

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION
BROWNFIELD REDEVELOPMENT AND VOLUNTARY CLEANUP PROGRAM
DIVISION 335-15

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**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION
BROWNFIELDREDEVELOPMENT AND VOLUNTARY CLEANUP PROGRAM**

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LAND DIVISION
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**CHAPTER 335-15-1
GENERAL**

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335-15-1-.01 Purpose.

These regulations are promulgated pursuant to the Alabama Land Recycling and Redevelopment Act, Code of Ala. 1975, §22-30E-4. The Brownfield Redevelopment and Voluntary Cleanup Program provides a mechanism for the implementation of a cleanup program that encourages applicants to voluntarily assess, remediate and provide for the productive reuse of properties with actual or perceived contamination. The program is designed to expedite the voluntary cleanup process and has been designed for entry at any stage of the cleanup process as long as all applicable criteria have been achieved up to the point of entry.

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335-15-1-.02 Definitions.

Unless otherwise defined in 335-15-1 through 335-15-8, the following words and terms shall have the meanings given below:

(a) "ADEM" is the Alabama Department of Environmental Management.

(b) "Applicant" is the owner, operator or prospective purchaser of a qualifying property seeking to participate in

335-15-1-.02

the voluntary cleanup program by submission of an application under 335-15-2.

(c) "Application fee" means the nonrefundable review fee submitted with the Voluntary Cleanup Program application.

(d) "Aquifer" means a geologic formation, group of formations or a part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(e) "Brownfield" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or perceived presence of a hazardous substance, pollutant or contaminant.

(f) "Brownfield Redevelopment District" means any potentially affected property as described in the Code of Alabama 1975, §§22-30E-14, 22-30E-15, and 22-30E-16.

(g) "Brownfield Remediation Reserve Fund" means an account established to collect contributions from responsible person applicants authorized by the Code of Alabama 1975, §22-30E-5.

(h) "Brownfield Remediation Reserve Fund Contribution" means an amount provided to the Department by a responsible person applicant pursuant to the Code of Alabama 1975, §22-30E-5 for deposit into and to be used for the purposes of the Brownfield Remediation Reserve Fund.

(i) "Carcinogen" means a chemical classification for the purpose of risk assessment as an agent that is known or suspected to cause cancer in humans, including but not limited to a known or likely human carcinogen or a probable or possible human carcinogen under an EPA weight-of-evidence classification system.

(j) "Certification of compliance" means a statement prepared by a professional engineer or geologist licensed to practice in the State of Alabama which certifies compliance with a voluntary cleanup plan required by 335-15-4-.06.

(k) "Cleanup" means the cleaning up, remediation, mitigation, control, or removal of contaminants from the environment in accordance with an approved "Voluntary Cleanup Plan".

(l) "Cleanup Properties Inventory" means the Voluntary Cleanup Properties Inventory compiled and updated as necessary by the Department pursuant to 335-15-6-.03(1) for all qualifying properties for which a property assessment plan or cleanup plan has been approved.

(m) "Cleanup Standard" means a cleanup level which may be based on specific requirements of relevant environmental laws

or regulations (e.g., Clean Water Act, Clean Air Act, TSCA, RCRA, CERCLA, et al.), derived using the procedures outlined in Section 300.430(e)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300) and/or utilizing requirements found in the Alabama Risk-based Corrective Action Guidance (ARBCA) Manual or other appropriate risk-based corrective action principles through the appropriate implementation of applicable response actions or land use controls.

(n) "Commission" means the Alabama Environmental Management Commission as defined in the Code of Alabama 1975, §22-22A-3.

(o) "Completion" means fulfillment of the commitment agreed to by the participant as part of this program.

(p) "Contaminant" means any substance that results in alteration of the chemical, physical or biological integrity of soils, sediments, air and surface water or groundwater including:

1. Solid waste (as defined in 335-13); or
2. Petroleum product(s).

(q) "Department" means the Alabama Department of Environmental Management or its successor agency.

(r) "Director" means the Director of the Alabama Department of Environmental Management or such other person to whom the director has delegated authority.

(s) "EPA" means the United States Environmental Protection Agency.

(t) "Engineer" means a person registered as a professional engineer with the State of Alabama Board of Registration for Professional Engineers and Land Surveyors and practicing under the Rules of Professional Conduct, specifically Canon II.

(u) "Environment" is defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C., §9601, et seq.

1. The navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act.
2. Any other surface water, groundwater, drinking water supply, land surface or subsurface strata, or ambient air

335-15-1-.02

within the State of Alabama or under the jurisdiction of the State of Alabama.

(v) "Environmental Covenant" as defined in 335-5-1-.03.

(w) "Facility" is a term synonymous with "property".

(x) "Fiduciary" means a person who acts for the benefit of another person as a bona fide trustee, executor, and/or administrator.

(y) "Geologist" means a person registered as a professional geologist with the State of Alabama pursuant to the Alabama Professional Geologist Licensing Act.

(z) "Hazardous constituent" as defined in 335-14-2-Appendix VIII and/or 335-14-5-Appendix IX.

(aa) "Hazardous substance" means any substance included on the List of Hazardous Substances and Reportable Quantities, codified as 40 CFR Part 302, Table 302.4, in force and effect on the effective date of 335-15-1 (May 21, 2001) and subsequent revisions thereof, or any substance listed on the List of Extremely Hazardous Substances and Their Threshold Planning Quantities, codified as 40 CFR Part 355, Appendix A, in force and effect on the effective date of 335-15 and subsequent revisions thereof.

(bb) "Hazardous waste" means any solid waste as defined in 335-14.

(cc) "Hazardous Waste Treatment, Storage or Disposal Facility" means any property or facility which is intended or used for the treatment, storage or disposal of hazardous waste subject to the permit requirements of 335-14-8.

(dd) "Land Use Controls" means any restriction or control, which serves to protect human health or the environment, that limits the use of or exposure to, any portion of a property, including water resources. These controls include but are not limited to:

1. Engineering controls for remedial actions directed toward containing or controlling the migration of contaminants through the environment. These include, but are not limited to, storm water conveyance systems, slurry walls, liner systems, caps, leachate collection systems, pump and treat systems, and groundwater recovery systems.

2. Institutional controls which are legal or contractual restrictions on property use that remain effective after remediation is completed and are used to meet remediation

levels. The term may include, but is not limited to, deed notations, deed restrictions and/or, water use restrictions, restrictive covenants, conservation easements, and limited development rights.

3. Water use restrictions which can be placed on the use of a particular water supply source that has been identified as being contaminated with hazardous substances or other contaminants in order to protect human health and the environment.

(ee) "Letter of Concurrence with Conditions" means a letter issued by the Department to an applicant upon the Department's concurrence with the certification of compliance that pertains to the response action and contains a legal description of the subject area, unit, site or qualifying property, as applicable.

(ff) "Major Modification" means any modification that is not a minor modification.

(gg) "Minor Modification" means any administrative and/or general information changes, correction of typographical errors, changes in ownership and or operational control, and changes in the frequency of, or procedures for, monitoring, reporting or sampling by the applicant to provide for more frequent monitoring, reporting or sampling.

(hh) "Mitigation" means reducing to the extent possible or rectifying the adverse impact by repairing, rehabilitating, restoring, or limiting exposure to the affected environment.

(ii) "Noncarcinogen" is a chemical classification for the purposes of risk assessment as an agent for which there is either inadequate toxicological data or which is not likely to be a carcinogen based on an EPA weight-of-evidence classification system.

(jj) "Non-responsible Person" means any person who is not a responsible person or responsible person applicant.

(kk) "Operation and Maintenance" means any action(s) required to operate and/or maintain the processes in place to minimize any potential exposures to environmental concerns on a property.

(ll) "Owner or Operator"

1. The definition includes the following:

(i) In the case of a facility, any person who is the owner or operator of the facility.

(ii) Any person who owned, operated, or otherwise controlled activities at a facility immediately prior to title or control of the facility being conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of state or local government.

2. The definition does not include the following:

(i) A person who can show evidence of ownership or a deed in lieu of foreclosure primarily to protect that person's security interest in the facility or who acts in good faith, solely in a fiduciary capacity and who did not actively participate in the management, disposal, or release of hazardous wastes, hazardous constituents, or hazardous substances from the facility.

(ii) A unit of a state or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquire title by virtue of its function as sovereign. This exclusion shall not apply to any state or local government which has caused or contributed to the release of hazardous wastes, hazardous constituents, or hazardous substances from the facility.

(mm) "Parent" has the same meaning as in 17 CFR 240.12b-2 (1 April 1996 Edition).

(nn) "Participant" means a person who has received confirmation of eligibility and has remitted payment of the application fee.

(oo) "Person" means an any individual, corporation, general or limited partnership, limited liability company or partnership, joint venture, association, trust, unincorporated organization, governmental authority, municipal corporation or any other legal entity.

(pp) "Petroleum" means oil or petroleum of any kind and in any form, including, without limitation, crude oil or any fraction thereof, petroleum, gasoline, kerosene, fuel oil, oil sludge, used oil, substances or additives utilized in the refining or blending of crude petroleum or petroleum stock, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, and mixtures of natural gas and synthetic gas.

