

DEPARTMENT OF ENVIRONMENTAL QUALITY, HAZARDOUS WASTE DIVISION

SUBJECT: Regulation No. 30, 2011; Annual Update

DESCRIPTION: The proposed regulatory amendment will update the Hazardous Substances Site Priority List by deleting five (5) sites where cleanup has been completed and adding one (1) site for investigation and potential remediation.

PUBLIC COMMENT: The department held a public hearing on January 9, 2012, and the public comment period expired on January 24, 2012. No comments were received at the hearing.

The proposed effective date of the rule is May 2012, ten (10) business days following filing of the rulemaking decision with the office of the Secretary of State after the April 2012 Arkansas Pollution Control and Ecology Commission meeting.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: No additional state funding is necessary at the five sites removed from the Site Priority List and the investigative cost of adding one new site to the list may range up to \$300,000 depending on the scope of contamination found, with costs of remediation to be addressed once the degree of contamination and environmental risk is better known.

LEGAL AUTHORIZATION: Arkansas Code § 8-7-509(f)(1) specifically requires the department to revise annually “a prioritized listing of hazardous substance sites at which remedial actions are authorized through the use of Hazardous Substance Remedial Action Trust Fund moneys,” and the department is required to submit the revised listing to the Arkansas Pollution Control and Ecology Commission for approval after public notice and an opportunity for hearing. Under Arkansas Code § 8-7-508(a)–(c), the department is authorized to initiate and implement remedial actions with respect to hazardous substance sites under the Remedial Act Trust Fund Act, Arkansas Code § 8-7-501 *et seq.*

**Arkansas Pollution Control and Ecology Commission
Regulation No. 30
Rulemaking Packet Transmitted to Arkansas Legislative Council
Administrative Rules and Regulations Subcommittee
Public Health, Welfare and Labor Subcommittee
December 7, 2011**

List of Attachments

Legislative Council Questionnaire

Legislative Council Financial Impact Statement

Act 143 Statement

Economic Impact/Environmental Benefit Analysis

Regulatory flexibility statement

Summary of proposed changes

Marked-up copy of proposed Regulation 18 changes

Petition for Rulemaking

Commission Minute Order authorizing Rulemaking

Public Notice

Public Hearing Date: January 9, 2012

Comment Deadline: January 24, 2012

QUESTIONNAIRE
FOR FILING PROPOSED RULES AND REGULATIONS WITH THE
ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY	Arkansas Department of Environmental Quality	
DIVISION	Hazardous Waste Division	
DIVISION DIRECTOR	Clyde E. Rhodes, Jr.	
CONTACT PERSON	Tom Ezell, (501) 682-0854	
ADDRESS	5301 Northshore Drive, North Little Rock, AR 72118	
PHONE NO: (501) 682-0833	FAX NO: (501) 682-0880	E-MAIL: benefield@adeq.state.ar.us
NAME OF PRESENTER AT COMMITTEE MEETING	Ryan Benefield, Deputy Director	
PRESENTER E-MAIL	benefield@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 Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

- 1. What is the short title of this rule?
APC&EC Regulation No. 30, 2011 Annual Update

 - 2. What is the subject of the proposed rule?
Arkansas Remedial Action Trust Fund Hazardous Substances Site Priority List

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

If yes, what is the effective date of the emergency rule? N/A
When does the emergency rule expire? N/A

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

5. Is this a new rule? Yes _____ No XX If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes _____ No XX If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes XX No _____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

A marked-up version of the regulation is attached at Exhibit "A" to the rulemaking packet. A site-by-site summary is attached at Exhibit "G" to the rulemaking packet.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give Arkansas Code citation.

Arkansas Remedial Action Trust Fund Act, Ark. Code Ann. § 8-7-509.

7. What is the purpose of this proposed rule? Why is it necessary?

This proposed revision would delete five (5) sites where cleanup has been completed, and add one (1) site for investigation and potential remediation. Ark. Code Ann. § 8-7-509(f) requires an annual review and update of sites on the State Priority List.

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).

http://www.adeq.state.ar.us/regs/drafts/draft_regs.htm

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

Date: January 10, 2012

Time: 2:00 p.m.

Place: at the Department headquarters at 5301 Northshore Drive, North Little Rock.

10. When does the public comment period expire for permanent promulgation?
January 25, 2012, 4:30 p.m.

11. What is the proposed effective date of this proposed rule? (Must provide a date.) May 2012 (10 business days following filing of the rulemaking decision with the office of the Secretary of State, after the April, 2012 APC&E Commission meeting)

12. Do you expect this rule to be controversial? Yes _____ No XX If yes, please explain.

13. 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.

NAMES, ADDRESSES, & PHONE NUMBERS	FOR	AGAINST
Arkansas Environmental Federation, 1400 W. Markham Street, Suite 302, Little Rock, AR 72201, (501) 374-0263	X	

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Environmental Quality
DIVISION Hazardous Waste Division
PERSON COMPLETING THIS STATEMENT Tom Ezell
TELEPHONE No. (501) 682-0854 **FAX No.** (501) 682-0880 **EMAIL:** ezell@adeq.state.ar.us

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

APC&EC Regulation No. 30, 2011 Annual Update

1. **Does this proposed, amended, or repealed rule have a financial impact?**
Yes XX No _____

2. **Does this proposed, amended, or repealed rule affect small businesses?**
Yes _____ No XX

If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Ark. Code Ann. § 25-15-301 *et seq.*

Attached as Exhibit "E" to the rulemaking packet.

