

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 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 2761

5 By: Representative Saunders
6
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH THE PHASE I ENVIRONMENTAL
10 SITE ASSESSMENT CONSULTANT ACT; TO MAINTAIN A
11 PUBLIC LIST OF PHASE I ENVIRONMENTAL SITE
12 ASSESSMENT CONSULTANTS; AND FOR OTHER PURPOSES.
13
14

Subtitle

15 THE PHASE I ENVIRONMENTAL SITE
16 ASSESSMENT CONSULTANT ACT.
17
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 8, Chapter 7, Subchapter 13 is amended
23 to read as follows:

24 § 8-7-1301. Title.

25 This subchapter shall be known and may be cited as the ~~"Environmental~~
26 ~~Site Assessment Consultant and Hazardous Substance Response Contractor~~
27 ~~Certification Act"~~ "The Phase I Environmental Site Assessment Consultant
28 Act".
29

30 § 8-7-1302. Purpose.

31 It is the purpose of this subchapter to authorize the Arkansas
32 Department of Environmental Quality to establish and administer a
33 certification program to+

34 ~~(1) Certify Phase I environmental site assessment consultants;~~

35 ~~(2) Certify comprehensive site assessment consultants and~~
36 ~~response action contractors undertaking investigations and response actions,~~



1 respectively, under the Arkansas Hazardous Waste Management Act of 1979, § 8-
 2 7-201 et seq., the Emergency Response Fund Act, § 8-7-401 et seq., the
 3 Remedial Action Trust Fund Act, § 8-7-501 et seq., or the Voluntary Cleanup
 4 Act, § 8-7-1101 et seq.; and

5 ~~(3) Require as a condition of certification that such~~
 6 ~~contractors and consultants demonstrate that they have the qualifications~~
 7 ~~required to undertake such activities.~~ maintain a list of Phase I consultants
 8 who meet the minimum qualifications for an environmental professional who
 9 undertakes a Phase I environmental site assessment, referred to as "all
 10 appropriate inquiry" under the Small Business Liability Relief and
 11 Brownfields Revitalization Act, Pub. L. No. 107-118, as it exists on January
 12 1, 2007 or a Phase I environmental site assessment under the American Society
 13 for Testing and Materials standard E1527-00 as in effect on January 1, 2005.

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) "Comprehensive site assessment" means an assessment to~~
 20 ~~determine the rate, extent, and characteristics of contamination at a site~~
 21 ~~addressed under the Arkansas Hazardous Waste Management Act of 1979, § 8-7-~~
 22 ~~201 et seq., the Emergency Response Fund Act, § 8-7-401 et seq., the Remedial~~
 23 ~~Action Trust Fund Act, § 8-7-501 et seq., or the Voluntary Cleanup Act, § 8-~~
 24 ~~7-1101 et seq.;~~

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

28 ~~(4) "Department" means the Arkansas Department of Environmental~~
 29 ~~Quality;~~

30 ~~(5) "Director" means the Director of the Arkansas Department of~~
 31 ~~Environmental Quality;~~

32 ~~(6) "Environmental site assessment" means a Phase I~~
 33 ~~environmental site assessment or a comprehensive site assessment;~~

34 ~~(7) "Environmental site assessment consultant" means a person~~
 35 ~~that performs a Phase I environmental site assessment or comprehensive~~
 36 ~~environmental site assessment for a fee or in conjunction with other services~~

1 ~~for which a fee is charged;~~

2 ~~(8) "Hazardous substance" has the same meaning as that term is~~
 3 ~~set out in § 8-7-503;~~

4 ~~(9) "Hazardous waste" has the same meaning as that term is set~~
 5 ~~out in § 8-7-203;~~

6 ~~(10)(1) "Person" means any individual, corporation, company,~~
 7 ~~firm, partnership, association, trust, joint-stock company or trust, venture,~~
 8 ~~state or federal government or agency, or any other legal entity however~~
 9 ~~organized;~~

10 ~~(11)(2) "Phase I consultant" means a person that performs a~~
 11 ~~Phase I environmental site assessment for a fee or in conjunction with other~~
 12 ~~services for which a fee is charged; and~~

