

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.

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

# 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.

## Subtitle

18 ENVIRONMENTAL REMEDIATION CONTRACTOR  
19 CERTIFICATION ACT.  
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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:

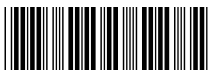
27 8-7-1301. Title.

28 This subchapter shall be known and may be cited as the "Environmental  
29 Remediation Contractor Certification Act".

30  
31 8-7-1302. Purpose.

32 It is the purpose of this subchapter to:

33 (1) Authorize the Arkansas Department of Environmental Quality  
34 to establish and administer a hazardous waste or hazardous substance site  
35 remediation contractor and environmental consultant certification program to  
36 certify contractors and consultants performing site investigations and



1 removal and remedial actions under the Arkansas Hazardous Waste Management  
 2 Act of 1997, § 8-7-201 et seq., the Emergency Response Fund Act, § 8-7-401 et  
 3 seq., the Remedial Action Trust Fund Act, § 8-7-501 et seq., § 8-7-1101 of  
 4 seq., or other state law; and

5 (2) Require Arkansas contractors and consultants performing site  
 6 investigations and removal and remedial actions to be certified by the  
 7 department as having satisfied acceptable compliance with site investigation  
 8 planning, implementation, and ethical standards to:

9 (A) Ensure that the validity of technical and scientific  
 10 data submitted to the department in support of response actions at hazardous  
 11 waste and hazardous substance sites may be further assured; and

12 (B) Protect persons that employ contractors concerning  
 13 hazardous substances and hazardous wastes.

14  
 15 8-7-1303. Definitions.

16 As used in this subchapter:

17 (1) "Commission" means the Arkansas Pollution Control and  
 18 Ecology Commission;

19 (2) "Contractor" or "consultant" means a person that provides  
 20 information, opinion, advice, or services for a fee or in conjunction with  
 21 other services for which a fee is charged;

22 (3) "Department" means the Arkansas Department of Environmental  
 23 Quality;

24 (4) "Director" means the Director of the Arkansas Department of  
 25 Environmental Quality;

26 (5) "Environmental site manager" means an individual who is  
 27 certified by the department under this subchapter to act as a contractor or  
 28 consultant relating to:

29 (A) The conduct of Phase I environmental site assessments;

30 (B) The investigation of a site to determine the rate and  
 31 extent of a release of a hazardous substance;

32 (C) The sampling of environmental media or wastes, or  
 33 both;

34 (D) The response to the release or threatened release of a  
 35 hazardous substance;

36 (E) The cleanup of a release of a hazardous substance; and

1                   (F) The remediation of soil or water contaminated by a  
2 hazardous substance;

3                   (6) "Hazardous substance" has the same meaning as set out in §  
4 8-7-503;

5                   (7) "Hazardous waste" has the same meaning as set out in § 8-7-  
6 503;

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

10                   (9) "Release of hazardous substances" means any spilling,  
11 leaking, pouring, emitting, emptying, discharging, injecting, escaping,  
12 leaching, dumping, or disposing of hazardous substances into the environment;

13                   (10)(A) "Remedy or Remedial action" means actions consistent  
14 with a permanent remedy instead of or in addition to removal actions in the  
15 event of a release or threatened release of a hazardous substance or  
16 hazardous waste.

17                   (B) The actions defined in subdivision (10)(A) of this  
18 section include, but are not limited to:

19                               (i) Investigations designed to determine the need  
20 for and scope of remedial action; and

21                               (ii) Planning, legal, fiscal, economic, engineering,  
22 geological, technical, or architectural studies necessary to:

23                                       (a) Plan and direct remedial actions;

24                                       (b) Recover the cost of remedial actions; and

25                                       (c) Enforce the provisions of this subchapter;

26                   (11) "Remove" or "removal action" means:

27                               (A) The cleanup or removal of a released hazardous  
28 substance or hazardous waste from the environment;

29                               (B) Necessary actions taken in the event of a threatened release of a  
30 hazardous substance or a hazardous waste into the environment;

31                               (C) Actions necessary to monitor, test, analyze, and evaluate a release or  
32 threatened release of a hazardous substance or hazardous waste;

33                               (D) Disposal or processing of removed material; or

34                               (E) Other actions necessary to prevent, minimize, or mitigate damage to  
35 the public health or welfare or the environment that might otherwise result from a release or  
36 threatened release of a hazardous substance or hazardous waste;

1           (12) "Response action" means remove, removal, remedy, or  
2 remedial action; and

3           (13) "Responsible charge" means direct control of, supervision  
4 of, and legal responsibility for all work being performed related to the  
5 services provided by an environmental site manager.

