

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 2141 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: S3/29/05 H4/1/05

A Bill

SENATE BILL 936

5 By: Senator Wooldridge
6
7

For An Act To Be Entitled

9 AN ACT RELATING TO HAZARDOUS WASTES AND
10 SUBSTANCES; REQUIRING THE ARKANSAS DEPARTMENT OF
11 ENVIRONMENTAL QUALITY TO IMPLEMENT A PROGRAM FOR
12 THE CERTIFICATION OF CONTRACTORS AND CONSULTANTS
13 INVOLVED IN THE CLEAN UP OF LEAKS, SPILLS, OR
14 OTHER RELEASES OR ACCIDENTS INVOLVING HAZARDOUS
15 WASTES OR HAZARDOUS SUBSTANCES; AND FOR OTHER
16 PURPOSES.
17

Subtitle

18 ENVIRONMENTAL REMEDIATION CONTRACTOR
19 CERTIFICATION ACT.
20
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 *SECTION 1. Arkansas Code Title 8, Chapter 7 is amended to add an*
26 *additional subchapter to read as follows:*

27 *"8-7-1301. Title.*

28 *This subchapter shall be known and may be cited as the "Environmental*
29 *Site Assessment Consultant and Hazardous Substance Response Contractor*
30 *Certification Act".*

31
32 *8-7-1302. Purpose.*

33 *It is the purpose of this subchapter to authorize the Arkansas*
34 *Department of Environmental Quality to establish and administer a*
35 *certification program to:*



1 (1) Certify Phase I Environmental Site Assessment Consultants;

2 (2) Certify Comprehensive Site Assessment Consultants and

3 Response Action Contractors undertaking investigations and response actions,
4 respectively, under the Arkansas Hazardous Waste Management Act of 1997, § 8-
5 7-201 et seq., the Emergency Response Fund Act, § 8-7-401 et seq., or the
6 Remedial Action Trust Fund Act, § 8-7-501 et seq., or the Voluntary Cleanup
7 Act, § 8-7-1101 et seq.; and

8 (3) Require as a condition of certification that such

9 contractors and consultants demonstrate that they have the qualifications
10 required to undertake such activities.

11
12 8-7-1303. Definitions.

13 As used in this subchapter:

14 (1) "Commission" means the Arkansas Pollution Control and
15 Ecology Commission;

16 (2) "Comprehensive site assessment" means an assessment to
17 determine the rate, extent, and characteristics of contamination at a site
18 addressed under the Arkansas Hazardous Waste Management Act of 1997, § 8-7-
19 201 et seq., the Emergency Response Fund Act, § 8-7-401 et seq., or the
20 Remedial Action Trust Fund Act, § 8-7-501 et seq., or the Voluntary Cleanup
21 Act, § 8-7-1101 et seq.;

22 (3) "Comprehensive site assessment consultant" means a person
23 that performs a comprehensive environmental site assessment for a fee or in
24 conjunction with other services for which a fee is charged;

25 (4) "Environmental site assessment" means a Phase I
26 environmental site assessment or a comprehensive site assessment;

27 (5) " Environmental Site Assessment Consultant" means a person
28 that performs a Phase I environmental site assessment or comprehensive
29 environmental site assessment for a fee or in conjunction with other services
30 for which a fee is charged;

31 (6) "Response Action Contractor" means a person that is required to
32 obtain a contractor's license pursuant to 17-25-101, et seq, and is
33 responsible for undertaking the
34 physical removal, treatment, or disposal of hazardous substances or
35 environmental media contaminated with hazardous substances associated with a
36 response action at a site addressed under the Arkansas Hazardous Waste

1 Management Act of 1997, § 8-7-201 et seq., the Emergency Response Fund Act, §
2 8-7-401 et seq., or the Remedial Action Trust Fund Act, § 8-7-501 et seq., or
3 the Voluntary Cleanup Act, § 8-7-1101 et seq.; for a fee or in conjunction
4 with other services for which a fee is charged;

5 (7) "Department" means the Arkansas Department of Environmental
6 Quality;

7 (8) "Director" means the Director of the Arkansas Department of
8 Environmental Quality;

9 (9) "Hazardous substance" has the same meaning as set out in §
10 8-7-503;

