

EXHIBIT A:

STATEMENT OF BASIS AND PURPOSE

Statement of Basis and Purpose

The Arkansas Pollution Control and Ecology Commission (the “Commission”) is given the power and responsibility to promulgate rules and regulations. Under Ark. Code Ann. § 8-1-203(b)(1), the Commission is granted the power and responsibility to promulgate rules and regulations implementing the substantive statutes which are administered by the Arkansas Department of Environmental Quality (hereinafter “ADEQ” or “Department”).

Regulation No. 32 implements a certification program under the authority of Act 2141 of 2005 (Arkansas Code, Ann. §§ 8-7-1301 *et seq.*) for consultants who perform environmental site assessments, site investigations and risk assessment in preparation of site cleanup plans, and contractors who actually carry out site cleanups. Act 1018 of 2007 repealed all the provisions of Act 2141 and set a new requirement where the Department simply compiles and maintains a public listing of consultants who meet the requirements to perform Phase I environmental site assessments.

The purpose of this proposed revision to Regulation No. 32 is to repeal applicable portions of the Regulation whose statutory authority was repealed by Act 1018 of 2007. These revisions include:

Proposed Revision:	Basis & Purpose:
(a) Amending § 32.101 to reflect the revised purpose of the Act and Regulation;	Act 1018 requires the Department to implement a “certification” program to identify and list Phase I consultants who meet the federal standards set forth at 40 CFR 312 for “environmental professionals” (hereafter “EPs”). Provisions for Comprehensive Site Assessment Consultants and Response Action Contractors are repealed.
(b) Amending § 32.101 to reflect the revised authority for the Regulation;	Remove reference to Act 2141 of 2005, and refer to new authority under Act 1018 of 2007.
(c) Amending the list of definitions at § 32.103 in accordance with those used in Act 1018 of 2007;	<p>Remove definitions not addressed by Act 1018.</p> <ul style="list-style-type: none">● Amend definition of “<i>certification and listing</i>” to provide for the review of qualifications of those consultants requesting to be placed on the Department’s list of certified Phase I consultants, and providing they meet the federal requirements at 40 CFR 312.10, placing their names on said list.● Amend definition of “<i>relevant experience</i>” to include and clarify EPA’s expectations of actual working knowledge in carrying out Phase I

	<p>environmental site assessments, as set forth in EPA’s response to comments on the November 2005 final rule for All Appropriate Inquiries (70 FR 66-70).</p>
<p>(d) Amending § 32.201 to reflect the revised qualifications for an “environmental professional” pursuant to the requirements of Act 1018 of 2007 and referenced federal regulations at 40 CFR 312.10;</p>	<p>Sections 32.201(a) and (b) are amended to reflect the change in certification procedures pursuant to Act 1018. Consultants wishing to be included on the Department’s list of certified environmental professionals will submit an application setting forth their qualifications pursuant to the federal requirements for EPs.</p> <p>Paragraph 32.201(F) is retained (and re-numbered to paragraph (C)) to clarify that neither the Federal nor State regulations pursuant to Act 1018 would prohibit a person from working on Phase I assessments provided that such work is done under the supervision and responsible charge of a qualified EP.</p>
<p>(e) Repealing and removing Sections 32.203, 32.204, 32.205, and 32.206;</p>	<p>These provisions were repealed by Act 1018.</p>
<p>(f) Revising § 32.301 to reflect the revised qualification and application process for Phase I Consultants pursuant to the provisions of Act 1018 of 2007;</p>	<p>The qualification standards set forth for Phase I consultants are taken directly from the federal definition of an “environmental professional” set forth in the All Appropriate Inquiries rule at 40 CFR 312.10. As clarified by EPA in their response to comments on the November, 2005 All Appropriate Inquiries rule (70 FR 66070), the use of the phrase “<i>full-time</i>” 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</p>

	inquiries investigations, on a full-time basis to continue qualify as an environmental professional.
(g) Repealing and removing Section 32.302;	These provisions were repealed by Act 1018. It should be noted that the federal AAI rule, as referenced by Act 1018, does not contain the exclusions for state employees, or employees performing Phase I services for their employers in the course of such employment; all persons performing Phase I site assessments must meet the federal requirements for an EP.
(h) Repealing and reserving Chapters 4 and 5;	These provisions were repealed by Act 1018.
(i) Amending § 32.601 to reflect review and renewal of a Phase I consultant's certification and listing under the provisions of Regulation No. 32 at least once every two years;	These procedures are revised to reflect a consultant's certification and inclusion on a list of Phase I consultants rather than the formal certification process provided for under Act 2141 of 2005. The two-year period for listing is retained; after two years a consultant must re-notify the Department that he or she is still interested in being included on said list, and provide basic documentation of required continuing education as an environmental professional.
(j) Repealing and reserving Sections 32.602, 32.603, and 32.604;	These provisions were repealed by Act 1018.
(k) Amending § 32.605 to remove references to continuing education training for response actor and other contractors;	Federal regulations at 40 CFR 312.10 require that an environmental professional "should remain current in his or her field through participation in continuing education or other activities." The previous Regulation No. 32 requirements for continuing education are therefore retained as is to maintain compliance with this federal requirement. Provisions for CSA consultants and response action contractors are removed, since Regulation 32 no longer addresses these disciplines. The continuing education requirements here are set such that EPs who are required to maintain continuing education as part of their professional registration programs will concurrently meet the requirements of Regulation No. 32.

(l) Amending § 32.606 to lower the certification and listing fee for Phase I Consultants from \$200 initially and \$200 biennially thereafter to \$25 for both initial certification/listing and renewal; and removing the provisions for examination fees;	The fee for review of individual applications for qualification and subsequent listing as an EP and Phase I consultant addresses the average cost to the Department for the time involved in such review.
(m) Amending § 32.607 to remove references to Response Action Contractors;	These provisions were repealed by Act 1018.
(n) Amending § 32.608 to delete record keeping and review requirements for provisions repealed by Act 1018 of 2007;	These provisions were repealed by Act 1018. Basic record-keeping requirements are retained in order to document compliance with the federal AAI standards as well as the provisions of Reg. 32.605 for continuing education requirements.
(o) Repealing and reserving Chapter 7; and	These provisions were repealed by Act 1018.
(p) Amending § 32.901 to remove references to regulatory language stricken by the preceding amendments.	These provisions were repealed by Act 1018.

Compliance with Act 143 of 2007 (formerly Executive Order 05-04): These revisions make typographic corrections to existing state provisions in the Regulation. As such, they substantially codify existing State regulations and are not subject to the provisions of A.C.A. § 25-15-302.

A copy of the regulatory flexibility questionnaire for the proposed revisions was submitted to the Arkansas Department of Economic Development on May 11, 2007. No comments were received from the ADED.

The Commission finds that the proposed revisions to Regulation No. 32 facilitate compliance with and implementation of the statutes administered by the Department and ensure the quality of environmental site assessments. These revisions are in the public interest, and are necessary to comply with state and federal law.