

EXHIBIT J

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 Tammie Hynum
CONTACT PERSON Tom Ezell
ADDRESS 5301 Northshore Drive, North Little Rock, AR 72118
PHONE NO. (501) 682-0854 FAX NO. (501) 682-0565 E-MAIL ezell@adeq.state.ar.us
NAME OF PRESENTER AT COMMITTEE MEETING J. Ryan Benefield, P.E.
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

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
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? 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

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

Does this repeal an existing rule? Yes No
If yes, a copy of the repealed rule is to be included with your completed questionnaire.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 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."**

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

Ark. Code Ann. § 8-7-509(f)(1)

7. What is the purpose of this proposed rule? Why is it necessary?
The amendment adds one site (Cedar Chemical Company, in Helena, Phillips County) to the National Priority List section of the Regulation, authorizing the expenditure of state funds from the Arkansas Remedial Action Trust Fund in support of Federal investigative and remedial actions at that site. While initial site characterization and remedial design are fully federal-funded, actual clean-up costs will require a 10% match from state funds, and long-term care for the site after clean-up is completed must be fully funded by either the state or any identified responsible parties. Additionally, six sites (including Cedar Chemical) are nominated for deletion from the State Priority List section of the regulation, indicating that health risks from these sites have been controlled and clean-up activities under the State's responsibilities have been completed; or in the case of Cedar Chemical, the site has been approved for addition to the federal National Priority List for address under the federal Superfund program.

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 No
If yes, please complete the following:

Date: March 4, 2013

Time: 2:00 p.m.

Place: Commission Room, ADEQ headquarters, 5301 Northshore Drive, NLR, AR 72118

10. When does the public comment period expire for permanent promulgation? (Must provide a date.) March 18, 2013

11. What is the proposed effective date of this proposed rule? (Must provide a date.) ~ June 2013

12. Do you expect this rule to be controversial? Yes No
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.

None anticipated. (The three past amendments have garnered no public comments.)



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) 682-0565 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

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Does this proposed, amended, or repealed rule affect small businesses? Yes No
If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

See Attachment "F" to Rulemaking petition.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

N/A

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.

Current Fiscal Year

General Revenue	<u>\$ 0.00</u>
Federal Funds	<u>\$ 0.00</u>
Cash Funds	<u>\$ 0.00</u>
Special Revenue	<u>\$ 0.00</u>
Other (Identify)	<u>\$ 0.00</u>
Total	<u>\$ 0.00</u>

Next Fiscal Year

General Revenue	<u>\$ 0.00</u>
Federal Funds	<u>\$ 0.00</u>
Cash Funds	<u>\$ 0.00</u>
Special Revenue	<u>\$ 0.00</u>
Other (Identify)	<u>\$ 0.00</u>
Total	<u>\$ 0.00</u>

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.

Current Fiscal Year

\$ \$ 0.00

Next Fiscal Year

\$ \$ 0.00

Site characterization, feasibility studies, and remedial design under CERCLA are 100% federal funded (or funded by any viable responsible parties), and average from three to four years for similar Superfund projects, and slightly more than two years in the case of Cedar Chemical due to the previous investigative work accomplished by the State. Therefore, no state costs pursuant to this rule are anticipated during the 2-year window addressed in this impact statement. Upon selection and approval of a final remedy for the Cedar Chemical site, (several years from now) the State (via the RATFA) will be responsible for 10% of the total remedial action costs, as well as 100% of the costs for post-closure, long term care of the site if there are no remaining viable responsible parties. Such remedial action costs will be substantial (multi-million \$); long term care for similar sites average \$50,000 per year for an indefinite, multi-year period (minimum 30 years).

Current cost estimates for cleanup at the Cedar Chemical site range up to \$37 million, which is more than four times the current balance of the Arkansas Remedial Action Trust Fund, which must address the needs at all abandoned sites within the state. While the state will retain a sizable responsibility for matching

cleanup costs as well as for long term care, addressing this site under the federal Superfund program will realize an approximately \$33 million reduction in the State's obligations for cleanup costs for the Cedar site.