11 (10) "Hazardous waste" has the same meaning as set out in § 8-7-
12 203;

13 (11) "Person" means any individual, corporation, company, firm,
14 partnership, association, trust, joint-stock company or trust, venture, state
15 or federal government or agency, or any other legal entity however organized;

16 (12) "Phase I environmental site assessment" means a Phase I
17 environmental site assessment as that term is used in the American Society
18 for Testing and Materials standard E1527-00 as in effect on January 1, 2005;
19 and

20 (13) "Phase I Consultant" means a person who performs a Phase I
21 environmental site assessment for a fee or in conjunction with other services
22 for which a fee is charged.

23
24 8-7-1304. Powers and duties.

25 (a) The Arkansas Department of Environmental Quality shall:

26 (1) Establish and administer the Environmental Site Assessment
27 Consultant and Hazardous Substance Response Contractor Certification Program
28 for response action contractors and Environmental Site Assessment
29 consultants; and

30 (2) Issue, deny, revoke, condition, or suspend the certification
31 of response action contractors and environmental site assessment consultants
32 under the terms established in this subchapter.

33 (b) The Arkansas Pollution Control and Ecology Commission shall
34 promulgate necessary regulations to effect the purpose and implementation of
35 the certification program, including, but not limited to:

36 (A) Provisions governing categories of certification;

- 1 (B) Applications for certification;
2 (C) Continuing education requirements;
3 (D) Professional and technical standards for
4 certification;
5 (E) Renewals of certifications;
6 (F) Procedures for peer committee review and other actions
7 affecting the status of certification; and
8 (G) Establish reasonable fees.

9
10 8-7-1305. Applicability.

11 (a)(1) Six (6) months after the adoption of rules by the Arkansas
12 Pollution Control and Ecology Commission to implement this subchapter, a
13 person shall not provide services as a Environmental Site Assessment
14 Consultant or a Response Contractor unless those services are performed under
15 the direction and responsible charge of an individual who has obtained a
16 certification under this subchapter.

17 (2)(A) Until the Environmental Site Assessment Consultant and
18 Hazardous Substance Response Contractor Certification Program is implemented,
19 the Arkansas Department of Environmental Quality should develop and maintain
20 a list of those Environmental Site Assessment Consultants and Response Action
21 Contractors who indicate to the department an intent to apply for
22 certification enumerated under this subchapter.

23 (B) After the certification program is implemented, the
24 department shall develop and maintain a list of those Environmental Site
25 Assessment Consultants and Response Action Contractors who have a
26 certification under this subchapter.

27 (C) The department shall make available to the public the
28 lists required under subdivisions (a)(2)(A) and (a)(2)(B) of this section.

29 (b) The provisions of this section do not prohibit the engagement of
30 an associate, apprentice or an assistant, or a subcontractor if an individual
31 who is certified under this subchapter supervises that associate, apprentice
32 or assistant, or subcontractor and maintains responsibility for the work of
33 that associate, apprentice or assistant, or subcontractor.

34 (c) This subchapter does not apply to:

35 (1) Services provided by an employee of a business or public
36 agency relative to the hazardous substance or hazardous waste management,

1 release investigation, or response responsibilities of his or her employer,
2 exclusively, while the employee is acting in the course of his or her
3 employment;

4 (2) Services provided by an employee of a public agency with the
5 responsibility of regulatory enforcement, emergency response, or protection
6 of public health, welfare, or the environment while the employee is acting in
7 the course of that employment; or

8 (3) Services provided by a person that is a transporter of
9 hazardous wastes that are:

10 (A) Designated as the specific responsibility of the
11 transporter of hazardous wastes under the applicable state or federal
12 regulations; or

13 (B) Necessary to perform the service of transportation of
14 hazardous waste in accordance with the applicable state and federal
15 regulations.

16 (d) Any environmental site assessment activities performed by a person
17 certified as an environmental site assessment consultant under this
18 subchapter that would constitute the "practice of engineering" as defined in
19 § 17-30-101 shall be performed under the responsible charge of and signed and
20 sealed by a professional engineer registered in the State of Arkansas.