3. **If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.**
An estimate of anticipated costs to implement the revisions proposed in this rulemaking is provided under question 5 below.

4. **If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.**

<u>Current Fiscal Year (2012)</u>		<u>Next Fiscal Year (2013)</u>	
General Revenue:	N/A	General Revenue:	N/A
Federal Funds:	N/A	Federal Funds:	N/A
Cash Funds:	N/A	Cash Funds:	N/A
Special Revenue:	N/A	Special Revenue:	N/A

Other (Identify):	N/A	Other (Identify):	N/A
Total:	N/A	Total:	N/A

(This revision is not associated with a federal rule or requirement. Federal funds will not be expended against these program requirements.)

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

Anticipated costs to the Arkansas Hazardous Substance Remedial Action Trust Fund, administered by ADEQ:

<u>Current Fiscal Year (2012)</u>		<u>Next Fiscal Year (2013)</u>	
General Revenue:	N/A	General Revenue:	N/A
Federal Funds:	N/A	Federal Funds:	N/A
Cash Funds:	N/A	Cash Funds:	N/A
Special Revenue:	N/A	Special Revenue:	\$ 300,000.00
Other (Identify):	N/A	Other (Identify):	N/A
Total:	N/A	Total:	N/A

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

<u>Current Fiscal Year (2012)</u>		<u>Next Fiscal Year (2013)</u>	
Federal Funds:	\$ 0.00	Federal Funds:	\$ 0.00
Special Revenue:	\$ 3,336,000.00	Special Revenue:	~ \$ 3.5 million
Total:	\$ 3,336,000.00	Total:	~ \$ 3.5 million

Estimate includes costs of annual operations & maintenance at completed sites, scheduled investigations & remedial actions to be paid by the ADEQ from the Remedial Action Trust Fund. Estimate does not include investigation and cleanup costs funded by responsible parties, Department shared resources, and related operational expenses to implement and oversee the statutory program requirements.

7. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation, and explain how they are affected.

ADEQ expects to incur investigative expenses up to \$300,000 from the Remedial Action Trust Fund for the investigation, characterization, feasibility studies, and remedial design for the former Fulton Class 3C landfill proposed for addition to the SPL. No additional costs are anticipated for the five sites proposed for deletion from the SPL.

8. What is the total estimated cost by fiscal year to the agency to implement this regulation?

<u>Current Fiscal Year (2012)</u>		<u>Next Fiscal Year (2013)</u>	
Federal Funds:	\$ 0.00	Federal Funds:	\$ 0.00
Special Revenue:	~ \$ 3.5 million	Special Revenue:	~ \$ 3.5 million
Total:	~ \$ 3.5 million	Total:	~ \$ 3.5 million

Estimate includes costs of annual operations & maintenance at completed sites, scheduled investigations & remedial actions to be paid from the Remedial Action Trust Fund. Estimate does not include investigation and cleanup costs funded by responsible parties, staffing costs, Department shared resources, and related operational expenses to implement and oversee the statutory program requirements.

**Compliance with Act 143 of 2007
(formerly Executive Order 05-04)**

A copy of this rulemaking petition and all attachments was provided to the Arkansas Department of Economic Development via e-mail on November 16, 2011.

ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION

ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT ANALYSIS

Rule Number & Title: Regulation No. 30, Arkansas Remedial Action Trust Fund Hazardous Substances Site Priority List, 2011 Annual Update
Petitioner: ADEQ Hazardous Waste Division
Contact/Phone/Electronic mail: Clyde Rhodes, 682-0831, rhodesc@adeq.state.ar.us
Analysis Prepared By: Tom Ezell, (501) 682-0854
Date Analysis Prepared: October 10, 2011

STEP 1: DETERMINATION OF ANALYSIS REQUIREMENT

Is the proposed rule exempt from economic impact/environment benefit analysis for one of the following reasons?	YES	NO
▶ The proposed rule incorporates the language of a federal statute or regulation without substantive change		X
▶ The proposed rule incorporates or adopts the language of an Arkansas state statute or regulation without substantive change		X
▶ The proposed rule is limited to matters arising under Regulation No. 8 regarding the rules of practice or procedure before the Commission		X
▶ The proposed rule makes only <i>de minimis</i> changes to existing rules or regulations, such as the correction of typographical errors, or the renumbering of paragraphs or sections; or		X
▶ The proposed rule is an emergency rule that is temporary in duration.		X

If the proposed rulemaking does not require the following Analysis due to one or more of the exemptions listed above, state in the Petition to Initiate Rulemaking which exemptions apply, and explain specifically why each is applicable.

RULE SUMMARY:

Ark. Code Ann. § 8.7.509(f)(1) requires the Department to annually update the state priority list of hazardous substance sites eligible for investigation and remedial actions through use of moneys from the Remedial Action Trust Fund. ADEQ is explicitly required by this state statute to update Regulation No. 30 at least annually. This revision to Regulation No. 30 accomplishes the annual update to the priority lists for hazardous substance sites where the Pollution Control & Ecology Commission has authorized expenditures from the Remedial Action Trust Fund for investigation, cleanup, and long term maintenance in order to eliminate or mitigate unacceptable risks to human health or the environment from hazardous substance contamination at the listed sites. This revision does not have a corresponding federal rule or requirement.

