under that federal act or a Phase I environmental site assessment as that term is used in the American Society for Testing and Materials standard E1527-05 as in effect on January 1, 2007.

(G) “***Phase I Consultant***” means a person who performs a Phase I environmental site assessment for a fee or in conjunction with other services for which a fee is charged.

(H) “***Public agency***” means any administrative body, department or agency of government which has official or quasi official status.

(I) “***Relevant experience***” as used in defining the qualifications of environmental site assessment consultants in this Regulation, means: participation in the performance of all appropriate inquiries investigations, environmental site assessments, or other site investigations that may include environmental analyses, investigations, and remediation which involve the understanding of surface and subsurface environmental conditions and the processes used to evaluate these conditions and for which professional judgment was used to develop opinions regarding conditions indicative of releases or threatened releases to the subject property. The use of the phrase “*full-time*” within the definition of environmental professional and the definition of relevant experience is meant to require that an individual has accumulated the equivalent of 3, 5, or 10 years of actual working experience in performing environmental site assessments. An individual may accumulate such experience over a longer length of time than the 3, 5, or 10 years, as long as the total time of accumulated experience would be the equivalent of 3, 5, or 10 years of full-time experience. Even after an individual accumulates the required number of years of full-time experience, that individual does not have to conduct environmental site assessments, or all appropriate inquiries investigations, on a full-time basis to continue qualify as an environmental professional.

## **CHAPTER 2: CERTIFICATION AND LISTING PROGRAMS**

### **Reg. 32.201. Applicability.**

(A) The Arkansas Department of Environmental Quality shall:

(1) Maintain and make available to the public a list of Phase I consultants who meet the minimum qualifications for an environmental professional who undertakes a Phase I environmental site assessment, referred to as “all appropriate inquiry” under the provisions of the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, and the rules promulgated under that federal act.

(2) [Reserved].

(B) Persons wishing to be placed upon the Department’s list of certified environmental professionals shall meet the education and experience requirements set forth at 40 CFR 312.10 and § 32.301(B) of this Regulation, and submit an application for such certification and listing to the Department.

## **CHAPTER 3: PHASE I CONSULTANTS**

### **Reg.32.301. Certification Criteria for Phase I Consultants.**

(A) An applicant seeking certification to be listed as a Phase I Consultant shall submit an application on forms provided by the Department and shall pay the applicable application fees.

(B) Persons seeking certification as a Phase I Consultant shall possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases on, at, in, or to a property, sufficient to meet the objectives and performance factors for all appropriate inquiries set forth in 40 CFR 312.20; and shall demonstrate this by meeting at least one of the following combinations of education and experience:

(1) Hold a current Professional Engineer's or Professional Geologist's license or registration; and have the equivalent of three (3) years of full-time relevant experience; *or*

(2) Have a Bachelor's or higher degree from an accredited institution of higher education in a relevant discipline of engineering or science and the equivalent of five (5) years of full-time relevant experience; *or*

(3) Have a high school diploma or general equivalency diploma and at least ten (10) years of full-time relevant experience; *or*

(4) Be licensed or certified by the federal government, a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) to perform environmental inquiries as defined in 40 CFR 312.21 and have the equivalent of three (3) years of full-time relevant experience.

(C) Relevant experience shall be demonstrated by the submittal of an application for certification documenting the applicant's experiences and qualifications as prescribed by § 32.301(B) above.

(D) Applicants shall also submit, as part of the application for certification, a Disclosure Statement in accordance with the disclosure statement provisions of APC&EC Regulation No. 8. The Disclosure Statement shall also certify that neither the individual nor the individual's employer have been convicted of or plead guilty to an environmental crime or offense, or any related criminal offense.

(E) The Department may request and review additional relevant information about the applicant or application in order to properly process the application.

(F) Upon demonstration of compliance with the criteria, the applicant shall be eligible for certification and listing as a Phase I Consultant under this subchapter.



## **CHAPTER 4: [RESERVED]**

## **CHAPTER 5: [RESERVED]**

## **CHAPTER 6: ADMINISTRATION**

### **Reg.32.601. Certification Renewal.**

(A) Certification and listing under the provisions of this Regulation to an individual shall be valid for two (2) years (or portion thereof) from July 1st of the year the Department adds the individual to the list of certified environmental professionals.

(B) After June 1 of the second year after the Department adds a consultant to the list of certified environmental professionals under the provisions of this Regulation, the consultant must re-apply to the Department for renewal.

(C) A holder of a certificate who wishes to renew his or her certification shall:

(1) Submit an application for renewal to the Department, demonstrating that the consultant continues to meet the qualifications at § 3.301(B) of this Regulation, on forms provided by the Department;

(2) Submit a nonrefundable fee in the form of a money order, cashier's check, or other payment method determined by the Department in the amount set forth at § 32.606; and

(3) Complete and submit documentation of continuing education training of the type and amount as set forth at § 32.605 of this Regulation.