21 (e) Any environmental site assessment activities performed by a person
22 certified as an environmental site assessment consultant under this
23 subchapter that would constitute the "public practice of geology" as defined
24 in § 17-32-102 shall be performed under the responsible charge of and signed
25 and sealed by a professional geologist registered in the State of Arkansas.

26
27 8-7-1306. Certification categories.

28 (a) The Arkansas Pollution Control and Ecology Commission shall
29 establish by regulation categories of certification under this subchapter.

30 (b) Categories of certification shall include:

31 (1) Phase I Environmental Site Consultant;

32 (2) Comprehensive Environmental Site Assessment Consultant; and

33 (3) Response Action Contractor.

34
35 8-7-1307. Certification criteria and procedure.

36 (a)(1) The Arkansas Pollution Control and Ecology Commission shall

1 establish by rule criteria for certification as a Environmental Site
2 Assessment Consultant.

3 (2) The criteria shall incorporate United States Environmental
4 Protection Agency requirements including minimum qualifications for an
5 Environmental Professional who undertake Phase I environmental site
6 assessments, of "all appropriate inquiry" as defined under the Small Business
7 Liability Relief and Brownfields Revitalization Act, Public Law No. 107-118
8 and the rules promulgated under that federal act that are not inconsistent
9 with this subchapter.

10 (3) Upon demonstration of compliance with the criteria the
11 applicant shall be eligible for certification as a Phase I Environmental Site
12 Assessment Consultant under this subchapter.

13 (b) The criteria for initial certification of a Phase I Environmental
14 or a Comprehensive Site Assessment Consultant, or both shall provide that:

15 (1) The license issued to a registered professional engineer or
16 engineering intern meets the requirements for an Environmental Site
17 Assessment Consultant certificate if:

18 (A) Any professional engineer or engineering intern who
19 performs Phase I Environmental Site Assessment or Comprehensive Site
20 Assessment, or both , as applicable:

21 (i) Registers with the Arkansas Department of
22 Environmental Quality;

23 (ii) Submits demonstration of knowledge, training,
24 experience, or any combination of as knowledge, training, and experience as
25 determined by regulations issued under this subchapter; and

26 (iii) Pays the applicable fees,; or

27 (B) A professional engineer licensing board has or
28 develops a program recognized by the department as substantially similar to
29 the program created in this subchapter that requires demonstration of
30 knowledge, training, experience, or any combination of as knowledge,
31 training, and experience in the field of Phase I Environmental Site
32 Assessments or Comprehensive Site Assessments that satisfies the requirements
33 of the professional licensing board;

34 (2) The license issued to a professional geologist or geologist-
35 in-training meets the requirements as an Environmental Site Assessment
36 Consultant certificate if:

1 (A) Any professional geologist or geologist in-training,
2 who performs a Phase I Environmental Site Assessment or Comprehensive Site
3 Assessment, or both, as applicable:

4 (i) Registers with the Arkansas Department of
5 Environmental Quality;

6 (ii) Submits demonstration of knowledge, training,
7 experience, or any combination of as knowledge, training, and experience as
8 determined by regulations issued under this subchapter; and

9 (iii) Pays the applicable fees, or

10 (B) A professional geologist licensing board has or
11 develops a program recognized by the department as substantially similar to
12 the program created under this subchapter that requires demonstration of
13 knowledge, training, experience, or any combination of as knowledge,
14 training, and experience in the field of Phase I Environmental Site
15 Assessments or Comprehensive Site Assessments that satisfies the requirements
16 of the professional licensing board;

17 (3) Any person who provides proof of :

18 (A) Certification by another state recognized by the
19 department as substantially equivalent for performing Environmental Site
20 Assessments;

21 (B) Completion of training and receipt of certification or
22 other form of recognition of successful completion of training provided by
23 organizations found by the department to provide training necessary to
24 perform an Environmental Site Assessment; or

25 (4)(A) Any person who demonstrates competence by achieving a
26 passing score on an examination administered by the department in accordance
27 with the rules issued under this subchapter or relevant and appropriate
28 criteria as the commission shall deem appropriate, or both.