STEP 2: THE ANALYSIS

2A. ECONOMIC IMPACT

1. Who will be affected economically by this proposed rule?

State: a) the specific public or private entities affected by this rulemaking, indicating for each category if it is a positive or negative economic effect; and b) provide the estimated number of entities affected by this proposed rule.

Investigative and remedial action costs for sites listed in Regulation No. 30 are paid from the Arkansas Hazardous Substance Remedial Action Trust Fund, administered by the Arkansas Department of Environmental Quality. Upon completion of remedial actions, the Department has historically sought to recover these costs from the responsible parties, if these parties are still viable.

Public and private businesses, other than responsible or potentially responsible parties for sites list in the Regulation, do not incur any economic costs from the implementation of this regulation.

Sources and Assumptions: N/A

2. What are the economic effects of the proposed rule?

State: 1) the estimated increased or decreased cost for an average facility to implement the proposed rule; and 2) the estimated total cost to implement the rule.

This proposed revision removes five sites where remedial actions have been completed from the State Priority List, and no additional State funding is necessary at these sites. One additional site is proposed for addition to the List for the purpose of site investigation and characterization and potentially for remediation. Investigative costs for this site may range up to \$300,000, depending on the scope of contamination found, with costs of remediation to be addressed once the degree of contamination and environmental risk is better known.

Sources and Assumptions: N/A

3. List any fee changes imposed by this proposal, and the justification for each.

None.

4. What is the probable cost to ADEQ in manpower and associated resources to implement and enforce this proposed change, and what is the source of revenue supporting this proposed rule?

ADEQ carries out investigative and remedial action work using current staff and site investigation contractors. Funding is derived from the Hazardous Substance Remedial Action Trust Fund.

Sources and Assumptions: N/A

5. Is there a known beneficial or adverse impact to any other relevant state agency to implement or enforce this proposed rule? Is there any other relevant state agency's rule that could adequately address this issue, or is this proposed rulemaking in conflict with or have any nexus to any other relevant state agency's rule? Identify state agency and/or rule.

No.

Sources and Assumptions: N/A

6. Are there any less costly, non-regulatory, or less intrusive methods that would achieve the same purpose as this proposed rule?

No.

Sources and Assumptions: N/A

2B. ENVIRONMENTAL BENEFIT

1. What issues affecting the environment are addressed by this proposal?

Specific potential risks at each site are described in the attached site summary reports (Exhibit "G" of the rulemaking packet).

2. How does this rule protect, enhance, or restore the natural environment for the well being of all Arkansans?

By identifying and addressing hazardous substance contamination at each of these sites, necessary actions have been taken to remove or control human exposure to these hazards, to restore or mitigate degradation of the integrity of the environment at each site, and restore these properties to beneficial use. One additional site is proposed for listing in order to evaluate its threat to local groundwater and drinking water resources, seeking to protect the health and well-being of citizens in that community.

Sources and Assumptions: N/A

3. What detrimental effect will there be to the environment or to the public health and safety if this proposed rule is not implemented?

Unacceptable risks to human health or the environment at the sites proposed for delisting have been removed through remedial actions. 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 use of these properties. In the case of the one site proposed for listing, potential health threats would remain uncharacterized and unaddressed.

Sources and Assumptions: N/A

4. What risks are addressed by the proposal and to what extent are these risks anticipated to be reduced?

Necessary actions are described in the summary sheet prepared for each site proposed to be added to the State Priority List. (See Exhibit "G" of the rulemaking packet).

Sources and Assumptions: N/A

**ECONOMIC IMPACT STATEMENT
OF PROPOSED RULES OR REGULATIONS**

EO 05-04: Regulatory Flexibility

Department: Dept. of Environmental Quality

Division: Hazardous Waste

Contact Person: Tom Ezell

Date: October 3, 2011

Contact Phone: (501) 682-0854

Contact E-Mail: ezell@adeq.state.ar.us

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.

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 April 2010.

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.
- 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?

Unacceptable risks to human health or the environment at these sites have been removed or controlled through remedial actions. 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. One additional site is proposed for listing in order to evaluate its threat to local groundwater and drinking water resources, seeking to protect the health and well-being of citizens in that community.

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.

Costs of carrying out long term stewardship and maintenance activities at sites listed on the National Priority and State Priority lists are approximately \$3.5 million per calendar year. Staff oversight and support equates to approximately \$0.4 million per calendar year.

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.

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

EXECUTIVE SUMMARY
REVISIONS TO APC&EC REGULATION No. 30
(Arkansas Remedial Action Trust Fund Hazardous Substances Site Priority List)
Proposed December 2, 2011

The Arkansas Pollution Control and Ecology Commission (APC&EC) is proposing to amend its Regulation No. 30 (Arkansas Remedial Action Trust Fund Hazardous Substances Site Priority List) in order to delete five sites from the state priority list following the completion of cleanups at these sites, and to add one additional site to the list in order to investigate potential contamination or environmental risks from that site. A public hearing will be held at the Arkansas Department of Environmental Quality's (ADEQ) headquarters in North Little Rock on January 9, 2012, to receive comments on the proposed revisions. This hearing will begin at 2:00 p.m. in the Commission Room at the ADEQ headquarters building at 5301 Northshore Drive. The deadline for submitting written comments on the proposed changes is 4:30 p.m. on January 24, 2011.