### **Reg.32.602. Lapsed Certifications.** [Reserved].

### **Reg.32.603. Certification by Other States or Organizations.** [Reserved].

### **Reg.32.604. Reciprocity Agreements.** [Reserved].

### **Reg.32.605. Continuing Education Requirements.**

(A) Phase I consultants shall remain current in their field through participation in continuing education or other activities.

(B) Definitions. As used in this Subsection, the following terms are defined as follows:

(1) Professional Development Hours (PDH) – A contact hour (nominal) of instruction or presentation. The common denominator for other units of credit.

(2) Continuing Education Unit (CEU) – Unit of credit customarily used for continuing education courses. One continuing education unit equals ten (10) hours of classroom experience in an approved education course.

(3) College/Unit Semester/Quarter Hour – Credit for an approved college course.

(4) Course/Activity – Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the certified contractor or consultant's field of practice.

(C) Requirements – Every certified consultant is required to report a cumulative of fifteen (15) PDH units per year for each renewal period. If a registrant exceeds the annual requirement in any renewal period, a maximum of fifteen (15) PDH units may be carried forward into the subsequent renewal period.

(D) PDH units may be earned as follows:

- (1) Successful completion of college courses.
- (2) Successful completion of continuing education courses.
- (3) Successful completion of correspondence, televised, videotaped, audiotape, and other short courses/tutorials.
- (4) Presenting or attending qualifying seminars, in-house courses, work shops, or professional, technical, or managerial presentations made at meetings, conventions, or conferences.

(E) Units – The conversion of other units of credit to PDH Units are as follows:

- (1) 1 College or unit semester course — 30 PDH
- (2) 1 College or unit quarter course — 15 PDH
- (3) 1 Continuing Education Unit — 10 PDH
- (4) 1 Hour of professional development in course work, seminars, or professional, or management, or technical presentations made at meetings, conventions or conferences: — 1 PDH
- (5) For teaching items 1 through 4 above, apply a multiple of 2 (teaching credit is valid for teaching a course or seminar for the first time only).

(F) Determination of Credit – The Department has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit.

(1) Credit for college or community college approved courses will be based upon credit established by the college.

(2) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(3) The types of training and continuing education required by this Chapter which may be eligible for approval include instructional courses, seminars or conferences sponsored by the Department, the Environmental Protection Agency, educational institutions, independent professional or trade associations, manufacturers, or firms engaged in environmental site assessment or hazardous substance management or remediation.

(4) Course content must be related to work performed by persons performing environmental site assessment or hazardous substance management or remediation.

(G) **Training Records.** The responsibility of maintaining records to be used to support credits claimed is the responsibility of the consultant. Records required include, but are not limited to:

- (1) A log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; or
- (2) Attendance verification records in the form of completion certificates, or other documents supporting evidence of attendance furnished by the organization sponsoring the approved training or continuing education.

These records must be maintained for a period of three (3) years or in compliance with any applicable state requirements, and copies may be requested by the Department for audit verification purposes.

(H) **Exemptions.** A consultant may be exempt from the professional development education requirements for one of the following reasons:

(1) A consultant serving on temporary active duty in the Armed Forces of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining professional development hours required during that year.

(2) Consultants experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the Department may be exempt. Supporting documentation must be furnished to the Department.

(I) **Noncompliance.** The certification of a person who does not satisfy the continuing education requirements at renewal time will be suspended and the certificate holder notified of that status. The Consultant will have six (6) months from the renewal date to satisfy that condition or his or her certification will be revoked.

#### **Reg.32.606. Fees.**

(A) Any person who applies to the Department for certification and listing as a Phase I Consultant, shall submit as part of that application a money order, cashiers check, or other payment method determined by the Department in the amount of twenty-five dollars (\$25.00) payable to the Department for an application fee.

(B) Applications or renewals will not be processed by the Department without payment of the fee.

(C) Fees will be reviewed biennially for potential adjustment to cover the costs of administering the Environmental Professional Certification Program.

(D) The Department will not issue refunds for any fees paid pursuant to this Regulation.

#### **Reg.32.607. Certification Statement.**

(A) All documents, reports, or correspondence created pursuant to activities addressed by this Regulation, whether submitted to the Department or to a client, shall include:

(1) The following certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information.

and;

(2) The signature of the certified consultant.

**Reg.32.608. Records Review.**

(A) The Department may inspect any records required to be kept under this Regulation during normal business hours including, but not limited to, the following:

- (1) Copies of professional licenses, if applicable;
- (2) Copies of certificates or licenses from another state, tribe, U.S. territory, or organization recognized by the Department as substantially equivalent, if applicable; and
- (3) Documentation of continuing education requirements pursuant to § 32.605.

(B) The Department may establish requirements concerning the information that shall be included in the records.

## **CHAPTER 7: [RESERVED]**

## **CHAPTER 8: SEVERABILITY**

### **Reg.32.801. Severability.**

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 9: EFFECTIVE DATE**

### **Reg.32.901. Effective Date.**

This Regulation shall be in full force and effect ten (10) days after it is filed with the Secretary of State.