13 ~~(12)(3) "Phase I environmental site assessment" means a Phase I~~
 14 ~~environmental site assessment as that term is used in the American Society~~
 15 ~~for Testing and Materials standard E1527-00 as in effect on January 1, 2005;~~
 16 ~~an assessment defined as "all appropriate inquiry" under the Small Business~~
 17 ~~Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, and~~
 18 ~~the rules promulgated under that federal act or a Phase I environmental site~~
 19 ~~assessment as that term is used in the American Society for Testing and~~
 20 ~~Materials standard E1527-00 as in effect on January 1, 2005; and.~~

21 ~~(13) "Response action contractor" means a person that is:~~

22 ~~(A) Required to obtain a contractor's license pursuant to~~
 23 ~~§ 17-25-101 et seq.; and~~

24 ~~(B) Responsible for undertaking the physical removal,~~
 25 ~~treatment, or disposal of hazardous substances or environmental media~~
 26 ~~contaminated with hazardous substances associated with a response action at a~~
 27 ~~site addressed under the Arkansas Hazardous Waste Management Act of 1979, §~~
 28 ~~8-7-201 et seq., the Emergency Response Fund Act, § 8-7-401 et seq., the~~
 29 ~~Remedial Action Trust Fund Act, § 8-7-501 et seq., or the Voluntary Cleanup~~
 30 ~~Act, § 8-7-1101 et seq., for a fee or in conjunction with other services for~~
 31 ~~which a fee is charged.~~

32
 33 § 8-7-1304. Powers and duties.

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

35 ~~(1) Establish and administer the Environmental Site Assessment~~
 36 ~~Consultant and Hazardous Substance Response Contractor Certification Program~~

1 ~~for response action contractors and environmental site assessment~~
 2 ~~consultants; and~~

3 ~~(2) Issue, deny, revoke, condition, or suspend the certification~~
 4 ~~of response action contractors and environmental site assessment consultants~~
 5 ~~under the terms established in this subchapter. maintain and make available~~
 6 ~~to the public a list of Phase I consultants who meet the minimum~~
 7 ~~qualifications for an environmental professional who undertakes a Phase I~~
 8 ~~environmental site assessment, referred to as "all appropriate inquiry" under~~
 9 ~~the Small Business Liability Relief and Brownfields Revitalization Act, Pub.~~
 10 ~~L. No. 107-118, and the rules promulgated under that federal act.~~

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

- 14 ~~(1) Provisions governing categories of certification;~~
- 15 ~~(2) Applications for certification;~~
- 16 ~~(3) Continuing education requirements;~~
- 17 ~~(4) Professional and technical standards for certification;~~
- 18 ~~(5) Renewals of certifications;~~
- 19 ~~(6) Procedures for peer committee review and other actions~~
 20 ~~affecting the status of certification; and~~

21 ~~(7) Establishment of reasonable fees. The Arkansas Pollution~~
 22 ~~Control and Ecology Commission shall promulgate rules to implement this~~
 23 ~~subchapter.~~

24
 25 ~~8-7-1305. Applicability.~~

26 ~~(a)(1) Six (6) months after the adoption of rules by the Arkansas~~
 27 ~~Pollution Control and Ecology Commission to implement this subchapter, a~~
 28 ~~person shall not provide services as an environmental site assessment~~
 29 ~~consultant or a response action contractor unless those services are~~
 30 ~~performed under the direction and responsible charge of an individual who has~~
 31 ~~obtained a certification under this subchapter.~~

32 ~~(2)(A) Until the Environmental Site Assessment Consultant and~~
 33 ~~Hazardous Substance Response Contractor Certification Program is implemented,~~
 34 ~~the Arkansas Department of Environmental Quality should develop and maintain~~
 35 ~~a list of those environmental site assessment consultants and response action~~
 36 ~~contractors that indicate to the department an intent to apply for~~

1 ~~certification enumerated under this subchapter.~~

2 ~~(B) After the certification program is implemented, the~~
3 ~~department shall develop and maintain a list of those environmental site~~
4 ~~assessment consultants and response action contractors that have a~~
5 ~~certification under this subchapter.~~