Sites Proposed for Deletion from the State Priority List

ADEQ is proposing to delete five (5) sites from those currently listed on the State Priority List. Site investigation and necessary remedial activities have been completed at these sites to a point where the site no longer poses an unacceptable risk to human health or the environment from hazardous substances defined under the Arkansas Remedial Action Trust Fund Act. The sites proposed for delisting are:

- (1) Baird Manufacturing, Clarendon, Monroe County
- (2) Dana Minton Property, Alexander, Saline County
- (3) I. Easter Property, Pine Bluff, Jefferson County
- (4) Value-Line 10th Street, Arkadelphia, Clark County
- (5) Walgreens Store #03045, Hot Springs, Garland County

Sites Proposed for Addition to the State Priority List

One site is proposed to be added to the State Priority List for investigation of potential hazardous substances and their effect on local groundwater and other environmental conditions.

- (1) Fulton Class 3C Landfill, Rogers, Benton County

Background information and the details on conditions at each site, as well as a complete listing of the proposed changes to Regulation 30 can be found on the Drafts of Proposed Regulations page of the ADEQ's Internet web site at http://www.adeq.state.ar.us/regsdrafts/reg30_draft_docket_11-008-R/reg30_draft_docket_11-008-R.htm.

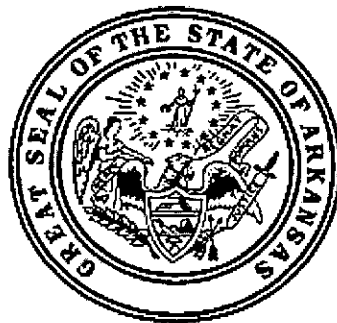
Oral and written comments will be accepted at the hearings, but written comments are preferred in the interest of accuracy. In addition, written and electronic mail comments will be considered if received no later than 4:30 p.m. January 24, 2011. Written comments should be delivered or mailed to: Doug Szenher, public information

coordinator, POA Division, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, AR 72118. Electronic mail comments should be sent to: reg-comment@adeq.state.ar.us.

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

REGULATION No. 30

**ARKANSAS
REMEDIAL ACTION TRUST FUND
HAZARDOUS SUBSTANCES SITE
PRIORITY LIST**



INITIAL DRAFT

**Submitted to
the Pollution Control and Ecology Commission
in December 2011**

CHAPTER 1:

GENERAL PROVISIONS

Reg.30.101 Authority

This regulation is promulgated pursuant to provisions of the Remedial Action Trust Fund Act of 1985, A.C.A. Ark. Code Ann. § 8-7-509(f)(1).

Reg.30.102 Purpose

The Arkansas Remedial Action Trust Fund Hazardous Substances Site Priority List identifies those hazardous substance sites for which expenditures are authorized from the Hazardous Substances Remedial Action Trust Fund pursuant to the provisions of the Ark. Code Ann. § 8-7-509(d)(2) and (d)(3). It is not a site inventory or historical list. Sites are listed alphabetically, and a particular site's position on the list is not relative to its hazard ranking or degree of risk or potential risk.

Reg.30.103 Definitions

When used in connection with this regulation, terms shall have the meaning defined at ~~Arkansas Code, Annotated~~ Ark. Code Ann. § 8-7-503, or as defined at APC&EC Regulation No. 23 § 260.10.

Reg.30.104 Criteria for Listing Hazardous Substance Sites

(a) Monies deposited into the Hazardous Substance Remedial Action Trust Fund shall be segregated into two portions.

(1) Eighty percent (80%) of the annual receipts shall be designated for expenditures related to National Priority List (NPL) sites as listed in Chapter 2 of this regulation.

(2) Twenty percent (20%) of the annual receipts shall be designated for expenditures related to State Priority List (SPL) sites as listed in Chapter 3 of this regulation.

(3) In the event monies from either NPL or SPL sites are not expended in any given year, the remaining monies shall be carried over to the next year and shall remain as originally apportioned, unaffected by apportionment of additional funds in subsequent years unless otherwise authorized by law.

(b) Monies from the Hazardous Substance Remedial Action Trust Fund may not be expended by the Director at any hazardous substance site until such hazardous substance site is listed in the applicable chapter of this regulation.

(c) A hazardous substance site may be listed in Chapter 2 of this regulation (National Priority List (NPL) site) provided that:

(1) The hazardous substance site has been investigated and ranked by use of the revised Hazard Ranking System (rHRS), and

(2) The hazardous substance site scored a minimum of 28.50 based on the rHRS, or has been designated as the State's priority site in accordance with 40 CFR 300.425(c)(2) and placed on the federal National Priorities List as published in the *Federal Register*, and

(3) A final Remedial Investigation/Feasibility Study (and Health Risk Assessment, where applicable) has been conducted, and

(4) The Department has concurred with the remedy selection, and

(5) A Record of Decision (ROD) regarding the remedial action has been issued, and

(6) Federal monies for the remedial action at the hazardous substance site have been committed, and

(7) The Remedial Design has progressed to the 90% complete stage, and

(8) The Department has provided a 30 day public comment period and opportunity for hearing on the addition of the site to this list.

