

## DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY

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**SUBJECT:** APC&EC Rule No. 27

**DESCRIPTION:** The instant rulemaking concerns the amendment of the Arkansas Pollution Control and Ecology Commission's Rule No. 27: Licensing of Operators of Solid Waste Management Facilities and Illegal Dumps Control Officers, in order to promulgate the mandated necessary rules for the Division of Environmental Quality's administration of the Environmental Compliance Resource Program and the licensing of environmental officers. The Commission's authority to amend Rule No. 27 to address these changes is found in Arkansas Code Annotated §§ 8-6-2006 and 8-6-2007(a). The rulemaking is further proposed to comply with Arkansas law that repeals the duties and powers of illegal dumps control officers; to incorporate statutory changes from Act 1067 of 2019 passed by the Arkansas General Assembly; and to promulgate necessary forms to be used by environmental officers.

**PUBLIC COMMENT:** A public hearing was held on March 9, 2020. The public comment period expired on March 23, 2020. The Division provided the following summary of the public comment that it received and its response thereto:

**Commenter: Michael J. Daniels, Vice Chairperson, Southern Environmental Enforcement Network (SEEN)**

I was provided a copy of proposed changes to APC&EC Rule 27. I observed a reference to SEEN on page 17 of proposed changes. SEEN is listed as one of the approved providers of training to "operators." Based upon my appreciation of who an "operator" is, this may not be correct. SEEN is more qualified to provide training to a person who is an "Environmental Officer."

**Agency Response:** DEQ agrees and has made the change to the Revised Mark-up Draft that was suggested. The Southern Environmental Enforcement Network (SEEN) has been removed as one of the approved providers of training for "operators."

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Rule 27.102 – I just thought that I would mention that this section appears to still contain the term "regulations." **RESPONSE:** DEQ agrees and has made the changes to Rule 27.102 of the Revised Mark-Up Draft to remove the word "regulations."

(2) Rule 27.103, Definitions –

(a) Is there a reason that the definition for "Environmental violations" does not also include all of the language set forth in Ark. Code Ann. § 8-6-2003(4)? **RESPONSE:** The definition of environmental violation in Rule 27.103 was changed from the definition set forth in Ark. Code Ann. § 8-6-2003 to clarify and simplify the definition. The purpose of this Act is to address conduct prohibited under § 8-6-2005 for illegal dumping

of solid waste, the creation/furtherance of an illegal dump site, and illegal dumping of solid waste as it is addressed for waste tires in our Tire Act, § 8-9-401 et seq. Based on the wording of § 8-6-2004–2005, the language in § 8-6-2003(4)(B) can only address the “conduct prohibited in 8-6-2005,” or violations of the Tire Act. DEQ is enforcing violations of illegal dumping of solid waste in violation of § 8-6-2005 and the Tire Act, but § 8-6-2004 doesn’t state this clearly. To avoid redundancy and to clarify the rule’s application to illegal dumping violations and the Tire Act, DEQ drafted this portion of the rule that does not strictly mirror the wording of 8-6-2003(4).

(b) Should the initial reference to “§ 8-6-2005” be “§ 8-6-2005(1)” since subsections (2) and (3) of that statute are also enumerated? **RESPONSE:** DEQ agrees and has made the first reference to “§ 8-6-2005” be “§ 8-6-2005(1) in the Revised Mark-up Draft.

The proposed effective date is July 9, 2020.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

However, with respect to the total estimated cost by fiscal year to any private individual, entity, and business subject to the amended rules, the agency avers a cost of \$50 for the current fiscal year and \$25 for the next. It states: Solid waste operators’ cost will not change. The changes to the rule eliminate illegal dumps control officers who previously paid \$50.00 for licensing. Now, environmental officers, who were previously licensed as illegal dumps control officers, will be certified for an initial \$50.00 fee and a \$25.00 renewal fee each year.

With respect to the total estimated cost by fiscal year to state, county, and municipal government to implement the rules, the agency avers a cost of \$50 for the current fiscal year and \$25 for the next. It states: Solid waste operators’ cost, which may include cost to government employees, will not change. The changes to the rule eliminate illegal dumps control officers who previously paid \$50.00 for licensing. Now, environmental officers, who were previously licensed as illegal dumps control officers and who may include government employees, will be certified for an initial \$50.00 fee and a \$25.00 renewal fee each year.

**LEGAL AUTHORIZATION:** The proposed rules implement changes brought about by Act 1067 of 2019, sponsored by Representative Danny Watson, which created the Environmental Compliance Resource Act. Pursuant to Arkansas Code Annotated § 8-6-2006, the Arkansas Pollution Control and Ecology Commission shall promulgate rules for the administration of the Environmental Compliance Resource Program under the Environmental Compliance Resource Act (“Act”), Ark. Code Ann. §§ 8-6-2001 through 8-6-2019. The Division of Environmental Quality is charged with developing, implementing, and administering an Environmental Compliance Resource Program as provided under the Act and pursuant to the rules promulgated by the Commission. *See* Ark. Code Ann. § 8-6-2007(a).