(qq) "Pollutant" includes but is not limited to dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials,

radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste. [Note: Some materials that meet the definition of "pollutant" may not meet the criteria to be considered a solid waste, whether hazardous or nonhazardous.]

(rr) "Post-Remediation Costs" include all costs to which all of the following apply:

1. Are incurred after issuance of the Letter of Concurrence with Conditions for, or with respect to, the investigation, assessment, cleanup, remediation, control, or removal of contaminants resultant from, in whole or part, a preexisting release at the qualifying property that were identified and addressed in reports, assessments, or plans approved by the Department to demonstrate compliance with the risk reduction standards from the qualifying property.
2. Are not incurred as a result of non-compliance with the applicable response action or land use controls as described in the environmental covenant by the applicant.

(ss) "Preexisting release" means a release which occurred prior to an applicant's application for a limitation of liability pursuant to 335-15-4-.02.

(tt) "Property" is synonymous with "facility" and includes any or all of the following:

1. Any land, building, structure, installation, equipment, pipe or pipeline, sewer or publicly owned treatment works, pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, or storage container.
2. Any site or area where a hazardous waste, hazardous constituent, hazardous substance or petroleum product has been deposited, discharged, stored, disposed of, placed, or has otherwise come to be located.

(uu) "Prospective developer" means any person who desires to buy or sell a brownfield property for the purpose of developing or redeveloping that brownfield property and who did not cause or contribute to the contamination at the brownfield property.

(vv) "Prospective purchaser" means a person who intends to purchase a qualifying property.

(ww) "Qualifying property" means a property which meets the criteria of 335-15-2-.01(1).

(xx) "Relatives" means persons who are, or formerly were, related by marriage, adoption, or by consanguinity.

(yy) "Release" means any intentional or unintentional act or omission resulting in the spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including without limitation, the abandonment or discarding of barrels, containers, and other closed receptacles, of any solid waste, hazardous waste, hazardous constituent, petroleum products, or hazardous substance.

(zz) "Remediation" is synonymous with "cleanup".

(aaa) "Remediation Costs" includes all costs incurred for, or in relation to, the investigation or cleanup of, equitable relief relating to, or damages resultant from, in whole or in part, either of the following:

1. A pre-existing release at a qualifying property, including any liability to the state or any other person for the cleanup of the property under Code of Alabama 1975, Title 22 Chapters 22 and 30A and 335-6, 335-13, and 335-14.

2. A new release of a substance, constituent, or material which had been a part of a pre-existing release at the property, unless the new release results from non-compliance with an approved voluntary property assessment plan or voluntary cleanup plan or from the negligent, wanton, willful, or intentional conduct of the applicant.

3. These shall not include any costs incurred as a result of the requirements in 335-4 and 335-16.

(bbb) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediment) and debris that contain hazardous substances which are managed for implementation of the cleanup.

(ccc) "Residential" means single family residences of one or more dwelling units, including accessory land, buildings or improvements incidental to such dwellings.

(ddd) "Response Action" means those actions taken in the event of a release or threatened release of a hazardous waste, hazardous constituent, petroleum product, or hazardous substance into the environment to remove, prevent, or minimize the release of hazardous waste, hazardous constituents, petroleum products, or hazardous substances so that they do not pose a threat to public health and/or the environment.

(eee) "Responsible Person" means, except as otherwise provided, any person who has contributed or is contributing to a release of any hazardous waste, hazardous constituent, or hazardous substance at a property. This term specifically includes those persons described in §§107(a)(1) through 107(a)(4) of the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C., §9601 et seq. This term specifically excludes a responsible person applicant on or before the effective date of the Brownfield Remediation Reserve Fund Act of 2023 (Act Number 2023-356, 2023 Regular Session) for those matters addressed in the assessment plan and those persons described in §107(b) of the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C., §9601 et seq. as amended on January 11, 2002.

(fff) "Responsible Person Applicant" means any owner or operator who makes application and submits an assessment plan for a qualifying property into the Voluntary Cleanup Program and who has been accepted by and whose Voluntary Property Assessment Plan or Voluntary Property Assessment Report has been approved by the Department on or after the effective date of the Brownfield Remediation Reserve Fund Act of 2023 (Act Number 2023-356, 2023 Regular Session).

(ggg) "Restricted use" means any use other than unrestricted residential use.

(hhh) "Risk assessment" means a written site-specific evaluation of the risks to human health and the environment posed by conditions at the site. The process includes a written site-specific evaluation, encompassing, but not limited to, the identification of the contaminants present in the environmental media, the assessment of exposure and exposure pathways, the assessment of the toxicity of the contaminants present, the characterization of risks to humans, and the characterization of the impacts or risks to the environment.

(iii) "Site" means any property or portion thereof, as agreed to and defined by the participant and the Department, which contains or may contain contaminants being addressed under this program.

(jjj) "Source" means the point of origin of a suspected contaminant.

(kkk) "Subsidiary" has the same meaning as in the 17 CFR 240.12b-2 (1 April 1996 Edition).

(lll) "Unrestricted residential use" means the designation of acceptable future use at a site for any and all activities associated with residential use at which the remediation

levels, based on either background or standard residential exposure factors, shall have been attained throughout the site in all media.

(mmm) "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use, is contaminated by physical or chemical impurities.

(nnn) "Upper-bound lifetime cancer risk level" means a conservative estimate of the probability of one excess cancer occurrence in a given number of exposed individuals.

For example, a risk level of 1×10^{-6} equates to the possibility of one additional cancer occurrence beyond the number of occurrences that would otherwise occur in one million exposed individuals, beyond the number of occurrences that would otherwise occur. Upper-bound lifetime cancer risk level is based on an assumption of continuous, lifetime exposure and is likely to overestimate true risk.

(ooo) "Voluntary Cleanup Plan" means any plan approved under 335-15-4-.04 that describes in sufficient detail those actions planned to satisfy the cleanup requirements for the qualifying property.

(ppp) "Voluntary Cleanup Properties Inventory" means a compiled list updated by the Department pursuant to 335-15-6-.03(1) for all qualifying properties for which a property assessment plan or cleanup plan has been approved.

(qqq) "Voluntary Cleanup Report" means a final report of the cleanup of the entire facility in accordance with the specifications in the approved cleanup plan.

(rrr) "Voluntary Property Assessment Plan" means a plan that has been approved by the Department under 335-15-4-.03 and describes in sufficient detail those actions planned to perform a risk assessment or identify applicable cleanup requirements for the property.

(sss) "Voluntary Property Assessment Report" means a report of the assessment and findings from a Voluntary Property Assessment which may include a recommendation for applying cleanup standards to the property.

(ttt) "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

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CHAPTER 335-15-2
PARTICIPATION

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335-15-2-.01 Property Eligibility Criteria.

(1) Eligibility. In order to be considered a qualifying property for participation in the voluntary cleanup program established pursuant to 335-15-2, a property shall, unless granted a variance under 335-15-2-.03, meet the following criteria:

(a) It must not be listed on the federal National Priorities List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C., §9601, et seq.

(b) It must not be currently undergoing response activities required by an order of the Department.

(c) It must not be currently undergoing response activities required by an order of the United States Environmental Protection Agency issued pursuant to the provisions of the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C., §9601 et seq.

(d) It must not be a hazardous waste treatment, storage, or disposal facility subject to the permitting requirements of 335-14-8-.01 through 335-14-8-.08.

(2) Letter of Eligibility.

(a) Prior to submission of an application, a "Letter of Eligibility" for the property may be issued by the Department upon request and accompanied by the appropriate fee. Such a request shall be made in the form of a letter certifying that all of the requirements of 335-15-2-.01(1)(a) through (d) have been met. The "Letter of Eligibility" shall remain valid for a period of one year from the date of issuance.

(b) If the property does not meet all eligibility requirements or will otherwise require a variance for entrance into the program, a letter stating the reason(s) for denial will be sent to the person requesting the "Letter of Eligibility".

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335-15-2-.02 Application Participation Criteria.

(1) To qualify for participation in the voluntary cleanup program as provided in 335-15-2, an applicant shall not, unless granted a variance under 335-15-2-.03, be in substantive violation of any order, judgment, statute, rule, or regulation subject to the enforcement authority of the Department, or the United States Environmental Protection Agency with respect to the qualifying property.

(2) To participate in the Voluntary Cleanup Program an applicant shall:

(a) Submit to the Department a complete application with applicable registration fee as cited in 335-1-6-.07, and

(b) Pay to the Department all costs incurred by the Department's oversight of the voluntary cleanup as specified in 335-1-6-.07 Fee Schedule H.

Author: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; Crystal L. Collins

Statutory Authority: Code of Ala. 1975, §§22-30E-6, 22-30E-7.

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335-15-2-.03 Variations Criteria.