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

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

13 ~~(c) This subchapter does not apply to services provided by:~~

14 ~~(1) An employee of a business or public agency relative to the~~
15 ~~hazardous substance or hazardous waste management, release investigation, or~~
16 ~~response responsibilities of his or her employer, exclusively, while the~~
17 ~~employee is acting in the course of his or her employment;~~

18 ~~(2) An employee of a public agency with the responsibility of~~
19 ~~regulatory enforcement, emergency response, or protection of public health~~
20 ~~and welfare or the environment while the employee is acting in the course of~~
21 ~~that employment; or~~

22 ~~(3) A person that is a transporter of hazardous wastes that are:~~

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

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

29 ~~(d) Any environmental site assessment activities performed by a person~~
30 ~~certified as an environmental site assessment consultant under this~~
31 ~~subchapter that would constitute the "practice of engineering" as defined in~~
32 ~~§ 17-30-101 shall be performed under the responsible charge of and signed and~~
33 ~~sealed by a professional engineer registered in the State of Arkansas.~~

34 ~~(e) Any environmental site assessment activities performed by a person~~
35 ~~certified as an environmental site assessment consultant under this~~
36 ~~subchapter that would constitute the "public practice of geology" as defined~~

1 in § 17-32-102 shall be performed under the responsible charge of and signed
 2 and sealed by a professional geologist registered in the State of Arkansas.

3
 4 ~~8-7-1306. Certification categories.~~

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

7 ~~(b) Categories of certification shall include:~~

8 ~~(1) Phase I environmental site consultant;~~

9 ~~(2) Comprehensive environmental site assessment consultant; and~~

10 ~~(3) Response action contractor.~~

11
 12 ~~8-7-1307. Certification criteria and procedure.~~

13 ~~(a)(1) The Arkansas Pollution Control and Ecology Commission shall~~
 14 ~~establish by rule criteria for certification as an environmental site~~
 15 ~~assessment consultant.~~

16 ~~(2) The criteria shall incorporate United States Environmental~~
 17 ~~Protection Agency requirements including minimum qualifications for an~~
 18 ~~environmental professional who undertakes Phase I environmental site~~
 19 ~~assessments of "all appropriate inquiry" as defined under the Small Business~~
 20 ~~Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, and~~
 21 ~~the rules promulgated under that federal act that are not inconsistent with~~
 22 ~~this subchapter.~~

23 ~~(3) Upon demonstration of compliance with the criteria, the~~
 24 ~~applicant shall be eligible for certification as a Phase I environmental site~~
 25 ~~assessment consultant under this subchapter.~~

26 ~~(b) The criteria for initial certification of a Phase I environmental~~
 27 ~~site assessment consultant or a comprehensive site assessment consultant, or~~
 28 ~~both, shall provide that:~~

29 ~~(1) The license issued to a registered professional engineer or~~
 30 ~~engineering intern meets the requirements for an environmental site~~
 31 ~~assessment consultant certificate if:~~

32 ~~(A) Any professional engineer or engineering intern who~~
 33 ~~performs Phase I environmental site assessment or comprehensive site~~
 34 ~~assessment, or both:~~

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

1 other form of recognition of successful completion of training provided by
2 organizations found by the department to provide training necessary to
3 perform environmental site assessments; or

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

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

12 (c) Certification as a comprehensive site assessment consultant shall
13 serve as certification to perform both Phase I environmental site assessments
14 and comprehensive site assessments.

15 (d)(1) The commission shall establish by rule criteria for
16 certification as a response action contractor.

17 (2) The criteria for initial certification of a response action
18 contractor shall provide that the applicant has:

19 (A) A valid license issued by the Contractors Licensing
20 Board;

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

24 (c) Either:

25 (i) Completed training and received a certificate or
26 other form of recognition of successful completion of training provided by an
27 organization found by the department to provide training necessary to perform
28 response actions; or

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

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

36 (ii) Any examination administered by the department

1 in accordance with the rules issued under this subchapter is the property of
2 the department and shall remain confidential and shall not be subject to
3 disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

4 (e) ~~The commission shall promulgate rules for renewal of an
5 environmental site assessment consultant certificate that shall provide that
6 certification be renewed upon demonstration of the following criteria:~~