(d) Should the Commission disapprove the inclusion of a hazardous substance site in Chapter 2 of this regulation, the Chairperson of the Commission shall cause the record to reflect the specific rationale for this disapproval.

(e) Priority for funding in any given fiscal year for National Priority List sites identified in § 30.202 under the above criteria shall be as follows:

(1) Those sites at which remedial actions (including operations and maintenance) have been initiated previously.

(2) Additional hazardous substance sites based on the order of greatest impact to public health and/or the environment, as determined by the Director after reviewing available information developed in accordance with CERCLA as amended, and any other information considered applicable and scientifically reliable.

(f) Hazardous substance sites which pose a potential substantial endangerment to human health and/or the environment but do not meet the criteria listed at paragraphs (C) or (D) of this section may be listed at § 30.302 (State Priority List (SPL) sites) of this regulation. Hazardous substance sites listed at § 30.302 will be eligible for investigation and necessary remedial action on a case-by-case basis as determined by the Director.

(g) Eligible expenditures at hazardous substance sites listed at § 30.302 of this regulation are those:

(1) Where investigatory activities are required to determine the extent and degree (if any) of the release or threat of release of a hazardous substance at the site and any scientific or engineering studies deemed necessary by the Director to determine available and necessary alternatives for remediation;

(2) Where remediation activities are required to adequately secure, contain, abate, treat, dispose, or control hazardous substances to the extent financially and technically feasible, as

determined by the Director. Remediation activities shall include but are not limited to any engineering design work necessary to adequately plan, design, and implement remedial measures.

(3) Where long term stewardship (i.e., operations and maintenance activities, to include five-year reviews) is required to ensure the long term effectiveness of the remedy implemented at the hazardous substance site.

(h) Hazardous substance sites may be listed at § 30.302 of this regulation based on:

- (1) Proximity to population centers;
- (2) Potential impacts to surface waters;
- (3) Potential impact to groundwater;
- (4) Hydrologic and geologic characteristics,
- (5) The toxicity and characterization of hazardous substances present;
- (6) The mobility of the hazardous substances present;
- (7) The attenuation of the hazardous substances present; and
- (8) Releases or threat of releases of the hazardous substances.

(i) Priority for available funding for hazardous substance sites listed at § 30.302 of this Regulation shall be as follows:

(1) Those sites at which remedial actions (including operations and maintenance) have been initiated previously.

(2) Additional hazardous substance sites based on the order of greatest impact to public health and/or the environment, as determined by the Director after reviewing available information developed or discovered in the investigatory process.

(j) The above shall not be construed to preclude or limit the authority of the Director in:

(1) Mandating actions, pursuant to Ark. Code, Ann. §§ 8-7-501 *et seq.* (the Hazardous Substance Remedial Action Trust Fund Act), deemed necessary to abate an imminent and substantial endangerment to the public health, safety, and welfare, or to the environment, or

(2) Ordering responsible parties to address and abate any release of a hazardous substance, pursuant to Ark. Code, Ann. §§ 8-7-501 *et seq.*

Reg. 30.105 Severability

If any provision of this Regulation or the application thereof is held invalid, such invalidity shall not effect other provisions of this Regulation which can be given effect without the invalid provision or application and to this end the provisions of this Regulation are declared to be severable.

CHAPTER 2:

NATIONAL PRIORITY LIST SITES

Reg.30.201 Description

Hazardous substance sites listed in this Chapter are those which pose a potential substantial endangerment to human health and/or the environment, and for which State funds have been approved to match or supplement Federal funding for remedial actions pursuant to CERCLA. Criteria for listing a particular site is governed by § 30.104(c) of this regulation.

Reg.30.202 National Priority List Sites

EPA ID No.	AFIN	Site Name	Address/Location	City	County
ARD084930148	05-00003	ARKWOOD, INC.	HWY 65 1M S	OMAHA	BOONE
ARD980496186	34-00077	CECIL LINDSEY LANDFILL	35.637562 N; -91.230540 E	NEWPORT	JACKSON
ARD035662469	18-00131	GURLEY OIL PIT	35.119873 N; -90.312101 E	EDMONDSON	CRITTENDEN
ARD980496368	66-00268	INDUSTRIAL WASTE CONTROL	35.239293 N; -94.354493 E	JENNY LIND	SEBASTIAN
ARD980809941	43-00084	JACKSONVILLE (GRAHAM ROAD) MUNICIPAL LANDFILL	34.866382 N; -92.072375 E	JACKSONVILLE	PULASKI
ARD092916188	57-00060	MID-SOUTH WOOD PRODUCTS	HWY 71S 3 BLOCKS S-S REINE ST	MENA	POLK
ARD980745665	75-00049	OLD MIDLAND PRODUCTS	HWY 10 1/2 MIL E OF OLA	OLA	YELL
ARD980864110	28-00066	MONROE AUTO EQUIPMENT CO.	5 MI SW OF PARAGOULD	PARAGOULD	GREENE
ARD049658628	75-00008	MOUNTAIN PINE PRESSURE TREATING	HWY 28 E	PLAINVIEW	YELL
ARD042755231	52-00001	OUACHITA NEVADA WOOD TREATER	.25 MI N PF HWY 368 & MAIN	READER	OUACHITA
ARD008052508	70-00049	POPILE, INC.	SOUTHFIELD RD	EL DORADO	UNION
ARD981055809	60-00759	ROGERS ROAD MUNICIPAL LANDFILL	34.862234 N; -92.079085 E	JACKSONVILLE	PULASKI
ARD980496723	18-00130	SOUTH 8TH STREET LANDFILL	35.125641 N; -90.171356 E	WEST MEMPHIS	CRITTENDEN
ARD000023440	60-00028	VERTAC, INC.	1600 MARSHALL ST	JACKSONVILLE	PULASKI