(1) Property eligibility variance. The Department may, subject to the following criteria, grant a variance from the eligibility requirements contained in 335-15-2-.01. A variance may be granted if:

(a) The requirements of 335-15-2-.01 would render the property ineligible for cleanup under 335-15-2;

(b) No other qualified person has applied to participate in the voluntary cleanup program at the subject property; and

(c) It is determined that:

1. Such property ineligibility would result in the continuation of a condition that poses or could pose a threat to human health and/or the environment;

2. Compliance with a property eligibility requirement will not provide for a cost-effective response and the proposed voluntary cleanup plan will achieve results that are equivalent to those required through the use of a Department approved method or approach;

3. The Department would otherwise be required to perform the necessary cleanup on an abandoned site using funds from the Alabama Hazardous Substance Cleanup Fund, as described in Code of Alabama 1975, §22-30A-3, and the Department would be unable to recover the cost of the cleanup as provided in Chapter 30A; and

4. In the case of a facility subject to the permitting, closure, post-closure, or corrective action requirements of Code of Alabama 1975, §§22-30-12 and 22-30-16, the cleanup will be conducted in a manner consistent with the requirements of any applicable regulations and permits issued thereunder. Participation in the voluntary cleanup program may be used to expedite investigation and cleanup at sites, but shall not serve to limit the applicability or enforcement of any applicable requirements at facilities.

(2) Applicant eligibility variance. The Department may, subject to the following criteria, grant a variance from the eligibility requirements contained in 335-15-2-.02. A variance may be granted if:

(a) The requirements of 335-15-2-.02 would render the applicant ineligible for cleanup under 335-15-2,

(b) No other qualified person has applied to participate in the voluntary cleanup program at the subject property, and,

(c) It is determined that:

1. Such ineligibility would result in the continuation of a condition that does or could pose a threat to human health and/or the environment.

2. Compliance with an applicant eligibility requirement will not provide for a cost-effective response and the proposed voluntary cleanup plan will achieve results equivalent to those required through the use of a Department approved method or approach.

3. The Department would otherwise be required to perform the necessary cleanup on an abandoned site using funds from the Alabama Hazardous Substance Cleanup Fund, as described in Code of Alabama 1975, §22-30A-3, and the Department would be unable to recover the cost of the cleanup as provided in Chapter 30A.

(3) Variance request. The request will include such information as the applicant believes is relevant to the issuance of a variance and at a minimum should indicate why the variance may be necessary. A request for a variance, whether for the applicant or the property, shall be included in the application package.

(4) Variance conditions and withdrawals. The Department may place conditions upon the granting of a variance as it deems appropriate including, without limitation, a provision relating to the time all or a portion of the cleanup must be completed. If the applicant fails to comply with the conditions, the Department may modify or withdraw the variance, with the withdrawal subject to the Department's administrative appeals process.

(5) Exclusion. The Department shall not grant any variance from the qualification criteria for the limitation of liability as described in 335-15-4-.02(1).

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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION
ADMINISTRATIVE CODE

CHAPTER 335-15-3
APPLICATION

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335-15-3-.01 **Purpose.**

To establish procedures necessary for the submission of a complete and accurate application package thereby facilitating timely and efficient processing and review. Application packages shall be submitted with the appropriate fees as specified in ADEM Admin. Code R. 335-1-6 (See Fee Schedule H). Applications may be submitted using ADEM Form 521 (Voluntary Cleanup Program Application). As appropriate, the application package may be submitted individually or in conjunction with the Voluntary Assessment Plan or Report, Voluntary Cleanup Plan or Report, or the Certification of Compliance.

Author: Lawrence A. Norris; Stephen A. Cobb; Vernon H. Crockett; Sonja B. Favors; Crystal L. Collins; M. Gavin Adams; Austin R. Pierce; Pamela L. Monaghan

Statutory Authority: Code of Ala. 1975, §22-30E-5.

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335-15-3-.02 **Application Package Submittal.**

(1) Application Requirements. An application package submitted to the Department under 335-15-3 shall, at a minimum provide the following information in the form specified by the Department:

(a) Applicant description.

1. Full name of applicant;
2. Applicant's complete mailing address; and
3. Applicant's telephone number.

(b) The location of the property.

1. Street address and zip code;
2. Municipality or community
3. County;
4. United States Geological Survey (USGS) 7.5 minute quadrangle with the site delineated;
5. Longitude and latitude; and
6. Legal description of the property.

(c) Current ownership description.

1. Full name of owner;
2. Year(s) of ownership;
3. Current owner(s) name and title;
4. Current owner(s) address;
5. Current owner(s) telephone number; and
6. Current owner(s) email address.

(d) Recent available history of the site. The application shall include a description, including time frames, of the current and past usage of the property, to the extent known or reasonably ascertainable.

(e) Property features. The application shall include the results of a property inspection, to include the presence of various property structures and features. The property inspection shall state the date of the inspection, and the name of the person conducting the inspection.

(f) Maps

1. Legible property maps describing the locations of all units, structures, features, and potential sources of contamination. The maps shall be scaled and include:

(i) Location of all water bodies, ponds, springs, rivers and streams (including subterranean), estuaries, and wetlands;

(ii) Land use of contiguous properties and boundary lines;

(iii) Engineering structures such as drainage ways, diversion ditches, drain tiles, manholes, water lines, and sewers;

(iv) Highways, roads, roadcuts, paved or black-topped areas, and railroad lines;

(v) Outcrops, faults, caves, and sinkholes; and

(vi) Any other structures found during the preparation of the application.

2. The maps must include:

(i) An appropriate bar scale;

(ii) A north arrow; and

(iii) A legend.

(g) If applicable, request for a variance including such information as the applicant believes is relevant to the issuance of a variance under 335-15-2-.03(2).

(h) If applicable, a list of all orders, citations, and notices of violation to the applicant for any violations or alleged violations of environmental permits, laws and/or regulations. The applicant shall include a brief description of the violation(s) and the terms and status of any required remedial action(s) associated with the violations.

1. Any person signing a document under 335-15-3 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, 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, including the possible revocation of the limitations of liability and removal from the program."

2. Reserved.

(i) Provide any other information requested by the Department. The Department will review the application to verify that:

1. The application is complete; and

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2. The applicant and the site meet the eligibility criteria set forth in 335-15-2-.01 and 335-15-2-.02 or is entitled to a variance as set forth in 335-15-2-.03.

(2) Property Use. The applicant shall be solely responsible for ensuring that proposed use of the property will comply with all applicable zoning requirements

Author: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; Pamela W. Luckie; Pamela L. Monaghan

Statutory Authority: Code of Ala. 1975, §§22-30E-2, 22-30E-4, 22-30-19, 22-30-20.

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335-15-3-.03 Application Processing.

(1) Application Review. The Department shall review each application submitted for compliance with 335-15-3-.03(2). Upon completion of the initial review, the Department shall notify the applicant in writing whether the application is complete or deficient. If the application is incomplete or inaccurate, the Department:

(a) Shall request from the applicant any and all information necessary to correct the noted deficiencies;

(b) Shall notify the applicant of a date for submitting the necessary information; and

(c) May request any information necessary to clarify, modify, or supplement previously submitted material.

(2) Approval of Application. The Department shall approve an application once it is determined to be complete. An application is complete when the Department receives all required information identified in 335-15-3-.02.

(3) Disapproval of Application. An application may be disapproved if:

(a) It is ineligible under the Alabama Land Recycling and Economic Redevelopment Act Code of Ala. 1975, §22-30E and/or 335-15, or

(b) The applicant fails or refuses to correct deficiency(ies) in a timely manner.

(4) Non-Refundable Application Fee. The applicant is not entitled to a refund of the application fee for an application disapproved pursuant to 335-15-3.

(5) Application Resubmittal. An application that has been disapproved pursuant to 335-15-3-.03(2) may be submitted a second time without submission of an additional application fee. If an application is disapproved a second time, any subsequent resubmittal shall be accompanied by the appropriate application fee.

(6) Application Modification. If the applicant determines that any elements of an approved application must be modified, the applicant shall modify the approved application and submit the proposed modification for approval along with the appropriate fees.

Author: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; Vernon H. Crocket; Sonja B. Favors; Pamela W, Luckie; Crystal L. Collins

Statutory Authority: Code of Ala. 1975, §§22-30E-2, 22-30E-4.

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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION
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CHAPTER 335-15-4
TECHNICAL INFORMATION

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335-15-4-.01 Purpose.

Establishes criteria for the submission of voluntary property assessment plans and other technical information, liability limitations, assessments, plans, cleanup requirements, and certification of compliance.

Author: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; Sonja B. Favors; Austin R. Pierce; Pamela L. Monaghan

Statutory Authority: Code of Alabama, 1975, §22-30E-9.

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335-15-4-.02 Limitation Of Liability Qualifications.

(1) Limitation of liability criteria. To qualify for a limitation of liability as provided in the Code of Alabama 1975, §§ 22-30E-9(a) and 22-30E-10(b), an applicant shall meet all the following criteria:

- (a) The applicant shall not be a responsible person, as defined in 335-15-1-.02, at the qualifying property.

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(b) Where the applicant is an individual, the individual shall not:

1. Be a relative by blood within the third degree of consanguinity or by marriage; or
2. Be an employee, shareholder, officer, or agent; or otherwise be affiliated with a current owner of the subject property or any responsible person on the subject property.

(c) Where the applicant is a corporation or other legal entity, the corporation must not:

1. Be a current or former subsidiary, division, parent company, or partner of a current owner; or
2. Be the employer or former employer of the current owner; or
3. Be any responsible person on the subject property.

