

Arkansas Pollution Control and Ecology Commission

Regulation Number 32



Environmental Professional Certification

Adopted by the Pollution Control & Ecology Commission
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TABLE OF CONTENTS

CHAPTER 1: PURPOSE & AUTHORITIES	1-1
Reg.32.101. Purpose.....	1-1
Reg.32.102. Authority.....	1-1
Reg.32.103. Definitions.....	1-1
CHAPTER 2: CERTIFICATION AND LISTING PROGRAMS	2-1
Reg.32.201. Applicability.....	2-1
CHAPTER 3: PHASE I CONSULTANTS.....	3-1
Reg.32.301. Certification Criteria for Phase I Consultants.....	3-1
CHAPTER 4: CERTIFIED CLANDESTINE LABORATORY REMEDIATION CONTRACTORS	5-1
Reg.32.401. Application.....	6-1
Reg.32.402. Certification Criteria for Clandestine Laboratory Remediation Contractors.....	6-1
Reg.32.403. Financial Assurances.....	6-1
Reg.32.604. Reciprocity Agreements.....	6-2
Reg.32.301. Applications	3-1
CHAPTER 5: [RESERVED]	5-1
CHAPTER 6: ADMINISTRATION	6-1
Reg.32.601. Certification Renewal.....	6-1
Reg.32.602. Lapsed Certifications.....	6-1
Reg.32.603. Certification by Other States or Organizations.....	6-1
Reg.32.604. Reciprocity Agreements.....	6-2
Reg.32.605. Continuing Education Requirements.....	6-3
Reg.32.606. Fees.....	6-5
Reg.32.607. Certification Statement.....	6-6
Reg.32.608. Records Review.....	6-6
CHAPTER 7: DISCIPLINARY ACTIONS	7-1
Reg.32.701. Disciplinary Actions.....	7-1
Reg.32.702. Appeals.....	7-1
CHAPTER 8: SEVERABILITY	8-1
Reg.32.801. Severability.....	8-1
CHAPTER 9: EFFECTIVE DATE.....	9-1
Reg.32.901. Effective Date.....	9-1

CHAPTER 1: PURPOSE & AUTHORITIES

Reg.32.101. Purpose.

(A) Pursuant to Arkansas Code Annotated (A.C.A.) § 8-7-1301 *et seq.* (Act 1018 of 2007), to establish and implement a certification program to:

- (1) Maintain a list of Phase I consultants who meet the minimum qualifications for an environmental professional who undertakes a Phase I environmental site assessment, referred to as “all appropriate inquiry” under the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, as it exists on January 1, 2007, or a Phase I environmental site assessment under the American Society for Testing and Materials standard E1527-05 as in effect on January 1, 2007; *and*
- (2) Require that such consultants demonstrate that they have the qualifications required to undertake such activities.

(B) Pursuant to A.C.A. § 8-7-1401 *et seq.* (Act 864 of 2007), to establish and implement a certification program to:

- (1) Certify contractors who choose to undertake the inspection, sampling, remediation, and removal of contaminated materials from properties contaminated through the illicit manufacture of controlled substances;
- (2) Require as a condition of certification that such contractors demonstrate they have qualifications required to safely undertake such activities.

Reg.32.102. Authority.

A.C.A. §§ 8-7-1301, *et seq.* (Act 1018 of 2007) and §§ 8-7-1401, *et seq.* (Act 864 of 2007) authorize the Arkansas Pollution Control and Ecology Commission (“Commission”) to adopt rules and regulations necessary for the Arkansas Department of Environmental Quality (“Department”) to implement and effectuate the powers and duties of the Commission as established by the Acts.

Reg.32.103. Definitions.

The following terms shall have the same meaning when used in this Regulation as established by the Act, unless the context otherwise requires:

(A) “*Certification and listing*” means the review and approval of an individual’s education and relevant experience as prescribed at § 32.301(B) of this regulation and the placement of that individual’s name on the list of certified environmental professionals as required by § 32.101(A) of this regulation.