6  
7       8-7-1304. Powers and duties.

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

9           (1) Establish and administer the Environmental Remediation  
10 Contractor Certification Program for contractors and consultants; and

11           (2) Issue, deny, revoke, or suspend the certification of a  
12 contractor or consultant.

13       (b) Arkansas Pollution Control and Ecology Commission shall:

14           (1) Establish by regulation reasonable fees:

15                   (A) For the certification procedures set forth in this  
16 subchapter; and

17                   (B) To cover the expenses of administering the  
18 certification program; and

19           (2) Promulgate necessary regulations to effect the purpose and  
20 implementation of the certification program, including, but not limited to:

21                   (A) Provisions governing categories of certification;

22                   (B) Applications for certification;

23                   (C) Continuing education requirements;

24                   (D) Professional and technical standards for  
25 certification;

26                   (E) Renewals of certifications; and

27                   (F) Recertification after revocation.

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29       8-7-1305. Applicability.

30       (a) A person shall not provide services as an environmental site  
31 manager for a fee or in conjunction with other services for which a fee is  
32 charged unless those services are performed under the direction and  
33 responsible charge of an individual who has been certified by the Arkansas  
34 Department of Environmental Quality.

35       (b) The provisions of this section do not prohibit the engagement of  
36 an apprentice or an assistant if an individual who is certified by the

1 department under this subchapter supervises that apprentice or assistant and  
2 maintains responsibility for the work of that apprentice or assistant.

3 (c) This subchapter does not apply to:

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

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

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

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

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

20 (d) Any work performed by a person certified as an environmental site  
21 manager under this subchapter that would constitute the “practice of  
22 engineering” as defined in § 17-30-101 shall be performed under the  
23 responsible charge of and signed and sealed by a professional engineer  
24 registered in the State of Arkansas.

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

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31 8-7-1306. Certification categories.

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

34 (b) Categories of certification shall include at a minimum:

35 (1) Phase I environmental site assessor;

36 (2) Comprehensive site assessor; and

1           (3) Other categories of certification as the commission deems  
2 necessary and appropriate.

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4           8-7-1307. Certification criteria and procedure.

5           (a) An applicant for certification as an environmental site manager  
6 shall:

7           (1)(A) Be of good character and reputation as determined by the  
8 Arkansas Department of Environmental Quality upon review of the applicant's:

9                   (i) References;

10                   (ii) Record of violations of environmental laws and  
11 regulations; and

12                   (iii) Other such considerations as the department  
13 deems necessary and proper.

14           (B) Certification shall be denied if the a review  
15 indicates that activities or actions by the applicant indicate a disregard  
16 for environmental regulation or a demonstrated pattern of conduct that could  
17 reasonably be expected to result in an adverse environmental or public health  
18 impact;

19           (2) Submit to the department:

20                   (A) An application on a form provided by the department;

21                   (B) A nonrefundable fee for the review of the application  
22 in an amount to be established by regulations promulgated under this  
23 subchapter;

24                   (C) A color photograph of the applicant that is  
25 approximately 2 inches by 2 inches (2" x 2");

26                   (D) A disclosure statement under § 8-1-106(a)(2); and

27                   (E) Three (3) letters of reference from individuals with  
28 experience in the services of the classification for which application is  
29 being made attesting to the applicant's moral character and competence in  
30 that classification;

31           (3) Demonstrate to the department that the applicant meets one  
32 (1) of the following qualifications:

33                   (A)(i) A bachelor's or advanced degree from an accredited  
34 college or university in an area related to the environment including, but  
35 not limited to:

36                           (a) Environmental science;



1           (2) The department may not issue a certificate to an individual  
2 who is certified by another state or organization if the requirements of that  
3 state or organization are not substantially equivalent to the requirements  
4 for certification in Arkansas.

5           (c) The department may waive specific requirements for training  
6 necessary for a certificate if that training is determined not to be  
7 reasonably available.

8           (d)(1) Within sixty (60) days of receipt of all required materials,  
9 the department shall review each application and send each applicant written  
10 notice whether his or her application has been approved or rejected.