29 (B) Any examination administered by the department in
30 accordance with the rules issued under this subchapter are the property of
31 the department and shall remain confidential and shall not be subject to
32 disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

33 (c) Certification as a Comprehensive Site Assessment Consultant shall
34 serve as certification to perform both Phase I Environmental Site Assessments
35 and Comprehensive Site Assessments.

36 (d)(1) The commission shall establish by rule criteria for

1 certification as a Response Action Contractor.

2 (2) The criteria for initial certification of a Response Action
3 Contractor shall provide that the applicant has:

4 (A) A valid license issued by the Arkansas Contractor's
5 Licensing Board;

6 (B) Demonstrated that he or she has received the training
7 and medical monitoring required by the Occupational Health and Safety
8 Administration for handling hazardous substances;

9 (C) Either:

10 (i) Completed training and received a certification
11 or other form of recognition of successful completion of training provided by
12 an organization found by the department to provide training necessary to
13 perform response actions; or

14 (ii) Proof of certification by another state
15 recognized by the department as having an adequate certification program for
16 response action contractors; and

17 (D)(i) Demonstrated competency by achieving a passing
18 score on an examination administered by the department in accordance with the
19 rules issued under this subchapter or relevant and appropriate criteria as
20 the commission shall deem appropriate, or both.

21 (ii) Any examination administered by the department
22 in accordance with the rules issued under this subchapter are the property of
23 the department and shall remain confidential and shall not be subject to
24 disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

25 (e) The commission shall promulgate rules for renewal of an
26 Environmental Site Assessment Consultant certification that shall provide
27 that certification shall be renewed upon demonstration of the following
28 criteria:

29 (1)(A) For professional engineers or engineering interns, a
30 valid license to practice engineering and approved continuing education
31 hours; and

32 (B) For professional geologists or geologist-in-training,
33 a valid license to practice geology and approved continuing education hours;

34 (2) For those persons with a certification based on
35 certification by another state or organization, demonstration of a current
36 certificate from the approved state or organization and approved continuing

1 education hours; and

2 (3) For those persons whose certification is based on training
3 from an approved training organization or testing administered by the
4 department, proof of approved continuing education hours.

5 (f) The commission shall promulgate rules for renewal of a Response
6 Action Contractor certification that shall provide that certification shall
7 be renewed upon demonstration of the following criteria:

8 (1) A valid license from the Arkansas Contractor's Licensing
9 Board;

10 (2) Current training and medical monitoring as required by the
11 Occupational Health and Safety Administration for handling hazardous
12 substances;

13 (3) For those persons whose certification is based on
14 certification by another state or organization:

15 (A) Demonstration of a current certificate from the
16 approved state or organization; and

17 (B) Proof of approved continuing education;

18 (4) For those persons whose certification is based on training
19 from an approved training organization, proof of approved continuing
20 education; and

21 (5) Other relevant and appropriate criteria as the commission
22 may deem appropriate.

23
24 8-7-1308. Unlawful acts.

25 It is unlawful for any person to:

26 (1) Make any false statement or representation in any
27 application for certification;

28 (2) Render inaccurate any certification issued under this
29 subchapter; or

30 (3) Solicit or perform the services for which a certification
31 under this subchapter is required without holding a current and valid
32 certification under this subchapter.

33
34 8-7-1309. Disciplinary actions and suspension or revocation of
35 certification.

36 (a) A Response Action Contractor or the Environmental Site Assessment

1 Consultant holding certification issued under this subchapter may be subject
2 to a disciplinary action or the certification may be subject to suspension,
3 condition or revocation if he or she:

4 (1) Engages in activities subject to licensure under this
5 subchapter and is no longer entitled to the certification by reason of his or
6 her failure to maintain the license or certification on which the
7 certification was issued; or

8 (2) Demonstrably fails to produce acceptable work for specific
9 activities for which the Response Action Contractor or the Environmental Site
10 Assessment Consultant has been certified under this subchapter.

11 (b)(1) If the Director of the Arkansas Department of Environmental
12 Quality has sufficient evidence that a Response Action Contractor,
13 professional engineer, professional geologist, or other Environmental Site
14 Assessment consultant licensed by a state board should be subject to
15 disciplinary action or have his or her certification suspended, conditioned
16 or revoked, the director shall submit the evidence to the licensing board of
17 the contractor or professional involved.