(B) “*Certified Clandestine Laboratory Remediation Contractor*” means a firm or company that is licensed/certified by the Department pursuant to Section 4 of this regulation, and that performs investigation and remediation of residual contamination

from the manufacture of controlled substances or the storage of chemicals or equipment used in the manufacture of controlled substances.

(C) “*Clandestine Laboratory*” means a covert or secret illicit operation that uses a combination of apparatus and chemicals to make controlled substances.

(D) “*Commission*” means the Arkansas Pollution Control and Ecology Commission.

(E) “*Contaminated*” or “*Contamination*” means polluted by chemical residues so that the property is unfit for human habitation or use due to immediate or long term threats to human health or the environment. Property that at one time was contaminated but has been satisfactorily decontaminated according to procedures established by the department is not “contaminated”.

(F) “*Contractor*” means one or more individuals or commercial entities hired to perform work in accordance with the requirements of § 32.402 of this regulation.

(G) “*Controlled Substances*” (A.C.A. § 5-64-101(d)) means: “a drug, substance, or immediate precursor in schedules I – VI” of the Arkansas Department of Health list of controlled substances Agency# 007.07.

(H) “*Department*,” or “*ADEQ*” means the Arkansas Department of Environmental Quality, or its successor.

(I) “*Director*” means the Director of the Arkansas Department of Environmental Quality.

(J) “*Hazardous Substances*” means a hazardous substance as defined by A.C.A. § 8-7-503(6).

(K) “*HAZWOPER*” means the OSHA Hazardous Waste Operations and Emergency Response course (29 CFR 1910.120(a)(1)(i-v) and (29 CFR 1926.65(a)(1)(i-v)).

(L) “*Investigation*” means the process of assessing the nature, level, and/or extent of contamination of controlled or hazardous substances at a clandestine laboratory.

(M) “*Manufacture*” (A.C.A. § 5-64-101(m) (Repl. 1997) means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from a substance of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(1) “*Manufacture*” includes any packaging or repackaging of a controlled substance or labeling or re-labeling of a controlled substance’s container.

(2) However, “*Manufacture*” does not include the preparation or compounding of a controlled substance by an individual for his or her own use, or the preparation, compounding, packaging, or labeling of a controlled substance:

(a) By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice; *or*

(b) By a practitioner, or by his or her authorized agent under his or her supervision for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(N) “*OSHA*” means the federal Occupational Safety and Health Administration.

(O) “*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.

(P) “*Phase I environmental site assessment*” means an assessment defined as “all appropriate inquiry” under the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, and the rules promulgated under that federal act

or a Phase I environmental site assessment as that term is used in the American Society for Testing and Materials standard E1527-05 as in effect on January 1, 2007.

(Q) “*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.

(R) “*Property*” means any real or personal property, or segregable part thereof, that is involved in or affected by the unauthorized manufacture, distribution, or storage of hazardous chemicals. This includes but is not limited to single-family residences, units of multiplexes, condominiums, apartment buildings, manufactured housing, any shop, booth, garden, or storage shed, and all contents of the items referenced in this subsection.

(S) “*Property Owner*” means the person holding fee simple title to real property. “*Property Owner*” also means the person holding title to a manufactured home. With respect to personal property, the term means the person who lawfully owns such property.

(T) “*Public agency*” means any administrative body, department or agency of government which has official or quasi official status.

(U) “*Relevant experience*” as used in defining the qualifications of environmental site assessment consultants in this Regulation, means: participation in the performance of all appropriate inquiries investigations, environmental site assessments, or other site investigations that may include environmental analyses, investigations, and remediation which involve the understanding of surface and subsurface environmental conditions and the processes used to evaluate these conditions and for which professional judgment was used to develop opinions regarding conditions indicative of releases or threatened releases to the subject property. The use of the phrase “*full-time*” within the definition of environmental professional and the definition of relevant experience is meant to require that an individual has accumulated the equivalent of 3, 5, or 10 years of actual working experience in performing environmental site assessments. An individual may accumulate such experience over a longer length of time than the 3, 5, or 10 years, as long as the total time of accumulated experience would be the equivalent of 3, 5, or 10 years of full-time experience. Even after an individual accumulates the required number of years of full-time experience, that individual does not have to conduct environmental site assessments, or all appropriate inquiries investigations, on a full-time basis to continue qualify as an environmental professional.