(d) The limitation of liability provided by the Code of Alabama 1975, §§22-30E-9(a) and 22-30E-10 shall be contingent upon the applicant's good faith implementation of the voluntary property assessment and/or voluntary cleanup plan as approved by the Department. Such limitation of liability shall not be applicable to any activities conducted on the qualifying property before the Department's approval of the voluntary property assessment plan, cleanup plan, or concurrence with a certification of compliance, whichever occurs first.

(2) Inability to meet limitation of liability criteria. Applicants who do not meet the criteria in 335-15-4-.02(1), shall qualify only for a limitation of liability upon acceptance by the Department of the certification of compliance for cleanup of the site.

(3) Revocation of limitation of liability. If the Department determines the assessment or cleanup is not being implemented in accordance with the approved plan, it will notify the applicant and give reasonable opportunity to correct the deficiency. Failure to correct noted deficiencies shall result in the revocation of the limitation of liability protection afforded by the Alabama Land Recycling and Economic Redevelopment Act.

(4) Fiduciary limitation of liability. A lender, including one serving as a trustee, personal representative, or in any other fiduciary capacity in connection with a loan, or a lender holding evidence of ownership of a qualifying property primarily to protect a security interest, or as a result of foreclosure or a deed in lieu of foreclosure of a security interest, is entitled to

the liability protection established in the Code of Alabama 1975, §22-30E-9 if the lender meets each of the following requirements:

(a) The lender has not caused or contributed to a release of a contaminant at the qualified property;

(b) The lender seeks to sell, transfer, or otherwise divest the qualifying property at the earliest time; and

(c) The lender has not divested the borrower of, or otherwise engaged in, decision-making control of assessment or cleanup activities at the qualifying property or operations at the qualifying property or undertaken management activities beyond those required to protect its financial interest while making a good faith effort to sell the qualifying property;

(5) Extension of Limitation of Liability. The limitation of liability provided by the Code of Alabama 1975, §22-30E-9 and 22-30E-10 shall extend to the heirs, assigns, and designees of the person to whom such limitation of liability is granted; provided, however, that, except as may be provided by the Code of Alabama 1975, §22-30E-9(a), §22-30E-9(f) or §22-30E-9(g), such extension of the limitation of liability shall not operate to absolve from liability any person deemed to be a responsible person on the qualifying property.

(6) Departmental Response to Release. Nothing in 335-15-4 shall limit the authority of the Department to take action in response to any release or threat of release of regulated substances.

(7) Preexisting Contamination or Release Reporting. As provided in the Code of Alabama, 1975 §22-30E-4, the reporting of preexisting contamination or a preexisting release detected during the course of due diligence or site assessment activities to the Department, provided that any release reporting obligations shall be co-extensive with federal release-reporting obligations.

(8) Preexisting And New Release Liability. As provided in Code of Alabama, 1975 §22-30E-8 and §22-30E-10 upon the first to occur of the Department's approval of a voluntary property assessment plan, approval of a voluntary cleanup plan, or concurrence with the certification of compliance, with respect to a qualifying property, a responsible person applicant or an applicant shall be fully discharged and released from any and all liability to the state or to any other person, including any successor in interest to the applicant, with respect to the qualifying property for post-remediation costs incurred in connection with, equitable relief relating to, or damages resultant from, in whole or in part, a preexisting release at the qualifying property.

(9) Regulatory Compliance and Limitation of Liability. If, during the course of the assessment and or remediation process, the site becomes an active industrial facility, the facility will then be

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responsible for maintaining compliance with all applicable state and federal regulations. The limitation of liability provided in 335-15-4-.02(1), 335-15-4-.02(4), and 335-15-4-.02(8) does not extend to:

(a) Release(s) as a result of new industrial activity occurring during the assessment and, or remediation phase of the cleanup,

(b) Activities not described in the voluntary cleanup assessment plan or the voluntary cleanup work plan(s); or

(c) Release(s) that occur on the qualifying property after Departmental acceptance of the certification of compliance as a result of noncompliance with the applicable response action or land use controls within the environmental covenant by the applicant or successor in interest to the applicant.

Author: Lawrence A. Norris; Stephen A. Cobb; Sonja B. Favors; Pamela L. Monaghan; Crystal L. Collins; Pamela W. Luckie; Lynn T. Roper

Statutory Authority: Code of Alabama, 1975, §§22-30E-4, 22-30E-8, 22-30E-9, 22-30-10.

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335-15-4-.03 Voluntary Property Assessment Plans.

(1) Submission.

(a) After acceptance of the application by the Department as required in 335-15-3-.03, the applicant shall submit for approval, a complete and comprehensive Voluntary Property Assessment Plan for the site,

(b) If a property assessment has already been performed, a complete and representative Voluntary Property Assessment Report shall be submitted to the Department for review in accordance with 335-15-4-.03(8) (b).

(2) Content. A Voluntary Property Assessment Plan submitted by an applicant shall describe in sufficient detail those actions planned to develop the information necessary to perform a risk assessment or identify applicable cleanup standards for the qualifying property utilizing requirements found in the Alabama Risk-based Corrective Action Guidance (ARBCA) Manual or other appropriate risk-based corrective action principles through the appropriate implementation of applicable response actions or land

use controls. The plan should describe the methods to be used to determine the type(s) and the amount(s) of any contamination including the delineation of all soil and groundwater contamination discovered or known to exist within the qualifying property boundaries or portions thereof. Information previously submitted in the application package need not be resubmitted unless, during the assessment phase, information is discovered which is contrary to that information in the application package. Information submitted in the Voluntary Property Assessment Plan shall be submitted in a format consistent with the Alabama Environmental Investigation and Remediation Guidance (AEIRG).

(a) A Voluntary Property Assessment Plan submitted by a non-responsible person must delineate the horizontal and vertical extent of contamination in groundwater on-site only for the qualifying property. Such delineation of groundwater contamination shall be contained in a written report authored, signed and sealed by a qualified professional geologist or engineer licensed in the State of Alabama.

(b) A Voluntary Property Assessment Plan submitted by a responsible person applicant for a qualifying property may focus on known contaminants and must delineate the full vertical extent of groundwater contamination and horizontal extent to the property boundary within the qualifying property boundary or portions thereof. Such delineation of groundwater contamination shall be contained in a written report authored, signed and sealed by a qualified professional geologist or engineer licensed in the State of Alabama.

(3) Approval. The Department shall approve a complete Voluntary Property Assessment Plan within 60 days of submittal. The plan shall be considered approved if the Department fails to act within this timeframe.

(4) Implementation. Upon approval of the Voluntary Property Assessment Plan, the Department shall specify a time within which the applicant shall implement the approved Voluntary Property Assessment Plan. The applicant shall implement the plan in accordance with the specified schedule.

(5) Loss of Limitation of Liability. If the Department determines activities at the property are not being implemented in accordance with the approved Voluntary Property Assessment Plan, it will notify the applicant and give a reasonable opportunity to remedy the deficiencies. Failure to correct deficiencies will result in the loss of liability protections provided by the Code of Alabama 1975, §22-30E-10. The applicant will be provided with written notification specifying the basis for making the determination.

(6) Modification. If the applicant determines that any element of an approved Voluntary Property Assessment Plan must be modified in order to develop the information necessary to perform a risk

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assessment or identify applicable cleanup requirements for the qualifying property, the applicant shall modify the approved plan and submit the proposed modification for approval.

(7) Termination. If the applicant determines that any element of an approved Voluntary Property Assessment Plan must be modified in order to terminate activities at the property, the applicant shall notify the Department and obtain approval of the proposed modification. Approval may be withheld only if the requested modification to terminate assessment activities would increase the risk to human health and the environment posed by the conditions at the property within a specified time.

(8) Voluntary Property Assessment Report.

(a) An applicant shall, upon completion of those activities specified in the Voluntary Property Assessment Plan, submit to the Department a report of the assessment and findings from the assessment, which may include a recommendation for applying cleanup requirements to the property.

(b) If an assessment has been conducted prior to submission of an application, all pertinent information from that assessment shall be incorporated in the Voluntary Property Assessment Report.

(c) When a Voluntary Property Assessment Report proposes an Environmental Covenant as the appropriate remedy for the site, the Department will provide for public comment in accordance with 335-15-6-.02(1). The Voluntary Property Assessment Report and the draft Environmental Covenant shall be included in the Public Notice.

Author: Lawrence A. Norris; Stephen A. Cobb; James L. Bryant; Vernon H. Crockett; Sonja B. Favors; Lynn T. Roper; M. Gavin Adams; Austin R. Pierce; Pamela L. Monaghan; Crystal L. Collins

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335-15-4-.04 **Voluntary Cleanup Plans**.

(1) Submission. An acceptable Voluntary Cleanup Plan shall describe in sufficient detail those actions necessary to return the property to residential quality use, or at a minimum include

restrictions such as land use controls, if appropriate, to satisfy the cleanup requirements for the qualifying property.

(2) Content. The plan must identify those steps necessary to perform approved cleanup for the site. At a minimum, the cleanup plan must include:

(a) A description of the remediation at each area of known contamination;

(b) A description of the conduct of the cleanup at the facility;

1. A detailed description of the methods to be used during cleanup, including but not limited to, removing, transporting, treating, storing, or disposing of all remediation waste, identification of the type(s) of off-site solid and/or hazardous waste management unit(s) to be used, if applicable.