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.

Current Fiscal Year

\$ 1.401 million

Next Fiscal Year

\$ 1.4 million

(Total costs of implementing investigations, cleanup, and long-term care of sites listed in this regulation.)

**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 October 11, 2012. No response or comments have been received as of the filing date of this petition.

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, 2012 Annual Update
Petitioner: ADEQ Hazardous Waste Division
Contact/Phone/Electronic mail: Tammie Hynum, 682-0831, hynum@adeq.state.ar.us
Analysis Prepared By: Tom Ezell, (501) 682-0854
Date Analysis Prepared: September 20, 2012

STEP 1: DETERMINATION OF ANALYSIS REQUIREMENT
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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.

The revisions proposed in this petition would add one (1) site to the National Priority List Section in order to authorize the expenditure of State matching funds in support of federal cleanup actions under the Superfund program (90/10 federal/state split for cleanup activities) and for long term stewardship of the site once the Superfund cleanup is completed (The State is responsible for 100% of post-cleanup care and oversight).

Six (6) sites are proposed for deletion from the State Priority List section: five sites where cleanups have been completed and unacceptable risks once posed by these sites have been brought under control, and one site which has been approved for addition to the federal National Priority List.

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 abandoned hazardous substance 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, or when available, by the responsible parties for the site. At sites where the responsible parties did not participate in the cleanup efforts, upon completion of remedial actions, the Department has historically sought to recover any of its costs from the responsible parties, if these parties are still viable.

Public and private businesses, other than responsible or potentially responsible parties for abandoned hazardous substance sites listed 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 adds one site to the National Priority List section of the regulation, which would authorize expenditures from the Arkansas Remedial Action Trust Fund in support of Federal investigative and remedial actions and long term stewardship of the Cedar Chemical site under federal CERCLA requirements. Under CERCLA procedures, site characterization, feasibility studies, and remedial design are 100% federal-funded, so no expenditures are anticipated during the biennium addressed in impact analysis pursuant to the legislative checklist. Over the term of the cleanup, the RATF would be responsible for paying 10% of the cost of any remedial actions (actual clean-up activities) and once clean-up is complete, the entire cost of long term care (operating and maintaining any remaining engineering and institutional controls and periodic inspections to ensure the remedy remains effective) would also be the State's responsibility, if no viable responsible parties remain. A precise cost of cleanup has not yet been determined, but will be included in the feasibility study which EPA completes for the site. Preliminary estimates range from \$33 to 37 million dollars for site cleanup and remediation, a

figure four times the current balance of the Arkansas Remedial Action Trust Fund, which must address needs at all the sites listed in Regulation 30 across the State. Cost of long term care for similar sites average \$50,000 per year, for an indefinite period, typically not less than 30 years. While the State will retain responsibilities for matching funds and long term care of the Cedar site, addressing cleanup costs at Cedar Chemical under the federal Superfund program will result in a reduction of the State's current cleanup obligations by approximately \$33 million.

In addition to moving the Cedar Chemical site from the State Priority list section to the National Priority List section, this proposal also deletes from the State Priority List five additional sites where remedial actions have been completed, and no additional State funding is necessary at these sites.

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. Matching funds for federal Superfund activities will also be paid from this 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?

ADEQ previously entered into a Consent Administrative Order (LIS # 07-027) with the responsible parties for the Cedar Chemical site, conducted a thorough investigation, and issued a remedial action decision document (RADD) to the public and all affected parties. The responsible parties declined to carry out the actions set forth in the RADD to address the contamination at the site.

As the projected cleanup costs exceed the near-term capabilities of the state Remedial Action Trust Fund, the Governor requested that EPA place the Cedar Chemical site as the one allowed State-directed listing on the federal National Priorities List (NPL), for further investigation and remediation of the site under the Superfund program.