CHAPTER 3: STATE PRIORITY LIST SITES

Reg.30.301 Description

Hazardous substance sites listed in this Chapter are those which pose a potential substantial endangerment to human health and/or the environment, but which do not meet the criteria for listing on the National Priority List. These sites have been designated as eligible for State-funded investigation and necessary remedial actions on a case-by-case basis as determined by the Director. Criteria for listing a particular site is governed by §§ 30.104(f) and (h) of this regulation.

Reg.30.302 State Priority List Sites

EPA ID No.	AFIN	Site Name	Address	City	ZIP	County
ARD983286337	10-00016	AMITY LACQUER PAINT & CHEMICAL MFG CO	HWY 8 4M N ON COUNTY RD 53	AMITY	71921	CLARK
ARD035434596	73-00022	ARKANSAS GENERAL INDUSTRIES	102 MILLER STREET	BALD KNOB	72010	WHITE
ARD982286957	47-00003	ARKANSAS WASTE-TO-ENERGY WAREHOUSE SITE	420 W PARSONS DRIVE	OSCEOLA	72370	MISSISSIPPI
ARD055684633	48-00033	BAIRD MANUFACTURING	HWY 79B & ANN ALDEN	CLARENDON	72029	MONROE
ARD006337620	72-00676	BALDWIN PIANO & ORGAN CO.	1101 S BEECHWOOD AVE	FAYETTEVILLE	72701	WASHINGTON
ARD980583470	52-00163	BEI DEFENSE SYSTEMS	HIGHWAY 274 12 MI E	EAST CAMDEN	71701	CALHOUN
ARD990660649	54-00068	CEDAR CHEMICAL CO	49 PHILLIPS RD 311	HELENA	72342	PHILLIPS
ARR000011106	63-00462	DANA MINTON PROPERTY	7125 ANDERSON ROAD	ALEXANDER	72002	SALINE
ARD035560507	60-01942	FASHION PARK CLEANERS	1101 CUMBERLAND ST	LITTLE ROCK	72202	PULASKI
ARD990661050	52-00355	GENERAL DYNAMICS CORP	204 OUACHITA 212, AIRPORT IND PARK	EAST CAMDEN	71701	OUACHITA
None	04-00165	FULTON CLASS 3C LANDFILL	END OF QUAIL ROAD	ROGERS	72756	BENTON
ARD981055494	70-00283	GRIFFING RAILWAY REPAIR	SCHOOL ST BOX 1735	EL DORADO	71730	UNION
ARD021354493	67-00078	HADCO OF ARKANSAS ONC	TOWER RD 2M S	GILLHAM	71841	SEVIER

EPA ID No.	AFIN	Site Name	Address	City	ZIP	County
None	43-00298	I CAN, INC	420 W ACADEMY ST	LONOKE	72086	LONOKE
None	35-00460	L. EASTER PROPERTY (OLD AP&L PLANT)	1400 W 4TH ST	PINE BLUFF	71601	JEFFERSON
ARD062144308	60-00642	JIMELCO	3400 S MAPLE STREET	LITTLE ROCK	72204	PULASKI
ARD008049297	70-00694	NORPHLET CHEMICAL CO.	HWY 335 AND MACMILLAN ROAD	NORPHLET	71759	UNION
ARD051961829	72-00174	R&P ELECTROPLATING	2000 PUMP STATION RD	FAYETTEVILLE	72701	WASHINGTON
AR0000605322	37-00028	RED RIVER ALUMINUM	HWY 82 WEST	STAMPS	71860	LAFAYETTE
ARD041054552	21-00080	STAR STARRETT/LEER MFG	HWY 65 S IM S 65/165 JCT	DUMAS	71639	DESHA
ARR000011122	04-00342	SWIFT CHEMICAL CO FARM PROPERTY	2001 S 1ST ST	ROGERS	72756	BENTON
None	42-00117	THOMPSON SCIENTIFIC INDUSTRIES	1605 RIVER PORT RD	SCRANTON	72863	LOGAN
AR0000100859	35-00419	UTILITY SERVICES, INC	10184 HWY 79S	PINE BLUFF	71603	JEFFERSON
AR0000000331	10-00234	VALUE-LINE	701 S 3 RD STREET	ARKADELPHIA	71923	CLARK
AR0000000307	10-00118	VALUE-LINE	1205 N 10 th STREET	ARKADELPHIA	71923	CLARK
ARR000004556	26-00475	WALGREENS #03425	159 E GRAND	HOT SPRINGS	71901	GARLAND

CHAPTER 4:

EFFECTIVE DATE

Reg.30.401 Effective Date

This regulation and any amendments or revision thereof are effective 10 days after filing the regulation or any amendment or revision thereof with the Secretary of State, the State Library, and the Bureau of Legislative Research following adoption by the Commission.