2. A detailed description of the steps needed to remove or decontaminate all hazardous residues and contaminated containment system components, equipment, structures, and soils during cleanup including, but not limited to:

(i) Procedures for cleaning equipment and removal of contaminated soils;

(ii) Methods for sampling and testing surrounding soils,

(iii) Criteria for determining the extent of remediation necessary to satisfy the cleanup requirements, and

(iv) An estimate of the expected year of cleanup for facilities that use trust funds to demonstrate financial assurance under 335-15-5-.02(b).

3. A detailed description of other activities necessary during or after the cleanup period to ensure compliance with the cleanup performance requirements. This description may include operation and maintenance, such as, but not limited to groundwater monitoring, leachate collection, and run-on and run-off control;

4. A schedule for cleanup of known areas of contamination. At a minimum, the schedule must include the total time necessary to remediate each known area of contamination and the time required for cleanup activities;

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5. Provide proof of financial assurance in accordance with 335-15-5; and

6. An estimate of the expected year of cleanup for facilities that use trust funds to demonstrate financial assurance under 335-15-5-.02(b).

(c) An estimate of the maximum inventory of remediation wastes/contaminated media on-site during cleanup operations.

(d) A Voluntary Cleanup Plan submitted by a responsible person must provide for remediation of all contamination described in the property assessment report whether on-site or off-site beyond the property boundary. (e) A Voluntary Cleanup Plan submitted by a non-responsible party must provide for remediation of all contamination described in the property assessment report on-site only.

(e) A Voluntary Cleanup Plan submitted by a non-responsible person or a responsible person applicant must provide for remediation of the contamination described in the property assessment report within the qualifying property boundaries or portions thereof.

(3) Modifications. The applicant may modify the approved cleanup plan at any time prior to the notification of cleanup by submitting a written request to the Department. The request for modification approval must include a copy of the amended cleanup plan.

(a) The applicant must modify the cleanup plan whenever:

1. Changes in operating plans or facility design affect the cleanup plan;

2. There is a change in the expected year of cleanup, if applicable;

3. Unexpected events encountered during cleanup require a modification of the cleanup plan; and/or

4. The applicant determines that it necessary or advisable to make changes and/or deviations in cleanup requirements that affect either cleanup activities or the degree of remediation initially proposed.

(b) An applicant with an approved cleanup plan shall submit request for modification to the Department at least 60 days prior to the proposed change in facility design or operation, or no more than 30 days after an unexpected event has occurred which has affected the cleanup plan.

(c) If at any time an applicant determines that any element of an approved voluntary cleanup plan must be modified in order to terminate activities at the property, the applicant shall notify the Department and obtain approval of the proposed modification which may be withheld only if the requested modification would increase the risk to human health and the environment posed by conditions at the property.

(4) Processing.

(a) Within 60 days of submittal, the Department shall either approve a complete or modified Voluntary Cleanup Plan, or request corrections to or disapprove the Voluntary Cleanup Plan. The plan shall be considered approved if the Department fails to act within this timeframe.

(b) The Department shall review for completeness every cleanup plan submitted for approval as required by 335-15-4-.04(4). Upon completing the review, the Department shall notify the applicant in writing whether the plan is complete. If the plan is incomplete, the Department:

1. Shall list the information necessary to make the plan complete;
2. Shall specify in the notice of deficiency a date for submitting the necessary information; and
3. Shall request any information necessary to clarify, modify, or supplement previously submitted material.
4. Disapprove the plan if requested information is not submitted in a timely fashion.

(c) Once a cleanup plan is determined to be complete, the Department will provide for public comment in accordance with 335-15-6-.02(1).

(5) Implementation of Voluntary Cleanup Plan.

(a) Upon the Department approval of a Voluntary Cleanup Plan, the applicant shall begin implementation. The Department's approval of a Voluntary Cleanup Plan shall in no way be construed as a guarantee, promise, or assurance that the Department will concur with the applicant's Certification of Compliance with the cleanup requirements.

(b) If at any time the applicant or the Department determines that any element of an approved Voluntary Cleanup Plan must be modified in order to develop the information necessary to perform a risk assessment or identify applicable cleanup standards for the qualifying property, the applicant shall

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modify the approved plan and obtain approval of the proposed modification.

(c) An applicant shall retain records of any test results, waste analyses, and determinations made in accordance with the Voluntary Property Assessment Plan and/or the Voluntary Property Cleanup Plan, as well as records of off-site disposal locations, waste types and quantities, for a period of three years.

(d) The applicant shall submit proof of financial assurance to implement the Voluntary Cleanup Plan, in such form as specified by the Department in 335-15-5-.02.

(6) Removal of Wastes and Decontamination or Dismantling of Equipment. Nothing in 335-15-4-.04 shall preclude the applicant from the removal of hazardous wastes, constituents, contaminants or pollutants and decontamination or dismantling equipment in accordance with an approved cleanup plan either before or after notification of cleanup, provided all appropriate manifesting records are maintained.

(7) Voluntary Cleanup Report.

(a) Submission. Within 60 days of completion of the cleanup of the entire site, the applicant shall submit to the Department, by registered mail, a report that the site, has been remediated in accordance with the specifications in the approved cleanup plan.

(b) Content. The report must detail the actions performed in accordance with the specifications in the approved cleanup plan. At a minimum, the cleanup report must include:

1. The information required by 335-15-4-.04(2).
2. Certification of Compliance.

(i) Within 60 days of completion of cleanup or each area of contamination and/or within 60 days of completion of cleanup of the entire site, the applicant shall submit to the Department, by registered mail, a Certification of Compliance that the area of contamination, unit, or site, as applicable, has been remediated in accordance with the specifications in the approved cleanup plan

(ii) Certain information required by 335-15 involves the practice of engineering and/or land surveying, as those terms are defined in the Code of Alabama 1975, §§34-11-1 to 34-11-37; and/or the practice of geology, as that term is defined in Code of Alabama 1975, §§34-41-1 to 34-41-24. It is the responsibility

of any person preparing or submitting such information to ensure compliance with these laws and any regulations promulgated thereunder. All submissions, or parts thereof, which are required by State law to be prepared by a licensed engineer, land surveyor, or geologist, must include the engineer's, land surveyor's, and/or geologist's signature and/or seal, as required by the applicable licensure laws.

3. Restricted Use Property. For those properties that are cleaned up to requirements less stringent than those required for unrestricted residential use, the property owner shall comply with the requirements of 335-15-6-.03(3) within 60 days of the submission of the Certification of Compliance.

(8) Site Cleanup Prior to Submission of the Application. If site cleanup was conducted prior to submission of the application, all pertinent information from the original assessment and cleanup plans shall be incorporated into a Voluntary Property Assessment and Cleanup Report. The site is required to meet all requirements of 335-15 to be eligible for limitation of liability provisions cited in the Alabama Land Recycling and Economic Redevelopment Act.

Author: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; James L. Bryant; Vernon H. Crockett; Sonja B. Favors; Pamela W. Luckie; Crystal L. Collins; Lynn T. Roper; M. Gavin Adams; Austin R. Pierce; Pamela L. Monaghan

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335-15-4-.05 Cleanup Requirements.

(1) Cleanup levels.

(a) The participant, with the concurrence of the Department, shall consider impacts to human health and the environment. In establishing cleanup standards, cleanup levels may be based on specific requirements of relevant environmental laws or regulations (e.g., Clean Water Act, Clean Air Act, TSCA, RCRA, CERCLA, et al.), derived using the procedures outlined in Section 300.430(e)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300), and/or based upon the results of a site-specific risk assessment.

(b) The Department may set cleanup levels that reflect current and future use scenarios for the property as follows:

1. A site shall be deemed to have met the requirements for unrestricted use if the cleanup levels are derived in a manner consistent with Department or Environmental Protection Agency guidelines for assessing human and environmental health risks from hazardous constituents.

2. For sites that do not achieve the unrestricted use classification, restrictions on site use shall be applied to achieve cleanup standards. Restrictions shall include, but are not limited to, land use controls. The restrictions imposed upon a site shall be media-specific and may vary according to site-specific conditions.

(2) Remedial Action Measures. Cleanup levels for all media contaminated with hazardous constituents or hazardous wastes, that the applicant or the Department has reason to believe may have been released at the site shall be determined in accordance with 335-15-4-.05(3). Should the concentration of hazardous constituent(s) in an aquifer, surface water, soil, sediment or air exceed its cleanup level, the Department may require the voluntary cleanup plan to include measures as necessary to protect human health and the environment.

(3) Risk Assessment. Cleanup levels may be based upon a risk assessment that considers the site and all surrounding areas that may be impacted. This risk assessment must reflect current and future use scenarios.

(4) Property Use Considerations.

(a) A site shall be deemed to have met the requirements for unrestricted residential use if the cleanup level(s) satisfy the following criteria:

1. Is derived in a manner consistent with ADEM/EPA guidelines for assessing human and environmental health risks from hazardous constituents;

2. Is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act (TSCA) Good Laboratory Practice Standards (40 CFR Part 792, as amended), or equivalent;

3. Represents for human health cleanup levels to address carcinogens, a cumulative concentration associated with an excess upper bound lifetime cancer risk range of between 1×10^{-4} and 1×10^{-6} for carcinogens due to continuous constant lifetime exposure; and

4. Represents for human health cleanup levels to address noncarcinogens, a concentration to which the human population (including sensitive subgroups) could be exposed on a daily basis that is without appreciable risk of deleterious effects during a lifetime.

