

Title 8. Environmental Law

Chapter I. Arkansas Pollution Control and Ecology Commission, Department of Energy and Environment

Subchapter F. Land Resources — Hazardous Waste, Hazardous Substances, and Petroleum Products

Part 82. Brownfield Redevelopment

Subpart 1. Generally

8 CAR § 82-101. Title.

This part, adopted pursuant to the provisions of the Arkansas Hazardous Waste Management Act of 1979 (Acts 1979, No. 406, as amended, Arkansas Code § 8-7-201 et seq.), the Remedial Action Trust Fund Act (Acts 1985, No. 479, as amended, Arkansas Code § 8-7-501 et seq.), and the Arkansas Voluntary Cleanup Act (Acts 1997, No. 1042, as amended, Arkansas Code § 8-7-1101 et seq.), shall be known as 8 CAR pt. 82, Brownfield Redevelopment.

8 CAR § 82-102. Purpose.

It is the purpose of this part and it is hereby declared to be the policy of the Arkansas Pollution Control and Ecology Commission:

(1) 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;

(2) 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;

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

(4) To establish incentives to encourage prospective purchasers to voluntarily

develop and implement cleanup plans of abandoned sites without the need for adversarial enforcement actions by the Division of Environmental Quality;

(5) 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 cleanup policies for abandoned sites;

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

(7) As an incentive to promote the redevelopment of abandoned industrial sites, persons not responsible for preexisting pollution at or contamination on industrial sites should:

(A) Meet alternative cleanup requirements if they acquire title after the nature of conditions at the site have been disclosed; and

(B) Declare and commit to investigate, remediate as necessary, and limit the property to a specified future land use of the subject site; and

(8)(A) Property transactions at times necessitate title acquisition prior to completion of the actions contemplated at Arkansas Code § 8-7-1104(b) – (d) by persons not previously involved with the site or otherwise considered responsible parties for environmental conditions at a site.

(B) These persons should not be foreclosed from participation under the procedure enacted under the Voluntary Cleanup Act, Arkansas Code § 8-7-1101 et seq.

(C) Therefore, these persons, at the discretion of the Director of the Division of Environmental Quality, 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 part.

8 CAR § 82-103. Authority.

This part is promulgated pursuant to the Voluntary Cleanup Act, Acts 1997, No. 1042, as amended, Arkansas Code § 8-7-1101 et seq.

8 CAR § 82-104. Definitions.

(a) As used in this part, unless the context otherwise requires:

(1) "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 Division of Environmental Quality determines it is in the best interest of the citizens of Arkansas to promote redevelopment under this part while continuing to pursue the responsible party or parties;

(2) "Division" means the Division of Environmental Quality;

(3) "Implementing agreement" means a plan, order, memorandum of agreement, or other enforceable document issued by the Division of Environmental Quality under provisions of the Arkansas Hazardous Waste Management Act, Arkansas Code § 8-7-201 et seq., the Remedial Action Trust Fund Act, Arkansas Code § 8-7-501 et seq., or the Arkansas Voluntary Cleanup Act, Arkansas Code § 8-7-1101 et seq., to implement the voluntary cleanup process described in Arkansas Code § 8-7-1104;

(4) "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;

(5) "Property" means property and improvements, including:

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

(B) A "site" as defined in the Arkansas Hazardous Waste Management Act of 1979, Arkansas Code § 8-7-203(11);

(6) "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;

(7) "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 cleanup levels specified in the enforceable agreement with the prospective purchaser;

(8) "Residential property" means any real property used as a dwelling or property with four (4) or fewer dwelling units used exclusively for residential use; and

(9)(A) "Site assessment" means the site assessment to establish the baseline level of existing contamination on a site.

(B) The assessment shall identify, at a minimum, the:

(i) Location and extent of contamination;

(ii) Quantity or level of contamination;

(iii) Type of contamination;

(iv) Probable source of contamination; and

(v) Risk or threat associated with the contamination as described in Arkansas Code § 8-7-1104.

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

(b) Any other terms of this part not expressly defined shall have the same definitions as provided in Arkansas Code §§ 8-7-203, 8-7-304, 8-7-403, 8-7-503, or 8 CAR pt. 81, Hazardous Waste Management, unless manifestly inconsistent with the provisions and remedial intent of this part.

8 CAR § 82-105. Eligibility.

(a) This part applies to:

(1) A person who:

(A) 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;

(B) 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 Arkansas Code § 8-7-512(a)(2) – (4); and

(C) 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

(2) A person who:

(A) Is not a responsible party pursuant to Arkansas Code § 8-7-512(a)(2) – (4);

(B) Submits a letter of intent to participate as provided for under 8 CAR § 82-107(d); and

(C) Subsequently acquires title to an abandoned site prior to completion of an implementing agreement as set forth in Arkansas Code § 8-7-1104(d).

(b) This part shall not apply to a person who:

(1) Is a current owner or operator;

(2) Is a responsible party pursuant to Arkansas Code § 8-7-512(a)(2) – (4); or

(3) Has demonstrated a pattern of uncorrected noncompliance.

(c) The following types of sites shall not be eligible for participation in the Brownfield redevelopment process:

(1) Sites identified on the federal National Priorities List (NPL);

(2) Sites that have been submitted by the Division of Environmental Quality to the United States Environmental Protection Agency to be ranked for consideration of placement on the NPL;

(3) Sites that are covered by a hazardous waste management (RCRA) permit;

(4) Sites that operate under interim status authority pursuant to 8 CAR pt. 81, Hazardous Waste Management; and

(5) Sites subject to a federal order under CERCLA or RCRA.

8 CAR § 82-106. Public participation.

(a) The public shall be provided notice of the proposed remedy at a Brownfield site

and given the opportunity to comment and request a public hearing prior to the Division of Environmental Quality making a final remedy determination.

(b) The division shall follow 8 CAR pt. 11 in providing for public participation and input on the remedy selection.

8 CAR § 82-107. Process.

(a) The Division of Environmental Quality shall follow the process set forth in Arkansas Code § 8-7-1104 in evaluating and assisting the redevelopment of sites under the Arkansas Voluntary Cleanup Act, Arkansas Code § 8-7-1101 et seq.

(b) In evaluating and approving plans and remedial designs under this part, the division shall have use of all its powers and authorities as assigned under the provisions of:

(1) The Arkansas Hazardous Waste Management Act of 1979, Acts 1979, No. 406, as amended, Arkansas Code § 8-7-201 et seq.;

(2) The Remedial Action Trust Fund Act, Acts 1985, No. 479, as amended, Arkansas Code § 8-7-501 et seq.; and

(3) 8 CAR pt. 81, Hazardous Waste Management.

(c) In using these authorities, the division 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.

(d)(1) Property transactions at times necessitate title acquisition prior to completion of the actions contemplated at Arkansas Code § 8-7-1104(b) – (d) by persons not previously involved with the site or otherwise considered responsible parties for environmental conditions at a site.

(2) These persons, at the discretion of the Director of the Division of Environmental Quality, 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 part.

8 CAR § 82-108. Severability.

If any provision of this part 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 part are declared to be separate and severable.

8 CAR § 82-109. Effective date.

This part is effective ten (10) days after filing with the:

- (1) Secretary of State;
- (2) Arkansas State Library; and
- (3) Bureau of Legislative Research.