18 (2) The Arkansas Contractor's Licensing Board may investigate
19 the matter and take such action as it finds to be appropriate and report its
20 findings to the director.

21 (3) If the licensing board finds, following its procedures for
22 resolving disciplinary proceedings and licensing matters, that action is
23 necessary, the board shall provide appropriate information regarding the
24 actions taken to the director.

25 (4) The director shall consider the information by the licensing
26 board to determine appropriate action on the certification.

27 (5) If the department has sufficient evidence under this
28 subsection (b) that a Response Action Contractor or Environmental Site
29 Assessment Consultant should have his or her certification suspended,
30 conditioned or revoked, the director shall provide notice of a proposed
31 action under applicable rules of the Arkansas Pollution Control and Ecology
32 Commission.

33 (6) The director's decision shall be subject to adjudication
34 before the commission in accordance with administrative procedures adopted by
35 the commission.

36 (7)(A) If the licensing board finds that the issue presented is

1 not within the licensing board's jurisdiction or otherwise elects not to
2 pursue the matter, the licensing board shall notify the director.

3 (B) If the licensing board gives notice to the director
4 under subdivision (b)(7)(A) of this section, the peer review procedures
5 outlined in subsection (c) of this section shall apply.

6 (c)(1) The procedure described in this subsection (c) shall apply for
7 disciplinary action or suspension, conditioned, or revocation of the
8 certification of an Environmental Site Assessment Consultant who does not
9 have a professional license issued by a state board and under the licensing
10 board.

11 (2) Under this subsection (c), if the department has sufficient
12 evidence that a Response Action Contractor or Environmental Site Assessment
13 Consultant should have his or her certification suspended, conditioned or
14 revoked, the director shall provide notice of a proposed action and advise
15 the person of his or her right to a peer review and a hearing within the time
16 period provided under applicable rules of the commission.

17 (3) If a request for peer review is made within the allotted
18 timeframe, the commission shall appoint a peer review committee established
19 in accordance with the rules of the commission including, but not limited to
20 representation of at least three (3) certified Response Action Contractors or
21 Environmental Site Assessment Consultants in good standing.

22 (4)(A) The peer review committee shall conduct an investigation
23 in accordance with procedures established by rules and regulations developed
24 for these purposes by the commission.

25 (B) The peer review committee shall submit its report to
26 the director and to the consultant or contractor.

27 (5) The director shall consider the peer review committee report
28 in making a decision.

29 (6) Under this subsection (c), if the department has sufficient
30 evidence that a Response Action Contractor or Environmental Site Assessment
31 Consultant should have his or her certification suspended, conditioned or
32 revoked, the director shall provide notice of a proposed action under
33 applicable rules of the commission.

34 (7) The director's decision shall be subject to adjudication
35 before the commission in accordance with administrative procedures adopted by
36 the commission.

1
2 8-7-1310. Rules and regulations -- Appeals and hearings.

3 (a) The procedure of the Arkansas Pollution Control and Ecology
4 Commission for promulgating any rules and regulations, the conduct of
5 hearings, notice, review of actions on certificates, right of appeal,
6 presumptions, finality of actions, and related matters shall be as provided
7 in §§ 8-4-202, 8-4-210 – 8-4-214, and 8-4-218 – 8-4-229 and in the rules and
8 regulations applicable to administrative procedures of the Arkansas
9 Department of Environmental Quality and the commission.

10 (b) After notice and hearing, the commission shall adopt regulations
11 under this subchapter for the administration and implementation of a
12 certification program for contractors and consultants.

13
14 8-7-1311. Fees.

15 (a)(1) Under regulations promulgated by the Arkansas Pollution Control
16 and Ecology Commission, the Arkansas Department of Environmental Quality may
17 assess fees to participating contractors and consultants.

18 (2) Fees shall be reasonable and appropriate and subject to
19 periodic review.

20 (b) All fees collected under this subchapter shall be deposited in the
21 Hazardous Waste Permit Fund, § 19-6-434.

22 (c) Fees collected under this subchapter shall be used for the
23 purposes of administering this subchapter.

24
25 /s/ Wooldridge

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27
28 **APPROVED: 4/13/2005**

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