(b) Applies appropriate restrictions on future use for sites that do not achieve the unrestricted use classification. Restrictions shall include, but are not limited to, institutional and/or engineering controls. The restrictions imposed upon a site will be media-specific and may vary according to site-specific conditions. All use restrictions shall be described in the Certification of Compliance.

Author: Fred A. Barnes; Keith N. West, Lawrence A. Norris; M. Gavin Adams; Austin R. Pierce; Pamela L. Monaghan; Crystal L. Collins

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335-15-4-.06 Certificate Of Compliance-Letter Of Concurrence.

(1) Certification of Compliance. When all requirements of an approved cleanup plan have been completed, the applicant shall submit to the Department a Certification of Compliance. A Certification of Compliance may also be submitted when an assessment based on an approved Voluntary Property Assessment Plan has been completed and no contamination discovered. The Department shall review all reports and the required Certification of Compliance submitted under 335-15-4-.06. The applicant or eligible successor must satisfactorily maintain the engineering controls, remediation systems, or if non-permanent institutional controls are utilized pursuant to an agreement, the Department may issue the applicant a "Letter of Concurrence" with conditions. The Department may authorize an applicant to conduct a phased response only when, in the Department's evaluation, the schedule is reasonable.

(2) "Letter of Concurrence". Upon concurrence by the Department, the Department shall issue to the applicant "Letter of Concurrence".

(3) "Letter of Concurrence with Conditions". For partial response actions, a "Letter of Concurrence" with conditions shall pertain only to the partial response action area and shall include a legal description of that area.

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(4) Deed Records. The applicant shall comply with the requirements of 335-5.

(5) Revocation. The "Letter of Concurrence" may be revoked by the Department in the event that contamination posing an unacceptable risk to human health and the environment is discovered on site, or discovery is made that the submitted certification of compliance was based on information that was materially false, inaccurate or misleading.

(a) The applicant shall be notified in writing by certified mail of the proposed revocation.

(b) The applicant shall be given an opportunity to respond within 30 days upon receipt of the letter.

(c) Unacceptable response to the revocation letter will result in the reinstatement of any cleared deed notation and/or deed restriction until such time as the property is deemed to be in compliance.

(6) Sovereign Immunity. Issuance of the "Letter of Concurrence" does not constitute a waiver of sovereign immunity.

(7) Release from Liability. Upon the first to occur of the Department's approval of a Voluntary Property Assessment Plan, approval of a Voluntary Cleanup Plan, or concurrence with the submitted Certification of Compliance described in 335-15-4-.06, an applicant who is a non-responsible person or a responsible person applicant, as defined in 335-15-1-.02, at the qualifying property, shall not be liable to the state or any other person, including any successor in interest to the applicant with respect to the qualifying property, for costs incurred in the investigation or cleanup of, or equitable relief relating to, or damages resultant from, in whole or in part, a preexisting release at the qualifying property, including, but not limited to, any liability to the state for the cleanup of the property under Title 22, Chapters 22, 27, 30, 30A, and 35 of the Code of Alabama 1975, or a new release of a substance, constituent, or material which had been part of a preexisting release at the property, unless such new release results from noncompliance with an approved Voluntary Property Assessment Plan or Voluntary Cleanup Plan or from the negligent, wanton, willful, or intentional conduct of the applicant.

Author: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; Sonja B. Favors; Anna M. Ennis; M. Gavin Adams; Austin R. Pierce; Pamela L. Monaghan; Crystal L. Collins; Pamela W. Luckie; Lynn T. Roper

Statutory Authority: Code of Alabama, 1975, §§22-30E-5, 22-30E-9, 22-30E-10.

History: **New Rule:** Filed April 11, 2002; effective May 16, 2002.
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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION
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CHAPTER 335-15-5
FINANCIAL ASSURANCE

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335-15-5-.01 **Purpose.**

To establish minimum standards for the demonstration of financial assurance adequate to cover the cost of the voluntary cleanup. The financial assurance mechanism used must satisfy the following criteria:

- (a) It must ensure funds sufficient to cover the cost of the voluntary cleanup;
- (b) It must provide for availability of funds when needed;
- (c) It must be obtained by the applicant prior to the approval of cleanup activities and maintained throughout the life of those activities, and
- (d) It must be legally valid, binding, and enforceable under Alabama and Federal law.

Author: Fred A. Barnes; Keith N. West; Lawrence A. Norris;
Stephen A. Cobb

Statutory Authority: Code of Ala. 1975, §22-30E-9.

History: New Rule: Filed April 11, 2002; effective May 16, 2002.

Amended: Filed October 21, 2004; effective November 25, 2004.

335-15-5-.02 **Financial Assurance.**

The applicant shall demonstrate proof of financial assurance of his or her ability to implement the Voluntary Cleanup Plan, including operations and maintenance activities, in accordance with r. 335-15-5-.02 for any voluntary cleanup plan that requires operation and maintenance (e.g. groundwater monitoring, groundwater remediation, maintenance of cap, operation of treatment system) for the site following the initial cleanup activity (e.g. removal action, risk assessment, etc.) no later

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than 60 days following approval of the plan. Types of financial assurance include:

(a) Assets of the applicant. A certified financial report demonstrating suitable financial integrity and available resources sufficient to satisfy the projected cleanup cost.

(b) Cleanup trust fund.

1. A cleanup trust fund which conforms to the requirements of 335-15-5-.02(b)2. An applicant must submit an originally signed duplicate of the trust agreement to the Department no later than 30 days following establishment of the trust fund or within 60 days after a change in the current cleanup cost estimate.

2. Payments into the fund shall be made quarterly for short term remedial actions and annually for long term remedial actions. The pay-in-period is equal to one-half of the estimated remedial action period. The first payment must be made at the time the trust fund is established and receipt from the trustee must be submitted by the applicant to the Department no later than 30 days following the payment date. Subsequent payments must be made no later than 30 days after the anniversary date of the first payment. The amount of each payment shall be determined by the following formula:

$$\text{Payment Method} = \frac{CE-CV}{Y}$$

where

CE is the remedial action cost estimate at the time of the payment;

CV is the current value of the trust fund at the time of the payment; and

Y is the number of remaining quarter years for short term cleanup or years for long term remediation in the pay-in-period, at the time of the payment.

3. The applicant may accelerate payments into the trust fund or deposit the full amount of the current remedial action cost estimate at the time the fund is established. However, the value of the fund must be maintained at no less than the value that the fund would have if annual payments were made as specified in 335-15-5-.02(b)2.

4. If during the remedial action period, the value of the trust fund is greater than the total amount of the current remedial action cost estimate, the applicant may

submit a written request to the Department for release of the amount in excess of the current remedial action cost estimate.

5. After the pay-in-period is completed, the Department may approve a release of funds during the remedial action period, if the applicant demonstrates to the Department that the value of the trust fund exceeds the remaining cost of remedial action.

6. The Department will agree to termination of the trust when:

(i) An applicant substitutes alternate financial assurance as specified in 335-15-5-.02(b); or

(ii) The Department releases the applicant from the requirements of 335-15-5-.02(2) in accordance with 335-15-5-.02(6).

(c) Surety bond. An applicant may obtain a surety bond and submit the same to the Department.

(d) Remedial action letter of credit. An applicant may obtain an irrevocable standby letter of credit and submit the same to the Department.

(e) Multiple financial mechanisms. An applicant may establish more than one financial mechanism per site. These mechanisms are limited to those specified in 335-15-5-.02 (a), (b) and (c), respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current remedial action cost estimate. If an applicant uses a trust fund in combination with a surety bond or a letter of credit, the trust fund may be used as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for remedial action of the site.

(f) Release of the applicant from the requirements of 335-15-5-.02(b). Within 60 days after receiving certification that remedial action has been completed in accordance with the approved voluntary cleanup plan, the Department will relieve the applicant of the requirement to maintain financial assurance unless the Department has reason to believe that remedial action does not comply with the approved voluntary cleanup plan. The Department shall provide the applicant with the reason(s) for non-release.

Author: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; Vernon H. Crockett; Sonja B. Favors; Crystal L. Collins

335-15-5-.02

Statutory Authority: Code of Ala. 1975, §22-30E-9.

History: New Rule: Filed April 11, 2002; effective May 16, 2002.

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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
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CHAPTER 335-15-6
PUBLIC PARTICIPATION

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335-15-6-.01 **Purpose.**

(1) To provide a mechanism that allows for public participation in the Voluntary Cleanup Program in accordance with 335-15-4-.04(4)(c). The public notice informs the general public concerning matters of actual or perceived contamination and the proposed or implemented remediation of previously contaminated sites.

(2) To compile a Voluntary Inventory of existing sites undergoing voluntary cleanups and to provide a mechanism for the addition and removal of properties to the Voluntary Cleanup Inventory, including the procedures for inclusion in the deed records of the applicable probate court.