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 the six sites proposed for deletion, 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 authorize the use of state matching funds in support of site investigation, remedial design, cleanup, and long term care under the federal Superfund program.

Sources and Assumptions: See site summary fact sheets at Attachment "G".

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

Potentially unacceptable risks to human health or the environment at the sites proposed for delisting have been removed through remedial actions (direct removal or engineering controls) or institutional controls. 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, the State is required to commit to providing specific matching funds in support of site investigation, remedial design, cleanup, and long term care under the federal Superfund program.

Sources and Assumptions: See site summary fact sheets at Attachment "G".

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

Anticipated risks and any necessary actions are described in the summary sheet prepared for each site addressed in this proposed rule. (See Exhibit "G" of the rulemaking packet).

Sources and Assumptions: See site summary fact sheets at Attachment "G".

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

EO 05-04: Regulatory Flexibility

Department: Dept. of Environmental Quality
Contact Person: Tom Ezell
Contact Phone: (501) 682-0854

Division: Hazardous Waste
Date: September 20, 2012
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.

This rulemaking proposal is not driven by public complaint. 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 January 2012.

The amendment adds one site (Cedar Chemical Company, in Helena, Phillips County) to the National Priority List section of the Regulation, authorizing the expenditure of state funds from the Arkansas Remedial Action Trust Fund in support of Federal investigative and remedial actions at that site. While initial site characterization and remedial design are fully federal-funded, actual clean-up costs will require a 10% match from state funds, and long-term care for the site after clean-up is completed must be fully funded by either the state or any identified responsible parties. Additionally, six sites (including Cedar Chemical) are nominated for deletion from the State Priority List section of the regulation, indicating that health risks from these sites have been controlled and clean-up activities under the State's responsibilities have been completed; or in the case of Cedar Chemical, the site has been approved for addition to the federal National Priority List for address under the federal Superfund program.

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 (e.g., Cedar Chemical Company).
- 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?

One site is proposed for listing in order to confirm the State's agreement for sharing costs of clean-up and long term care for the Cedar Chemical Company site in Helena-West Helena, Phillips County, seeking to protect the health and well-being of citizens in that community. This commitment is required for the site to be eligible for federal investigative and remediation funding through the federal Superfund program. Absent the availability of Superfund funding, the state would be unable to afford the costs of the necessary cleanup at the site.

Potentially unacceptable risks to human health or the environment at the other five sites proposed for deletion from the State Priority List have been removed or controlled through remedial actions or institutional controls. 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.

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.

Average costs of carrying out long term stewardship and maintenance activities at sites listed on the National Priority and State Priority lists are approximately \$1.4 million per calendar year. Staff oversight and support equates to approximately \$0.4 million per calendar year. Remediation costs at the Cedar Chemical site alone have been estimated at up to \$37 million, approximately four times the current balance of the Arkansas Remedial Action Trust Fund. Remediation of the Cedar Chemical site through the Superfund program will reduce the State's environmental liability for abandoned site cleanup by approximately \$33 million.

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. Regulation No. 30 lists the geographic location of abandoned hazardous substance sites, not individuals, small businesses, or other persons.

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 potentially responsible party's degree of culpability and contribution to the conditions at the hazardous substance site.

This proposal adds one site for addition to the National Priority List section, where the U.S. Environmental Protection Agency will serve as the lead agency for overseeing cleanup and remediation. The liability of any responsible parties to EPA and the federal government is joint and several; not proportional as would be provided under State law.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

ADEQ has previously entered into a Consent Administrative Order with the PRPs, conducted a thorough site investigation, and issued a remedial action decision document with full notice and disclosure to the community, general public, and the responsible parties. The responsible parties declined to carry out the actions set forth in the remedial action decision, resulting in the site being referred to the U.S. EPA for cleanup.