(V) “*Remediation*” means the process of reducing the level of contamination of controlled substances below the concentrations allowed by this regulation.

CHAPTER 2: CERTIFICATION AND LISTING PROGRAMS

Reg. 32.201. Applicability.

(A) The Arkansas Department of Environmental Quality shall:

(1) Maintain and make available to the public a list of Phase I consultants who meet the minimum qualifications for an environmental professional who undertakes a Phase I environmental site assessment, referred to as “all appropriate inquiry” under the provisions of the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, and the rules promulgated under that federal act.

(2) [Reserved].

(B) Persons wishing to be placed upon the Department’s list of certified environmental professionals shall meet the education and experience requirements set forth at 40 CFR 312.10 and § 32.301(B) of this regulation, and submit an application for such certification and listing to the Department.

CHAPTER 3: PHASE I CONSULTANTS

Reg.32.301. Certification Criteria for Phase I Consultants.

(A) An applicant seeking certification to be listed as a Phase I Consultant shall submit an application on forms provided by the Department and shall pay the applicable application fees.

(B) Persons seeking certification as a Phase I Consultant shall possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases on, at, in, or to a property, sufficient to meet the objectives and performance factors for all appropriate inquiries set forth in 40 CFR 312.20; and shall demonstrate this by meeting at least one of the following combinations of education and experience:

- (1) Hold a current Professional Engineer's or Professional Geologist's license or registration; and have the equivalent of three (3) years of full-time relevant experience; *or*
- (2) Have a Bachelor's or higher degree from an accredited institution of higher education in a relevant discipline of engineering or science and the equivalent of five (5) years of full-time relevant experience; *or*
- (3) Have a high school diploma or general equivalency diploma and at least ten (10) years of full-time relevant experience; *or*
- (4) Be licensed or certified by the federal government, a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) to perform environmental inquiries as defined in 40 CFR 312.21 and have the equivalent of three (3) years of full-time relevant experience.

(C) Relevant experience shall be demonstrated by the submittal of an application for certification documenting the applicant's experiences and qualifications as prescribed by § 32.301(B) above.

(D) Applicants shall also submit, as part of the application for certification, a Disclosure Statement in accordance with the disclosure statement provisions of APC&EC Regulation No. 8. The Disclosure Statement shall also certify that neither the individual nor the individual's employer have been convicted of or plead guilty to an environmental crime or offense, or any related criminal offense.

(E) The Department may request and review additional relevant information about the applicant or application in order to properly process the application.

(F) Upon demonstration of compliance with the criteria, the applicant shall be eligible for certification and listing as a Phase I Consultant under this subchapter.

CHAPTER 4: CLANDESTINE LABORATORY REMEDIATION CONTRACTORS

32.401. Application.

(A) An applicant seeking certification as a Clandestine Laboratory Remediation Contractor shall submit an application on forms provided by the Department and shall pay the applicable application fees in accordance with § 32.606(B) of this regulation.

(B) Applicants shall also submit, as part of the application for certification, a Disclosure Statement in accordance with the disclosure statement provisions of APC&EC Regulation No. 8. The Disclosure Statement shall also certify that neither the individual nor the individual's employer have been convicted of or plead guilty to an environmental crime or offense, or any related criminal offense.

(C) Upon receipt of a complete application, the Department shall either accept or deny the applicant's certification. The Department may revoke the certification of any contractor for cause and collect the forfeited financial assurance of any contractor found to be in violation of A.C.A. §§ 8-7-1401 *et seq.* Contractors shall also report any changes in their registration information with the Department, such as address, financial assurance and/or liability insurance information within 30 days. Failure to comply fully with the requirements of this section may result in the immediate revocation of certification by the Department.

