

ARKANSAS SENATE
85th General Assembly - Regular Session, 2005
Amendment Form

Subtitle of Senate Bill No. 936

"ENVIRONMENTAL REMEDIATION CONTRACTOR CERTIFICATION ACT."

Amendment No. 1 to Senate Bill No. 936.

Amend Senate Bill No. 936 as originally introduced:

Delete everything after the ENACTING CLAUSE and substitute the following:

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

8-7-1301. Title.

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

8-7-1302. Purpose.

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

- (1) Certify Phase 1 Environmental Site Assessment Consultants;
- (2) Certify Comprehensive Site Assessment Consultants and Response Action Contractors undertaking investigations and response actions, respectively, under the Arkansas Hazardous Waste Management Act of 1997, § 8-7-201 et seq., the Emergency Response Fund Act, § 8-7-401 et seq., or the Remedial Action Trust Fund Act, § 8-7-501 et seq., or the Voluntary Cleanup Act, § 8-7-1101 et seq.; and
- (3) Require as a condition of certification that such contractors and consultants demonstrate that they have the qualifications required to undertake such activities.

8-7-1303. Definitions.

As used in this subchapter:

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



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

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

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

(6) "Response Action Contractor" means a person that is required to obtain a contractor's license pursuant to 17-25-101, et seq, and is responsible for undertaking the physical removal, treatment, or disposal of hazardous substances or environmental media contaminated with hazardous substances associated with a response action at a site addressed under the Arkansas Hazardous Waste Management Act of 1997, § 8-7-201 et seq., the Emergency Response Fund Act, § 8-7-401 et seq., or the Remedial Action Trust Fund Act, § 8-7-501 et seq., or the Voluntary Cleanup Act, § 8-7-1101 et seq.; for a fee or in conjunction with other services for which a fee is charged;

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

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

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

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

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

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

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

8-7-1304. Powers and duties.

(a) The Arkansas Department of Environmental Quality shall:

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

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

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

(A) Provisions governing categories of certification;

(B) Applications for certification;

(C) Continuing education requirements;
(D) Professional and technical standards for certification;
(E) Renewals of certifications;
(F) Procedures for peer committee review and other actions affecting the status of certification; and
(G) Establish reasonable fees.

8-7-1305. Applicability.

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

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

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

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

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

(c) This subchapter does not apply to:

(1) Services provided by an employee of a business or public agency relative to the hazardous substance or hazardous waste management, release investigation, or response responsibilities of his or her employer, exclusively, while the employee is acting in the course of his or her employment;

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

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

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

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

(d) Any environmental site assessment activities performed by a person certified as an environmental site assessment consultant under this

subchapter that would constitute the “practice of engineering” as defined in § 17-30-101 shall be performed under the responsible charge of and signed and sealed by a professional engineer registered in the State of Arkansas.

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

8-7-1306. Certification categories.

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

(b) Categories of certification shall include:

- (1) Phase I Environmental Site Consultant;
- (2) Comprehensive Environmental Site Assessment Consultant; and
- (3) Response Action Contractor.

8-7-1307. Certification criteria and procedure.

(a)(1) The Arkansas Pollution Control and Ecology Commission shall establish by rule criteria for certification as a Environmental Site Assessment Consultant.

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

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

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

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

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

- (i) Registers with the Arkansas Department of Environmental Quality;
- (ii) Submits demonstration of knowledge, training, experience, or any combination of as knowledge, training, and experience as determined by regulations issued under this subchapter; and
- (iii) Pays the applicable fees,; or

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

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

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

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

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

(iii) Pays the applicable fees, or

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

(3) The professional geologist or geologist-in-training provides proof of :

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

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

(4)(A) The professional geologist or geologist-in-training demonstrates competence by achieving a passing score on an examination administered by the department in accordance with the rules issued under this subchapter or relevant and appropriate criteria as the commission shall deem appropriate, or both.

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

(c) Certification of a professional geologist or geologist in-training as a Comprehensive Site Assessment Consultant shall serve as certification to perform both Phase I Environmental Site Assessments and Comprehensive Site Assessments.

(d)(1) The commission shall establish by rule criteria for certification as a Response Action Contractor.

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

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

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

(C) Either:

(i) Completed training and received a certification

or other form of recognition of successful completion of training provided by an organization found by the department to provide training necessary to perform response actions; or

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

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

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

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

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

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

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

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

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

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

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

(3) For those persons whose certification is based on certification by another state or organization, demonstration of a current certificate from the approved state or organization;

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

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

8-7-1308. Unlawful acts.

It is unlawful for any person to:

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

(2) Render inaccurate any certification issued under this

subchapter; or

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

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

(a) A Response Action Contractor or the Environmental Site Assessment Consultant holding certification issued under this subchapter may be subject to a disciplinary action or the certification may be subject to suspension, condition or revocation if he or she:

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

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

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

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

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

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

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

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

(7)(A) If the licensing board finds that the issue presented is not within the licensing board's jurisdiction or otherwise elects not to pursue the matter, the licensing board shall notify the director.

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

(c)(1) The procedure described in this subsection (c) shall apply for disciplinary action or suspension, conditioned, or revocation of the certification of an Environmental Site Assessment Consultant who does not

have a professional license issued by a state board and under the licensing board.

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

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

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

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

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

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

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

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

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

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

8-7-1311. Fees.

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

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

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

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

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Wooldridge

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Secretary