Author: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; Vernon H. Crockett; Sonja B. Favors; Crystal L. Collins; Lynn T. Roper; M. Gavin Adams; Austin R. Pierce; Pamela L. Monaghan

Statutory Authority: Code of Ala. 1975, §22-30E-4.

History: New Rule: Filed April 11, 2002; effective May 16, 2002.

Amended: Filed October 21, 2004; effective November 25, 2004.

Amended: Published February 28, 2020; effective April 13, 2020.

Amended: Published April 29, 2022; effective June 13, 2022.

335-15-6-.02 **Public Participation.**

(1) Public notification of cleanup. Once a Voluntary Cleanup Plan is determined to be complete, the Department will notify the public of the opportunity to submit written comments on the plan through the Department's website and request modifications to the plan no later than 30 days from the date of the notice. It will also, in response to a legitimate request or at its own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a Voluntary Cleanup Plan.

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The Department will give public notice of the hearing at least 30 days before it occurs.

(2) Public notice procedures. Public notice of activities described in 335-15-6-.02(3) shall be given by the following methods:

(a) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under 335-15-6-.02(2) (a) may waive his right to receive notice):

1. The applicant;

2. Persons who request in writing to be placed on a mailing list developed for the program:

(i) Including those who request in writing to be on the list;

(ii) Soliciting persons for area lists from participants in past voluntary cleanup proceedings in that area; and

(iii) Notifying the public of the opportunity to be put on the mailing list through the Department's website. The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Department may delete from the list the name of any person who fails to respond to such a request; and

3. Governmental Agencies:

(i) To any unit of local government having jurisdiction over the area where the voluntary cleanup facility is located; and

(ii) To each State agency having any authority under State law with respect to the construction or operation of such facility.

(b) Publication of a notice shall be posted on the Department's website.

(3) Content. All public notices issued under 335-15-6 shall contain the following information:

(a) Name and address of the office processing the voluntary cleanup action for which the notice is being given;

(b) Name and address of the applicant and, if different, of the site or activity regulated by the voluntary cleanup action;

(c) A brief description of the proposed cleanup action to be to be conducted at the site or activity described in the Voluntary Cleanup Application;

(d) Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft application; and

(e) A brief description of the comment procedures, including a statement of procedures to request a hearing.

(4) Departmental Review. After considering all comments submitted during the public comment period and public hearing (if held), the Department will approve or disapprove the Voluntary Cleanup Plan within 30 days of the close of the comment period. In the event that the Voluntary Cleanup Plan is not approved, the Department shall provide the applicant with a statement of reasons for the denial. The applicant must modify the Voluntary Cleanup Plan or submit a new Voluntary Cleanup Plan for approval within 30 days after receiving such written statement. The Department will approve or modify this Voluntary Cleanup Plan in writing within 60 days of receipt. If the Director modifies the Voluntary Cleanup Plan, this modified Voluntary Cleanup Plan becomes the approved Voluntary Cleanup Plan. A copy of the modified Voluntary Cleanup Plan with a detailed statement of reasons for the modifications must be mailed to the applicant.

Author: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; Pamela L. Monaghan

Statutory Authority: Code of Ala. 1975, §22-30E-4.

History: New Rule: Filed April 11, 2002; effective May 16, 2002.

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335-15-6-.03 Cleanup Inventory List.

(1) Voluntary Cleanup Properties Inventory. Pursuant to Code of Ala. 1975, §§22-30E-4(b)(2) and 22-30E-4(b)(3), the Department shall compile and update as necessary an inventory of all qualifying properties for which a Voluntary Properties Assessment Plan and/or Report or a Voluntary Cleanup and/or Report has been approved by the Department. No later than July 1st of each year, the Department shall send a copy of the inventory with the properties listed by county to the clerk of each probate court of the state. The inventory shall be called the Voluntary Cleanup Properties Inventory. The inventory shall include all the following information:

(a) The name of the property or another description identifying the property.

(b) The location of the property.

(c) The name of the owner of the property at the time of the property's inclusion in the inventory.

(d) A general description of the Voluntary Property Assessment Plan and/or Report or Voluntary Cleanup Plan and/or Report.

(e) A property cleaned up to standards less stringent than those required for unrestricted residential use, require a description of the applicable values used and any use restrictions which are imposed.

(2) Placement on the Cleanup Inventory. Upon the Department's approval of the Voluntary Property Assessment and/or the Voluntary Cleanup Plan, the property shall be listed on the Voluntary Cleanup Plan Properties Inventory as provided 335-15-6-.03(1).

(3) Restricted Use.

(a) The property owner of any property listed on the inventory which is designated as having been cleaned up to standards less stringent than those necessary for unrestricted residential use shall include the following notice in any deed, mortgage, deed to secure debt, lease, rental agreement, or other instrument given or caused to be given by the property owner which creates an interest in the property: "This property has been listed on the state's Voluntary Cleanup Properties Inventory and has been cleaned up to standards less stringent than those required for unrestricted residential use due to the presence of substances regulated under state law. Certain uses of this property may require additional cleanup. Contact the property owner or the Alabama Department of Environmental Management for further information concerning this property. This notice is provided in compliance with the Alabama Land Recycling and Economic Redevelopment Act."

(b) If warranted by further active or passive remediation that results in the reduction of contamination to unrestricted residential use levels, this notice may be removed in accordance with 335-15-6-.03(4).

(4) Unrestricted Use. Upon a written determination by the Department that a property has been cleaned up to standards suitable for unrestricted residential use, the notices required by 335-15-6-.03(1) shall be removed from the subject property records.

Author: Lawrence A. Norris; Stephen A. Cobb; Vernon H. Crockett; Sonja B. Favors; Crystal L. Collins; Lynn T. Roper; Pamela L. Monaghan

Statutory Authority: Code of Ala. 1975, §§22-30E-4, 22-30E-11.

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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION
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CHAPTER 335-15-7
ALABAMA LAND RECYCLING REVOLVING LOAN FUND

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335-15-7-.01 Purpose.

This Chapter is promulgated for the following purposes:

(a) To implement the purposes and objectives of the Federal Comprehensive Environmental Response, Compensation, and Liability Act, and the Alabama Land Recycling Authority Act;

(b) To establish procedures for the distribution of funds appropriated pursuant to the Federal Comprehensive Environmental Response, Compensation, and Liability Act, and any other monies appropriated to the Alabama Land Recycling Revolving Loan Fund, for the purpose of providing financial assistance to public bodies through the issuance of Fund loans to defray the costs of remediation of contaminated property in rural and urban areas of the state;

(c) To protect the public and the State by ensuring that appropriated fund monies are spent in a proper manner and for the intended purposes;

(d) To assure the distribution and use of Fund monies are consistent with the laws and policies of the State and Federal Government;

(e) To ensure proper administration of Fund monies;

(f) To establish accounting procedures for the administration of Fund monies; and

(g) To establish Fund loan repayment requirements.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.02 Applicability.

This Chapter shall constitute the rules of the Alabama Department of Environmental Management governing the disposition of appropriations pursuant to the Federal Comprehensive Environmental Response, Compensation, and Liability Act and the Alabama Land Recycling Authority Act or other monies appropriated to Alabama's Land Recycling Revolving Loan Fund (ALRRLF).

Author: Aubrey H. White, Lawrence A. Norris, Vernon H. Crockett, Sonja B. Favors, Anna M. Ennis

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: **New Rule:** Filed October 21, 2004; effective November 25, 2004. **Amended:** Published February 28, 2020; effective April 13, 2020.

335-15-7-.03 **Definitions.**

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise.

- (a) "Act" means the Alabama Land Recycling Authority Act.
- (b) "Allowable costs" are those costs that are eligible, reasonable, necessary, and allocable to the project; permitted by generally accepted accounting principles; and approved by the Department in the Fund loan agreement.
- (c) "Authority" means the corporation organized pursuant to the provisions of the Act as a public corporation, agency and instrumentality of the State and known as the Alabama Land Recycling Finance Authority.
- (d) "Authorizing resolution" means a resolution or order adopted by the Board of Directors of the Authority authorizing the issuance of agreements and related matters.
- (e) "Board of Directors" means the Board of Directors of the Alabama Land Recycling Finance Authority, consisting of the Governor, Lieutenant Governor, Speaker of the House of Representatives, Director of the Alabama Department of Environmental Management, and Director of Finance.
- (f) "Bonds" means revenue bonds, notes or obligations or other evidence of indebtedness issued by the Authority under the provisions of the Act.
- (g) "Bond proceeds" means the direct proceeds of the sale of bonds or notes, and the income derived from the investment of such proceeds.
- (h) "Certified mail" means any means of delivery where proof of receipt is obtained and date of receipt is recorded.
- (i) "Eligible property" means property which qualifies under 335-15-2-.01 for participation in the voluntary cleanup program, and which is owned and operated by a loan applicant or loan applicants which qualify for the limitations of liability as described in 335-15-4-.02.
- (j) "Federal Comprehensive Environmental Response, Compensation, and Liability Act" (CERCLA) means the Act of

Congress so designated (42 U.S.C. s/s 9601 et seq. 1980), as amended from time to time.

(k) "Federal grant" means a grant awarded pursuant to CERCLA for the purpose of capitalizing an Alabama Land Recycling Revolving Loan Fund and any amendments or supplements thereto.