32.402. Certification Criteria for Clandestine Laboratory Remediation Contractors.

(A) Persons seeking certification as a Clandestine Laboratory Remediation Contractor shall maintain the following information for all employees who perform decontamination and/or cleanup work of former clandestine laboratories:

- (1) Copy of a current OSHA 40-hour HAZWOPER training certificate (29 CFR 1910.120(e)) or copy of a current HAZWOPER 8-hour refresher certificate if it has been over 12 months since the initial training; *and*
- (2) Documentation of successful completion of an 8-hour training course approved by the Department that encompasses the following areas:
 - (a) Clandestine Drug Laboratory Site Remediation Best Standards and Practices;
 - (b) Hazardous and precautionary measures for initial and subsequent entry into a clandestine drug laboratory site;
 - (c) Preparation of the work plan for remediation of a clandestine drug laboratory;
 - (d) Typical manufacturing methods for controlled substances;
 - (e) Chemical and physical hazards of a clandestine drug laboratory;
 - (f) Typical flammable, combustible, corrosive, and reactive materials used in a clandestine drug laboratory;
 - (g) Sampling waste from the remediation of a clandestine drug laboratory;
 - (h) Preparing the final report on the remediation of a clandestine drug laboratory;
 - (i) Potential sharps and biohazards at a clandestine drug laboratory;

- (j) Proper handling and disposal of wastes from the remediation of a clandestine drug laboratory; and
 - (k) Other potential hazards or dangers that can be associated with a clandestine drug laboratory.
- (3) Supervisory personnel shall, in addition to the eligibility requirements of §§ 32.402(A)(1-2) above, shall comply with OSHA HAZWOPER supervisor training requirements of 29 CFR 1910.120(e).
- (B) ADEQ may request and review additional information about the applicant or application in order to properly process the application.
- (C) Upon demonstration of compliance with the criteria, the applicant shall be eligible for certification and listing as a Certified Clandestine Laboratory Remediation Contractor under this Regulation.

32.403. Financial Assurance.

- (A) Certified Clandestine Laboratory Remediation Contractor shall provide the following financial assurances:
- (1) A certificate of liability insurance issued by an insurance company licensed to do business in Arkansas certifying that the applicant has a general liability insurance policy in an amount of one million dollars (\$1,000,000.00) per incident \neq and two million dollars (\$2,000,000.00) aggregate for personal or property damage that might occur to third parties arising from the performance of regulated services for inhabitable properties by the contractor or his agents;
 - (2) Errors and omissions insurance in the amount of one million dollars (\$1,000,000.00) per occurrence for negligent acts committed in the course of a clandestine lab investigation and/or remediation;
 - (3) Pollution liability insurance in the amount of three million dollars (\$3,000,000.00); *and*
 - (4) Worker's Compensation and Employer's Liability in statutory limits shall be secured and maintained as required by the laws of the State of Arkansas.
- (B) In the event the insurance policy lapses, the applicant must provide a suitable replacement policy prior to the expiration of the existing policy. ADEQ shall be named as the certificate holder.

CHAPTER 5: [RESERVED]

CHAPTER 6: ADMINISTRATION

Reg.32.601. Certification Renewal.

(A) Certification and listing under the provisions of this Regulation to an individual shall be valid for two (2) years (or portion thereof) from July 1st of the year the Department adds the individual to the list of certified environmental professionals or Certified Clandestine Laboratory Remediation Contractors.

(B) After June 1 of the second year after the Department adds a person to the list of certified environmental professionals or Certified Clandestine Laboratory Remediation Contractors under the provisions of this Regulation, the person must re-apply to the Department for renewal.

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

- (1) Submit an application for renewal to the Department, demonstrating that the consultant continues to meet the applicable qualifications for certification and listing as prescribed in Chapter 3 and Chapter 4 of this Regulation, on forms provided by the Department;
- (2) Submit a nonrefundable fee in the form of a money order, cashier's check, or other payment method determined by the Department in the amount set forth at § 32.606 of this Regulation; and
- (3) Complete and submit documentation of continuing education training of the type and amount as set forth at § 32.605 of this Regulation.

Reg.32.602. Lapsed Certifications. [Reserved].

Reg.32.603. Certification by Other States or Organizations. [Reserved].

Reg.32.604. Reciprocity Agreements. [Reserved].

Reg.32.605. Continuing Education Requirements.