11           (2)(A) An applicant whose application is approved by the  
12 department and who wishes to take the examination for certification shall  
13 submit to the department a nonrefundable examination fee at least thirty (30)  
14 days before the examination is given.

15           (B) The department shall promulgate regulations to  
16 establish the amount of the examination fee.

17           (3) The department shall determine the content of the  
18 examinations.

19           (4) A score of seventy percent (70%) is a passing score on an  
20 examination for certification.

21           (5) If approved applications are pending before the department,  
22 the department shall provide an opportunity for examination at least one (1)  
23 time each year.

24           (6) The examinations are the property of the department and  
25 shall remain confidential and shall not be subject to disclosure under the  
26 Freedom of Information Act of 1967, § 25-19-101 et seq.

27           (7)(A) An applicant who fails the examination may apply for a  
28 re-examination.

29           (B) A nonrefundable fee for re-examination in an amount to  
30 be established by regulations promulgated under this subchapter shall  
31 accompany the application for re-examination.

32           (8)(A) Each application for certification shall remain on file  
33 with the department for two (2) years after the date that all required  
34 materials are received by the department.

35           (B) If the applicant does not pass an examination for  
36 certification or request re-examination within the two-year period, the



1 applicant shall file with the department a new application for certification.

2 (e) A holder of a certificate who wishes to renew his or her  
3 certification shall:

4 (1) Demonstrate to the department that he or she continues to  
5 meet all qualifications and performance requirements of subsections (a)-(c)  
6 of this section;

7 (2) Submit an application for renewal of the certificate to the  
8 department on forms provided by the department;

9 (3) Submit a nonrefundable fee in an amount to be established by  
10 regulations promulgated under this subchapter;

11 (4) Complete an examination for renewal if the department has  
12 determined that a renewal examination is appropriate; and

13 (5) Complete and submit documentation of continuing education  
14 training of the type and amount as determined by regulations issued under  
15 this subchapter.

16 (f) Each certificate issued to a successful applicant by the  
17 department shall clearly state:

18 (1) The name of the applicant;

19 (2) The number of the certificate;

20 (3) The date of expiration of the certificate;

21 (4) The specific classification of certification; and

22 (5) That the certificate is valid for two (2) years after the  
23 department issues the certificate.

24 (g)(1) After the effective date of this subchapter, all contractors  
25 and consultants shall be certified before performing site investigations and  
26 removal and remedial actions at hazardous waste or hazardous substance sites.

27 (2)(A) An applicant may obtain temporary certification until  
28 final regulations for certification are promulgated if the applicant meets  
29 all the qualifications set forth in subsections (a)-(c) of this section,  
30 except the requirements of passing an examination and paying the  
31 nonrefundable fee.

32 (B) An application for temporary certification shall be  
33 submitted to the department on forms provided by the department.

34 (h) After the date specified in regulations promulgated under this  
35 subchapter for certification:

36 (1) All qualifications shall be met; and

1           (2) Applicants shall:

2                   (A) Pass an examination; or

3                   (B) Qualify for an exemption.

4  
5           8-7-1308. Unlawful acts.

6           It is unlawful for any person to:

7                   (1) Violate any provisions of this subchapter or any regulations  
8 promulgated under this subchapter;

9                   (2) Falsify any data:

10                   (A) Submitted to the Arkansas Department of Environmental  
11 Quality; or

12                   (B) Related to an environmental investigation or response  
13 action;

14                   (3) Make any false statement, representation, or certification  
15 in any application, record, report, plan, or other document issued or sent to  
16 the department or related to response actions;

17                   (4) Misrepresent sampling procedures or methods used in  
18 laboratory analysis;

19                   (5) Misrepresent the procedures or documentation used in  
20 submittals or reports provided to a potential client, a client, the  
21 department, or any combination of potential client, client, and the  
22 department;

23                   (6) Render inaccurate any certification issued under this  
24 subchapter; or

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

28  
29           8-7-1309. Penalties and injunction.

30                   (a)(1) A violation of any provision of this subchapter or of any rule  
31 or regulation promulgated under this subchapter shall constitute a  
32 misdemeanor and upon conviction shall be punishable as a misdemeanor.

33                   (2) Each day that a violation continues shall constitute a  
34 separate offense.

