

EXHIBIT E

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 Tamara Almand
ADDRESS 5301 Northshore Drive, North Little Rock, AR 72118
PHONE NO. 501.683.0069 FAX NO. 501.682.0565 MAIL almand@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
One Capitol Mall, 5th Floor
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If yes, a copy of the repealed rule is to be included with your completed questionnaire.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 the 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 (1) site (49ers Resource Recovery and Forty-Niner Metals Management, LLC) to the State Priority List section of the regulation authorizing the expenditure of state funds from the Arkansas Remedial Action Trust Fund in support of State investigative and remedial actions of potential hazardous substance contamination; and adds one (1) site (MacMillan Ring Free Oil a/k/a Norphlet Chemical, in Norphlet, Union 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, four (4) sites (Arkansas Waste to Energy-Warehouse, I Can, Thompson Scientific Industries, and Norphlet Chemical Company) 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 MacMillan Ring Free Oil, 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: September 30, 2014
Time: 2:00 PM
Commission Room, ADEQ
headquarters, 5301 Northshore Drive,
Place: NLR, 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 October 14, 2014.

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

On or about December 20, 2014

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 Tamara Almand
TELEPHONE NO. 501.683.0069 **FAX NO.** 501.682.0565 **EMAIL:** almand@adeq.state.ar.us

To comply with Ark. Code Ann. § 25-15-204(e), 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. 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

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>

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 \$ 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)	\$ 2.25 Million (RATFA)
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Total	\$ 2.25 Million

General Revenue	\$ 0.00
Federal Funds	\$ 0.00
Cash Funds	\$ 0.00
Special Revenue	\$ 0.00
Other (Identify)	\$ 2.25 Million (RATFA)
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Total	\$ 2.25 Million

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

\$ 0.00

\$ 0.00

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

\$ 2.25 Million

\$ 2.25 Million

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

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.



**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, 2014 Annual Update

Petitioner: Arkansas Department of Environmental Quality, Hazardous Waste Division

Contact/Phone/Electronic mail: Tammie J. Hynum
(501) 682-0831
hynum@adeq.state.ar.us

2A. ECONOMIC IMPACT

1. Who will be affected economically by this proposed rule? State: a) the specific public and/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 MacMillan Ring Free Oil Site a/k/a Norphlet Chemical, Co., 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 \$7 to 15 million dollars for site cleanup and remediation, a figure one and one half 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 MacMillan Ring Free Oil site, addressing cleanup costs at MacMillan Ring Free Oil under the federal Superfund program will result in a reduction of the State's current cleanup obligations by approximately \$14 million.

In addition to moving the MacMillan Ring Free Oil site from the State Priority list section to the National Priority List section, this proposal also deletes from the State Priority List three 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 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 of 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 proposed 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 three 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 the 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: Tamara Almand
Contact Phone: (501) 683-0069

Division: Hazardous Waste
Date: August 5, 2014
Contact E-Mail: almand@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 July 30, 2013.

The amendment adds one site (MacMillan Ring Free Oil a/k/a Norphlet Chemical Co, in Norphlet, Union 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, four sites (including MacMillan Ring Free Oil) 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 MacMillan Ring Free Oil, 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., MacMillan Ring Free Oil).
- 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 MacMillan Ring Free Oil site in Norphlet, Union 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 three 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 MacMillan Ring Free Oil site alone have been estimated at up to \$15 million, approximately one and one half times the current balance of the Arkansas Remedial Action Trust Fund. Remediation of the MacMillan Ring Free Oil site through the Superfund program will reduce the State's environmental liability for abandoned site cleanup by approximately \$13.5 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.

No input has been received.

APC&EC REGULATION 30: REMEDIAL ACTION TRUST FUND HAZARDOUS SUBSTANCES SITE PRIORITY LIST

Proposed Amendments-Executive Summary

Regulation 30 establishes the State Hazardous Substances Site Priority List (SPL), which identifies Arkansas locations with hazardous substance issues which have been authorized 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 three 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; adding one site to the SPL for investigation, characterization, and remediation as may be needed; and transferring one site from the SPL to the National Priority List (NPL) for, which is administered by the U.S. Environmental Protection Agency.

Sites proposed for deletion from the SPL are:

- Arkansas Waste to Energy-Warehouse, 420 West Parsons Drive, Osceola, Mississippi County, Arkansas.
- Norphlet Chemical Co., Hwy 335 & MacMillan Road, Norphlet, Union County, Arkansas.
- I Can, Inc., 420 East Academy Street, Lonoke, Lonoke County, Arkansas.
- Thompson Scientific Industries, 1605 River Port Road, Scranton, Logan County, Arkansas.

Sites proposed for addition to the SPL are:

- 49ers Resource Recovery and Forty-Nine Metals Management, LLC, 4722 U.S. Highway 49 North, Paragould, Greene County, Arkansas.

Sites proposed for NPL listing for remedial action are:

- MacMillan Ring Free Oil a/k/a Norphlet Chemical, 600 MacMillan Road (State Highway 335), Norphlet, Union County, Arkansas.