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION No. 30; ARKANSAS)
HAZARDOUS SUBSTANCES REMEDIAL)
ACTION TRUST FUND SITE PRIORITY)
LIST)

DOCKET NO. 11-008-R

PETITION TO INITIATE RULEMAKING TO AMEND REGULATION NO. 30,
ARKANSAS REMEDIAL ACTION TRUST FUND HAZARDOUS SUBSTANCES SITE
PRIORITY LIST

The Arkansas Department of Environmental Quality (hereinafter "ADEQ" or the "Department"), for its Petition to Initiate Rulemaking to Amend Regulation No. 30, Arkansas Remedial Action Trust Fund Hazardous Substances Site Priority List, states:

1. Act 479 of 1985, the Arkansas Remedial Action Trust Fund Act, Ark. Code Ann. § 8-7-509(f)(1), requires the establishment and annual update of a prioritized list of hazardous substance sites at which the Commission may authorize the expenditures from the Remedial Action Trust Fund for the investigation, cleanup, and long term stewardship of these sites. This petition seeks to amend and update this list for sites within Arkansas that meet the criteria for listing on the U.S. Environmental Protection Agency's National Priority List (NPL) and require matching funds from the state for cleanup as well as long term care and stewardship, as well as those sites which require address using state funding, oversight, or both.

2. The proposed regulatory amendments include proposing five (5) sites for deletion from the State Priority List as remedial actions have been completed to the extent that the sites no longer

pose an unacceptable risk to human health or the environment under the provisions of the Remedial Action Trust Fund Act. One (1) new site is proposed for addition to the SPL.

3. The proposed revisions are attached at Exhibit "A."

4. Clyde Rhodes, Chief, Hazardous Waste Division, will be available to answer questions concerning this proposed rulemaking. A version of the regulation showing the proposed changes is attached as Exhibit "A" and is hereby incorporated by reference. The questionnaire for filing proposed rules and regulations with the Arkansas Legislative Council and Joint Interim Committee is attached at Exhibit "B." The Legislative Financial Impact Statement is attached at Exhibit "C." A statement addressing compliance with the provisions of Act 143 of 2007 is attached at Exhibit "D." A copy of the completed economic impact/environmental benefit analysis pursuant to Regulation No. 8.812 is attached at Exhibit "E." A copy of the Economic Impact Statement and Regulatory Flexibility Analysis required by the Arkansas Department of Economic Development pursuant to Act 143 of 2007 is attached at Exhibit "F." Summary sheets for each site proposed to be added or deleted are attached at Exhibit "G." A proposed Minute Order which initiates this request is attached at Exhibit "H."

5. Regulation No. 30 does not impose any additional costs or obligations to private businesses, small or otherwise. Liability for environmental contamination and cleanup for which they are responsible would be assessed under other federal and state laws; costs for investigation, characterization, and remediation of sites listed on the State Priority List are paid using state funds from the Remedial Action Trust Fund Act.

WHEREFORE, the ADEQ requests that the Commission initiate the rulemaking process, adopt the proposed Minute Order, and promulgate the proposed amendments to Regulation No. 30 for public notice and comment.

Respectfully submitted,

CLYDE E. RHODES, JR.
Chief, Hazardous Waste Division
Arkansas Department of Environmental Quality
(501) 682-0831

ARKANSAS POLLUTION
CONTROL AND ECOLOGY
COMMISSION

PETITION TO INITIATE
RULEMAKING
Regulation No. 30

Docket No. 11-008-R

MINUTE ORDER NO. 11 - 34

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On November 18, 2011, The Arkansas Department of Environmental Quality ("Department") filed a Petition to Amend Regulation No. 30 (Arkansas Remedial Action Trust Fund Hazardous Substances Site Priority List)(hereafter "Petition"). The Petition has been designated as Docket No. 11-008-R.

The Commission's Regulations Committee met on December 2, 2011 to review the Petition. Having considered the Petition, the Regulations Committee recommends the Commission institute a rulemaking proceeding to consider adopting the proposed revisions to Regulation No. 30.

1. The Department shall file an original and two (2) copies and a computer disk in Microsoft Word of all materials required under this Minute Order.

2. Persons submitting written public comments shall submit their written comments to the Department. Within ten (10) business days following the adoption or denial of the proposed rule, the Department shall deliver the originals of all comments to the Commission Secretary.

3. A public hearing shall be conducted on January 9, 2012, at 2:00 p.m. at the Department's offices at 5301 Northshore Drive, North Little Rock.

4. The period for receiving all written comments shall conclude ten (10) business days after the date of the public hearing pursuant to Regulation No. 8.806 unless an extension of time is granted.

5. The Department shall file, not later than fourteen (14) days before the Commission meets to consider adoption of the proposed rule, a Statement of Basis and Purpose as required by Regulation No. 8.815.

6. The Department shall file, not later than fourteen (14) days before the Commission meets to consider adoption of the proposed rule, a proposed Minute Order deciding this matter.

7. The Department shall seek review of the proposed rule from the Joint Interim Committee on Public Health and Welfare and from the Joint Interim Committee on Administrative Rules and Regulations.

8. The Regulations Committee may consider this matter at its April, 2012 meeting. In the event the appropriate legislative committees do not complete review of the proposed rule by the above date, the Regulations Committee and the Commission will consider the proposed amendment to the regulation after review by the appropriate legislative committees. Members of the Regulations Committee may ask questions of the Department and any person that made oral or written comments. The Regulations Committee will make a recommendation to the Commission.