(A) Phase I consultants and Certified Clandestine Laboratory Remediation Contractors shall remain current in their field through participation in continuing education or other activities.

(B) Definitions. As used in this Subsection, the following terms are defined as follows:

- (1) Professional Development Hours (PDH) – A contact hour (nominal) of instruction or presentation. The common denominator for other units of credit.
- (2) Continuing Education Unit (CEU) – Unit of credit customarily used for continuing education courses. One continuing education unit equals ten (10) hours of classroom experience in an approved education course.
- (3) College/Unit Semester/Quarter Hour – Credit for an approved college course.

- (4) Course/Activity – Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the certified contractor or consultant’s field of practice.
- (C) Requirements:
- (1) Every Phase I consultant shall be required to report a cumulative of fifteen (15) PDH units per year for each renewal period. If a registrant exceeds the annual requirement in any renewal period, a maximum of fifteen (15) PDH units may be carried forward into the subsequent renewal period.
 - (2) Certified Clandestine Laboratory Remediation Contractors seeking biennial renewal of their certificate shall annually conduct and maintain documentation for the successful completion of:
 - (a) At least 8 hours of OSHA HAZWOPER refresher training as prescribed by 29 CFR 1910.120(e); and
 - (b) At least 8 hours of additional training related to clandestine laboratory investigation or remediation.
- (D) PDH units may be earned as follows:
- (1) Successful completion of college courses.
 - (2) Successful completion of continuing education courses.
 - (3) Successful completion of correspondence, televised, videotaped, audiotape, and other short courses/tutorials.
 - (4) Presenting or attending qualifying seminars, in-house courses, work shops, or professional, technical, or managerial presentations made at meetings, conventions, or conferences.
- (E) Units – The conversion of other units of credit to PDH Units are as follows:
- (1) 1 College or unit semester course —30 PDH
 - (2) 1 College or unit quarter course —15 PDH
 - (3) 1 Continuing Education Unit — 10 PDH
 - (4) 1 Hour of professional development in course work, seminars, or professional, or management, or technical presentations made at meetings, conventions or conferences: — 1 PDH
 - (5) For teaching items 1 through 4 above, apply a multiple of 2 (teaching credit is valid for teaching a course or seminar for the first time only).
- (F) Determination of Credit – The Department has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit.
- (1) Credit for college or community college approved courses will be based upon credit established by the college.
 - (2) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.
 - (3) The types of training and continuing education required by this Chapter which may be eligible for approval include instructional courses, seminars or conferences sponsored by the Department, the Environmental Protection Agency, educational institutions, independent professional or trade associations, manufacturers, or firms engaged in environmental site assessment or hazardous substance management or remediation.

(4) Course content must be related to work performed by persons performing environmental site assessment or hazardous substance management or remediation.

(G) Training Records. Each Phase I consultant or Certified Clandestine Laboratory Remediation Contractor shall maintain records to document his or her qualifications and continuing education participation. The responsibility of maintaining records to be used to support credits claimed is the responsibility of the Phase I consultant or the Certified Clandestine Laboratory Remediation Contractor. Records required include, but are not limited to:

- (1) A log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; or
- (2) Attendance verification records in the form of completion certificates, or other documents supporting evidence of attendance furnished by the organization sponsoring the approved training or continuing education.

These records must be maintained for a period of three (3) years or in compliance with any applicable state requirements, and copies may be requested by the Department for audit verification purposes.

(H) Exemptions. A person may be exempt from the professional development education requirements for one of the following reasons:

- (1) A person serving on temporary active duty in the Armed Forces of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining professional development hours required during that year.
- (2) Persons experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the Department may be exempt. Supporting documentation must be furnished to the Department.

(I) Noncompliance. The certification of a person who does not satisfy the continuing education requirements at renewal time will be suspended and the certificate holder notified of that status. The Consultant will have six (6) months from the renewal date to satisfy that condition or his or her certification will be revoked.

Reg.32.606. Fees.

(A) Any person who applies to the Department for certification and listing as a Phase I Consultant shall submit as part of that application a money order, cashiers check, or other payment method determined by the Department in the amount of twenty-five dollars (\$25.00) payable to the Department for an application fee.