7 (1) ~~For a professional:~~

8 (A) ~~Engineer or an engineering intern, a valid license to
9 practice engineering and approved continuing education hours; and~~

10 (B) ~~Geologist or geologist in training, a valid license to
11 practice geology and approved continuing education hours;~~

12 (2) ~~For a person with a certificate based on certification by
13 another state or organization, demonstration of a current certificate from
14 the approved state or organization and approved continuing education hours;
15 and~~

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

19 (f) ~~The commission shall promulgate rules for renewal of a response
20 action contractor certificate that shall provide that certification be
21 renewed upon demonstration of the following criteria:~~

22 (1) ~~A valid license from the Contractors Licensing Board;~~

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

26 (3) ~~For those persons whose certificate is based on
27 certification by another state or organization:~~

28 (A) ~~Demonstration of a current certificate from the
29 approved state or organization; and~~

30 (B) ~~Proof of approved continuing education;~~

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

34 (5) ~~Other relevant and appropriate criteria as the commission
35 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 certification under this subchapter is required without holding a current and valid certificate under this subchapter.~~

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

~~(a) A response action contractor or environmental site assessment consultant holding a certificate issued under this subchapter may be subject to a disciplinary action or the certificate 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 certificate on which the certification was issued; or~~

~~(2) Demonstrably fails to produce acceptable work for specific activities for which the response action contractor or 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 Contractors 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 following its procedures for resolving disciplinary proceedings and licensing matters the Contractors Licensing Board finds that action is necessary, the Contractors Licensing Board shall provide~~

1 appropriate information regarding the actions taken to the director.

2 (4) The director shall consider the information by the
3 Contractors Licensing Board to determine appropriate action on the
4 certification.

5 (5) If the department has sufficient evidence under this
6 subsection that a response action contractor or environmental site assessment
7 consultant should have his or her certification suspended, conditioned, or
8 revoked, the director shall provide notice of a proposed action under
9 applicable rules of the Arkansas Pollution Control and Ecology Commission.

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

13 (7)(A) If the Contractors Licensing Board finds that the issue
14 presented is not within the Contractors Licensing Board's jurisdiction or
15 otherwise elects not to pursue the matter, the Contractors Licensing Board
16 shall notify the director.

17 (B) If the Contractors Licensing Board gives notice to the
18 director under subdivision (b)(7)(A) of this section, the peer review
19 procedures outlined in subsection (c) of this section shall apply.

20 (c)(1) The procedure described in this subsection shall apply to
21 disciplinary action or suspension, condition, or revocation of the
22 certification of an environmental site assessment consultant that does not
23 have a professional license issued by a state board and under the Contractors
24 Licensing Board.

25 (2) Under this subsection, if the department has sufficient
26 evidence that a response action contractor or environmental site assessment
27 consultant should have his or her certification suspended, conditioned, or
28 revoked, the director shall provide notice of a proposed action and advise
29 the person of his or her right to a peer review and a hearing within the time
30 period provided under applicable rules of the commission.

31 (3) If a request for peer review is made within the allotted
32 time frame, the commission shall appoint a peer review committee established
33 in accordance with the rules of the commission, including, but not limited
34 to, representation of at least three (3) certified response action
35 contractors or environmental site assessment consultants in good standing.

36 (4)(A) The peer review committee shall conduct an investigation

1 ~~in accordance with procedures established by rules and regulations developed~~
 2 ~~for these purposes by the commission.~~

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

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

7 ~~(6) Under this subsection, if the department has sufficient~~
 8 ~~evidence that a response action contractor or environmental site assessment~~
 9 ~~consultant should have his or her certification suspended, conditioned, or~~
 10 ~~revoked, the director shall provide notice of a proposed action under~~
 11 ~~applicable rules of the commission.~~

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

15
 16 ~~8-7-1310. Rules and regulations—Appeals and hearings.~~

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

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

27
 28 § 8-7-1311. Fees.

29 (a)(1) Under regulations promulgated by the Arkansas Pollution Control
 30 and Ecology Commission, the Arkansas Department of Environmental Quality may
 31 assess fees to ~~participating contractors and~~ Phase I consultants who apply to
 32 be placed on the list maintained under § 8-7-1304 .

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

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

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

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