35                   (b) Any violation of this subchapter shall be subject to injunction  
36 proceedings brought by the Arkansas Department of Environmental Quality in a

1 court of competent jurisdiction.

2 (c) A violation of any provision of this subchapter or of any rule or  
 3 regulation promulgated under this subchapter is subject to administrative  
 4 action by the department to:

5 (1) Revoke or suspend the contractor's or consultant's  
 6 certification; and

7 (2)(A) Assess administrative civil penalties of up twenty-five  
 8 thousand dollars (\$25,000) per day for each violation.

9 (B) Each day or part of a day during which the violation  
 10 is continued or repeated shall constitute a separate violation.

11 (d) The department may revoke a certification issued under this  
 12 subchapter if the contractor or consultant in question:

13 (1) Is no longer entitled to the certification by reason of its  
 14 or her failure to comply with the standards on which the certification was  
 15 issued; or

16 (2) Demonstrably fails to produce acceptable work for specific  
 17 activities for which the contractor has been certified.

18  
 19 8-7-1310. Standards of practice.

20 Each holder of a certificate issued by the Arkansas Department of  
 21 Environmental Quality under this subchapter:

22 (1) Is responsible for the work of other persons he or she  
 23 employs or supervises; and

24 (2) Shall:

25 (A) Provide services that:

26 (i) Are ethical;

27 (ii) Meet the current standards of the profession;

28 and

29 (iii) Comply with applicable federal, state, and  
 30 local laws and regulations concerning hazardous wastes and hazardous  
 31 substances;

32 (B)(i) Have a copy of his or her certificate at the  
 33 location where he or she is supervising work.

34 (ii) Upon request of the department, client, or  
 35 potential client, a holder of a certificate shall present his or her  
 36 certificate for inspection;

1                   (C) Make a written report to the facility, site owner, or  
2 operator within twenty-four (24) hours after the discovery of a release of a  
3 hazardous substance and advise that facility or site owner or operator of any  
4 applicable reporting requirements;

5                   (D) Report to the department and to the Arkansas  
6 Department of Emergency Management as soon as possible after he or she has  
7 knowledge of a release, the discovery of a release of a hazardous substance  
8 that presents an imminent and substantial hazard to human health, public  
9 safety, or the environment;

10                   (E) Secure the services of a qualified person to perform  
11 any part of his or her job that requires a level of service or skill that he  
12 or she is not qualified to provide;

13                   (F) Make complete prior disclosures to his or her clients  
14 or potential clients of conflicts of interest or other circumstances that  
15 could influence his or her judgment or the quality of services he or she  
16 provides;

17                   (G) Not falsify or misrepresent:

18                   (i) Data, interpretations, or conclusions in project  
19 documentation and reports submitted to clients or to the department; or

20                   (ii) His or her:

21                   (a) Education or experience;

22                   (b) The degree of responsibility for previous  
23 assignments;

24                   (c) The complexity of previous assignments,  
25 employment, or business;

26                   (d) Relevant factors concerning employers,  
27 employees, associates, joint ventures; or

28                   (e) Past accomplishments; and

29                   (H)(i) Maintain for three (3) years after the project is  
30 completed a written record of each project requiring certification.

31                   (ii) The department may:

32                   (a) Inspect the records during normal business  
33 hours; and

34                   (b) Establish requirements concerning the  
35 information that shall be included in the records.

36

1 8-7-1311. Rules and regulations -- Appeals and hearings.

2 (a) The procedure of the Arkansas Pollution Control and Ecology  
3 Commission for promulgating any rules and regulations, the conduct of  
4 hearings, notice, review of actions on certificates, right of appeal,  
5 presumptions, finality of actions, and related matters shall be as provided  
6 in the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., and  
7 without limitation in §§ 8-1-101 through 8-1-106 and §§ 8-4-201 through 8-4-  
8 229.

9 (b) No later than July 1, 2006, the commission shall adopt, after  
10 notice and hearing, regulations under this subchapter for the administration  
11 and implementation of a certification program for contractors and  
12 consultants.

13  
14 8-7-1312. Fees.

15 (a) 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 for the  
18 administrative costs of the Environmental Remediation Contractor  
19 Certification Program.

20 (b) All fees collected under this subchapter shall be deposited in the  
21 Hazardous Waste Permit Fund.

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

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