(B) Any person who applies to the Department for certification and listing as a Certified Clandestine laboratory Remediation Contractor shall submit as part of that application a money order, cashiers check, or other payment method determined by the Department in the amount of two hundred dollars (\$200.00) payable to the Department for an application fee.

(C) ADEQ will assess a technical review fee pursuant to APC&EC Regulation No. 23 Section 6(t) for each clandestine lab cleanup project submitted for review to determine whether the property has been satisfactorily remediated and is subsequently eligible for

removal from the list of contaminated properties established by A.C.A. § 8-7-1404. The amount of such fee shall not exceed two hundred dollars (\$200.00) per property.

(D) Applications or renewals will not be processed by the Department without payment of the fee.

(E) Fees will be reviewed biennially for potential adjustment to cover the costs of administering the Environmental Professional Certification Program.

(F) The Department will not issue refunds for any fees paid pursuant to this Regulation.

Reg.32.607. Certification Statement.

(A) All documents, reports, or correspondence created pursuant to activities addressed by this Regulation, whether submitted to the Department or to a client, shall include:

(1) The following certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information; *and*

(2) The signature of the certified Phase I consultant or Certified Clandestine Laboratory Remediation Contractor.

Reg.32.608. Records Review.

(A) The Department may inspect any records required to be kept under this Regulation during normal business hours including, but not limited to, the following:

(1) Copies of professional licenses, if applicable;

(2) Copies of certificates or licenses from another state, tribe, U.S. territory, or organization recognized by the Department as substantially equivalent, if applicable; and

(3) Documentation of continuing education requirements pursuant to § 32.605 of this regulation.

(B) The Department may establish requirements concerning the information that shall be included in the records.

CHAPTER 7: DISCIPLINARY ACTIONS

32.701. Disciplinary Actions.

(A) It is unlawful for any person to:

- (1) Make any false statement or representation in any application or certification;
- (2) Render inaccurate and certification issued under this Regulation; *or*
- (3) Solicit or perform the services for which a certification under this Regulation is required without holding a current and valid certification under this Regulation.

(B) A person certified under the provisions of the Regulation may be subject to disciplinary action, or the certification may be subject to suspension, condition, or revocation if he or she:

- (1) Engages in activities subject to certification under this Regulation and is no longer entitled to that certification by reason of his or her failure to maintain the license or other qualification on which the certification was issued;
- (2) Demonstrably fails to produce acceptable work for specific activities for which the contractor has been certified under this Regulation;
- (3) Practices fraud or deception;
- (4) Does not exercise reasonable care, judgment, or the application of knowledge in the performance of the certified contractor's responsibilities;
- (5) Is incompetent, unable, or unwilling to perform their responsibilities;
- (6) Fails to pay renewal fees;
- (7) Does not meet continuing education requirements; *or*
- (8) Fails to meet any provision of this Regulation.

(C) If the Department has sufficient evidence that a certified contractor should have his or her certification suspended, conditioned, or revoked, the Director shall provide notice of a final decision under the applicable rules of the Commission. The Director's final decision shall specify the terms of the suspension, condition, or revocation of the certification as a result of the disciplinary actions under this Regulation.

(D) The Director's decision shall be subject to adjudication before the Commission in accordance with administrative procedures adopted by the Commission.

(E) Certifications revoked, suspended, or conditioned shall be subject to the terms outlined in the Director's final decision.

(F) Disciplinary actions for failure to comply with the provisions of this Regulation may include the assessment of a civil penalty pursuant to APC&EC Regulation No. 7.

32.702. Appeals

A certificate holder or other party with standing may appeal the Director's final decision to the Commission. Such an action shall be conducted as provided for in A.C.A. § 8-4-202 *et seq.* and in accordance with the Commission's regulations on administrative procedures.

CHAPTER 8: SEVERABILITY

Reg.32.801. Severability.

If any provision of this Regulation or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end, provisions of this Regulation are declared to be separate and severable.

CHAPTER 9: EFFECTIVE DATE

Reg.32.901. Effective Date.

This Regulation shall be in full force and effect ten (10) days after it is filed with the Secretary of State.