9. At the Commission meeting, the presentation of oral statements and legal arguments shall be regulated as follows:

a. The Chair of the Commission will permit members of the public to make a statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. The Chair, in his discretion, may extend the one (1) hour oral statement period.

b. At the discretion of the Chair, an attorney representing one or more individuals, a corporation or other legal entity may be permitted five (5) minutes in which to address the Commission.

c. Department legal counsel or other designated Department employee will be permitted ten (10) minutes in which to address the Commission.

d. At the conclusion of all statements, the Chair will call on each Commissioner for the purpose of

ARKANSAS POLLUTION
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PETITION TO INITIATE
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asking the attorneys or persons sponsoring statements who are present, any questions they may have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

After each Commissioner has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

10. The Commission finds the proposed regulation is exempt from Act 143 of 2007 (formerly Executive Order 05-04) as amended by Act 809 of 2009, because the proposed rule substantially codifies existing state law.

The Commission accepts the recommendation of the Regulations Committee and initiates the rulemaking proceeding in Docket No. 11-008-R effective December 2, 2011. The Commission adopts, without modification, the procedural schedule set forth above.

COMMISSIONERS:

<u> </u>	J. Bates	<u> </u>	D. Samples
<u>AD</u>	L. Bengal	<u> </u>	L. Sickel
<u> </u>	J. Chamberlain	<u> </u>	J. Simpson
<u>LH</u>	L. Hitchcock	<u> </u>	W. Thompson
<u> </u>	D. Hendrix	<u> </u>	B. White
<u> </u>	S. Jorgensen	<u> </u>	R. Young

JJC SUBMITTED BY: C. Rhodes DATE PASSED: 12/02/2011
J. Chamberlin, Chair

NOTICE OF PUBLIC HEARING

The Arkansas Pollution Control and Ecology Commission (APC&EC) will hold a public hearing at North Little Rock January 9, 2012, to receive public comments on proposed revisions to Commission Regulation 30 (Remedial Action Trust Fund/Hazardous Substances Site Priority List). The hearing will begin at 2:00 p.m. in the Commission Room at the Arkansas Department of Environmental Quality (ADEQ) headquarters building, 5301 Northshore Drive, North Little Rock.

The deadline for submitting written comments on the proposed Regulation 30 changes is January 24, 2012.

In the event of inclement weather or other unforeseen circumstances, a decision may be made to postpone the hearing. If the hearing is postponed and rescheduled, a new legal notice will be published to announce the details of the new hearing date and comment period.

Regulation 30 establishes the state Hazardous Substances Site Priority List (SPL), which identifies Arkansas locations with hazardous substance issues which have been authorized to for funding by the state Hazardous Substances Remedial Action Trust Fund for assessment and possible remedial action.

The APC&EC's authority for amending Regulation No. 30 is found in Arkansas Code Annotated, Section 8-7-501, et seq.

Proposed changes to Regulation 30 include deleting five sites from the SPL because remedial actions at the locations have been performed to the extent that the sites no longer pose an unacceptable risk to human health or the environment; and the addition of one new site to the SPL.

Sites proposed for deletion from the SPL are:

- Dana Minton Property, 7126 Anderson Road, Alexander, Saline County.
- Baird Manufacturing, Highway 79B and Ann Alden Street, Clarendon, Monroe County.
- I. Easter Property (formerly Arkansas Power and Light Company Plant), 1400 W. 4th Street, Pine Bluff, Jefferson County.
- Value Line, 1205 N. 10th Street, Arkadelphia, Clark County.
- Walgreens Store No. 03425, 159 E. Grand, Hot Springs, Garland County.

The proposed addition to the SPL is the former Fulton Class 3C Landfill on Quail Road in Rogers, Benton County.

Copies of the proposed changes are available for public inspection during regular business hours at the ADEQ Headquarters Building in the Public Outreach and Assistance Division, or at ADEQ information depositories located in public libraries at Arkadelphia, Batesville, Blytheville, Camden, Clinton, Crossett, El Dorado, Fayetteville, Forrest City, Fort Smith, Harrison, Helena, Hope, Hot Springs, Jonesboro, Little Rock, Magnolia, Mena, Monticello, Mountain Home, Pocahontas, Russellville, Searcy, Stuttgart, Texarkana, and West Memphis; in campus libraries at the University of Arkansas at Pine Bluff and the University of Central Arkansas at Conway; or in the Arkansas State Library, 900 W. Capitol, Suite 100, Little Rock. In addition, a copy of the regulation showing the proposed changes, along with related support documents, is available for viewing or downloading at the ADEQ's Internet web site located at www.adeq.state.ar.us.

Oral and written comments will be accepted at the hearing, but written comments are preferred in the interest of accuracy. In addition, written and electronic mail comments will be considered if received no later than 4:30 p.m. January 24, 2012. Written comments should be sent to Doug Szenher, Arkansas Department of Environmental Quality, Public Outreach

and Assistance Division, 5301 Northshore Drive, North Little Rock, AR 72118. E-mail comments should be sent to: reg-comment@adeq.state.ar.us.

Published December 7 and 8, 2011,

Teresa Marks, Director,
Arkansas Department of Environmental Quality