**QUESTIONNAIRE**  
**FOR FILING PROPOSED RULES WITH THE**  
**ARKANSAS LEGISLATIVE COUNCIL**

**DEPARTMENT/AGENCY** Department of Energy and Environment  
**DIVISION** Office of Chief Counsel  
**DIVISION DIRECTOR** Shane Khoury  
**CONTACT PERSON** Michael Grappe  
**ADDRESS** 5301 Northshore Drive, North Little Rock, AR 72118  
**PHONE NO.** (501) 682-0647 **FAX NO.** (501) 682-0880 **E-MAIL** grappem@adeq.state.ar.us  
**NAME OF PRESENTER AT COMMITTEE MEETING** Michael Grappe  
**PRESENTER E-MAIL** grappem@adeq.state.ar.us

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this
- D. Rule" below.
- E. Submit two (2) copies of the Questionnaire and Financial Impact Statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5th Floor  
Little Rock, AR 72201

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1. What is the short title of this rule? APC&EC Regulation No. 27

2. What is the subject of the proposed rule? LICENSING OF OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES AND TRAINING AND CERTIFICATION REQUIREMENTS FOR ENVIRONMENTAL OFFICERS

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes  No

If yes, please provide the federal rule, regulation, and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?

Yes  No

If yes, what is the effective date of the emergency rule? \_\_\_\_\_

When does the emergency rule expire? \_\_\_\_\_

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes  No



8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

[https://www.adeg.state.ar.us/regs/draft\\_regs.aspx](https://www.adeg.state.ar.us/regs/draft_regs.aspx)

9. Will a public hearing be held on this proposed rule? Yes  No  If yes, please complete the following:

Date: March 9, 2020

Time: 10:00 a.m.

Place: Commission Room, DEQ Headquarters, 5301 Northshore Drive, North Little Rock, AR 72118

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

Ten business days from the date of the public hearing, which will be on or about March 23, 2020.

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

July 9, 2020

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. Not required because the APC

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). Not required because the APC&E

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.



**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Department of Energy and Environment

**DIVISION** Office of Chief Counsel

**PERSON COMPLETING THIS STATEMENT** Michael Grappe

**TELEPHONE NO.** (501) 682-0647 **FAX NO.** (501) 682-0880 **EMAIL:** grappem@adeq.state.ar.us

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** APC&EC Regulation No. 27

1. Does this proposed, amended, or repealed rule have a financial impact? Yes  No
  
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes  No
  
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes  No

If an agency is proposing a more costly rule, please state the following:

a) How the additional benefits of the more costly rule justify its additional cost;

b) The reason for adoption of the more costly rule;

c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.





4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue \$ 0.00  
 Federal Funds \$ 0.00  
 Cash Funds \$ 0.00  
 Special Revenue \$ 0.00  
 Other (Identify) \$ 0.00  
 Total \$ 0.00

General Revenue \$ 0.00  
 Federal Funds \$ 0.00  
 Cash Funds \$ 0.00  
 Special Revenue \$ 0.00  
 Other (Identify) \$ 0.00  
 Total \$ 0.00

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue \$ 0.00  
 Federal Funds \$ 0.00  
 Cash Funds \$ 0.00  
 Special Revenue \$ 0.00  
 Other (Identify) \$ 0.00  
 Total \$ 0.00

General Revenue \$ 0.00  
 Federal Funds \$ 0.00  
 Cash Funds \$ 0.00  
 Special Revenue \$ 0.00  
 Other (Identify) \$ 0.00  
 Total \$ 0.00

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ 50.00

\$ 25.00

Solid waste operators cost will not change. The changes to the rule eliminate illegal dumps control officers who previously paid \$50.00 for licensing. Now, environmental officers, who were previously licensed as illegal dumps control officers, will be certified for an initial \$50.00 fee and a \$25.00 renewal fee each year.

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ \$50.00

\$ \$25.00

Solid waste operators cost, which may include cost to government employees, will not change. The changes to the rule eliminate illegal dumps control officers who previously paid \$50.00 for licensing. Now, environmental officers, who were previously licensed as illegal dumps control officers and who may include government employees, will be certified for an initial \$50.00 fee and a \$25.00 renewal fee each year.



7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?  
Yes  No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.





**APC&EC REGULATION No. 27**  
LICENSING OF OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES AND  
ILLEGAL DUMPS CONTROL OFFICERS

Proposed Amendments – Executive Summary  
January 2020

The Arkansas Division of Environmental Quality (DEQ) proposes this rulemaking before the Arkansas Pollution Control and Ecology Commission amending Regulation No. 27: Licensing of Operators of Solid Waste Management Facilities and Illegal Dumps Control Officers, in order to promulgate the mandated necessary rules for DEQ's administration of the Environmental Compliance Resource Program and the licensing of environmental officers. The Commission's authority to amend Regulation No. 27 to address these changes is found in Arkansas Code Annotated §§ 8-6-2006 and 8-6-2007(a). DEQ further proposes to initiate this rulemaking to comply with Arkansas law that repeals the duties and powers of illegal dumps control officers; to incorporate statutory changes from Act 1067 of 2019 passed by the Arkansas General Assembly; and to promulgate necessary forms to be used by environmental officers.