(l) "Fund" means the Alabama Land Recycling State Revolving Fund established pursuant to Section 22-30F-4 of the Act.

(m) "Fund loan" means a loan from the Alabama Land Recycling Revolving Loan Fund for the allowable costs of a project.

(n) "Fund loan agreement" is the legal instrument executed between the Authority and the public body for the remediation of contaminated property.

(o) "Loan applicant" means any public body which applies for a Fund loan pursuant to the provisions of these rules and regulations.

(p) "Local governmental unit" means a city, town, county, district, association, State agency, or other public body (including an inter-municipal agency of two or more) of the foregoing entities created under State law.

(q) "Project priority list" means the list developed by the State in conformance with the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1972 (33 U.S.C. 1251 et al.), and any amendatory or supplementary acts thereto.

(r) "Project" means projects eligible for assistance from the revolving loan fund as certified to the Authority by the Department, including, without limitation, the following:

1. Assessment and investigation of eligible property pursuant to Code of Ala. 1975, §22-30E-9(b).

2. Cleanup of eligible property pursuant to Code of Ala. 1975, §22-30E-9(c).

3. Any expenditure of a type or category determined by the Authority or the Department to be of such nature as will facilitate the timely assessment, cleanup, and subsequent redevelopment and return to productive use of an eligible property.

(s) "Public body" includes each county, state agency, incorporated city or town, public corporation, district, cooperative, association, authority or instrumentality thereof created by or pursuant to state law, including also a combination of two or more of the foregoing.

(t) "Recipient" means any local governmental unit, which has received a Fund loan pursuant to this Chapter.

(u) "Revolving loan fund" or "Alabama Land Recycling Revolving Loan Fund (ALFFLF)"⁶ means a low interest loan program intended to finance remediation of contaminated brownfield sites in Alabama.

(v) "Substantial alteration" means any change, which results in an alteration of the project costs, or a change of 90 days or more in the project schedule.

Author: Aubrey H. White, Lawrence A. Norris, Vernon H. Crockett; Sonja B. Favors; Anna M. Ennis

Statutory Authority: Code of Ala. 1975, §§22-30F-3, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004. **Amended:** Published February 28, 2020; effective April 13, 2020.

335-15-7-.04 Alabama Land Recycling Revolving Loan Fund.

Proceeds of bond sales, Federal and State appropriations, payments of loan principal and interest, and interest earned on the fund shall be handled in the following manner:

(a) To make loans;

(b) To guarantee or subsidize loans via linked deposit or other appropriate means;

(c) As a source of revenue or security for the payment of principal and interest on revenue bonds issued by the Authority if the net proceeds of the sale of such bonds will be deposited in the Fund;

(d) Any Federal or State funds, which may be made available to the State for loans to any public body for the assessment and cleanup, of an eligible property, under the Act, may be deposited only to the Alabama Land Recycling Revolving Loan Fund.

(e) The monies in the Fund are specifically dedicated and for the purposes identified in Rule 335-15-7-.03; however, no monies shall be expended from the Fund for those purposes without the specific deposits thereof by the Authority.

(f) Payments of principal, interest and penalties on loans awarded from the Fund shall be made to the Fund pursuant to the Act.

(g) All interest earned shall be credited to the Alabama Land Recycling Revolving Loan Fund pursuant to the Act.

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(h) Nothing in 335-15 shall establish liability or responsibility on the part of the Department, the Authority or the State of Alabama to make loans from a source other than the Fund.

(i) The Department, the Authority or the State of Alabama shall have no liability or responsibility if the applicant defaults in payment for remedial actions or services undertaken to remediate the site.

Author: Aubrey H. White, Lawrence A. Norris, James L. Bryant
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: New Rule: Filed October 21, 2004; effective November 25, 2004. **Amended:** Filed August 15, 2006; effective September 19, 2006.

335-15-7-.05 **Terms Of The Loan.**

(1) The Fund may offer loans for up to 100 percent of allowable project costs and may offer a range of options regarding the term, interest rate and level of loan funding. Such loans must be made at or below market interest rates as determined by the Authority.

(2) The total term of the loans shall not exceed 10 years. Repayments shall begin no later than one year after completion of remediation, or three years from the date of loan award, whichever comes first, and shall be repaid in full in no later than 10 years later. Thereafter, loan repayments shall be made in accordance with the repayment schedule indicated in the borrower's Fund loan agreement. Principal and accrued interest with respect to a particular Fund loan may, however, be prepaid in accordance with the provisions of the relevant Fund loan agreement. Interest shall accrue from the date of delivery of the Authority's bonds in a leveraged loan program. In a direct loan program, interest accrues from the date of the execution of the loan agreement.

(3) Loans shall be made only to local governmental units that:

(a) Are on the State project priority list;

(b) Demonstrate tangible financial capacity to assure sufficient revenues to repay the loan;

(c) Provide security for repayment of the loan as required by the Authority;

(d) Agree to maintain records in accordance with governmental accounting standards and to conduct an annual audit of the facility's financial records;

(e) Provide such assurances as reasonably required by the Authority and the Department;

(f) Are not currently, or have been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan;

(g) Are not currently, or have been, a generator or transporter of contamination at the site subject to the loan; and,

(h) Are exempt from liability under CERCLA for the site subject to the loan.

(4) Fund loan payments will be disbursed to recipients at intervals as work progresses and expenses are incurred and approved, but not more often than once a month.

(5) The specific terms and conditions of the Fund loan shall be incorporated in the Fund loan agreement to be executed by the recipient and the Authority.

Author: Aubrey H. White, Lawrence A. Norris, James L. Bryant, Vernon H. Crockett, Sonja B. Favors, Anna M. Ennis

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: **New Rule:** Filed October 21, 2004; effective November 25, 2004. **Amended:** Filed August 15, 2006; effective September 19, 2006. **Amended:** Published February 28, 2020; effective April 13, 2020.

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335-15-7-.06 Criteria For Project Loan Priority.

Each year the Department shall develop a project priority list for the forthcoming Federal fiscal year. The priority system evaluates projects individually for their anticipated environmental and economic impacts. Annually, the project priority list shall be the subject of a public notice, including a public comment period. A public body desiring to be placed on the list shall make a request for placement by June 1 of each year, or as otherwise established by the Department. The requests will be ranked in accordance with the priority system and placed on the list. The following shall be submitted by the authorized representative of the public body when requesting placement on the list:

- (a) Brief description of the project indicating need;
- (b) Brief description of existing site conditions;
- (c) Estimated costs associated with the project; and
- (d) Projected public and economic value after remediation.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.07 Pre-application Procedures.

(1) Public bodies are urged to be familiar with the requirements of this Chapter and to contact the Department early in the planning process so projects are in a position to proceed.

(2) Each pre-application for a Fund loan shall be submitted to the Department, typically on a quarterly basis. The preapplication shall include full and complete documentation that a loan applicant is required to furnish.

(3) The Department may require a preapplication conference with potential loan applicants prior to submission of a formal application for a Fund loan.

Author: Aubrey H. White, Lawrence A. Norris, Vernon H. Crockett, Sonja B. Favors, Anna M. Ennis

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004. **Amended:** Published February 28, 2020; effective April 13, 2020.

335-15-7-.08 Application Procedures.

(1) Each application for a Fund loan shall be submitted by the established deadline. The application shall include complete documentation required for processing.

(2) The following shall be submitted when applying for a Fund loan:

(a) An application form for a Fund loan. Each application shall constitute a commitment by the loan applicant to comply with the requirements of this Chapter and, upon execution of the agreement by the Authority and the loan applicant, acceptance of the terms and conditions of the Fund loan agreement;

(b) A resolution passed by the local governmental unit authorizing the filing of an application for a Fund loan and specifying the individual authorized to sign the Fund loan application. If two or more local governmental units are involved, a resolution is required from each, indicating the lead loan applicant and the authorized representative;

(c) Statement of assurances in conformance with Rule 335-15-7-.14;

(d) Department approval with assessment and cleanup plans and reports, if applicable;

(e) Project cost breakdown;

(f) Projected cash flow schedule;

(g) Project remediation schedule;

(h) Certificate (legal opinion) from counsel and the authorized representative as to title or mechanism to obtain title necessary for project sites and easements;

(i) A certification that required local, State and federal permits and approvals, if applicable, were received;

(j) A statement from the loan applicant indicating that it has not violated any Federal, State or local law pertaining to fraud, bribery, graft, kickback, collusion or conflicts of interest relating to, or in connection with, the planning and implementation of the project;

(k) A statement from the loan applicant indicating if the services of a person, whose name appears on the Federal list

of debarments, suspensions and voluntary exclusions, were used for planning or design of the project;

(l) Executed inter-municipal agreements, if required;

(m) A plan for how the loan applicant plans to repay the Fund loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement the plan, and steps it plans to take before receiving the Fund loan that shall guarantee that at the time of the signing of the Fund loan agreement it shall be irrevocably committed to repay the Fund loan and pay any other expenses necessary to fully complete, implement, operate and maintain the project. The description shall include: pro forma projections of the loan applicant's financial operations during the remediation period of the project and five years thereafter; a summary of the sources and uses of all funds anticipated to be used for the Fund loan project; and a statement of the assumptions used in creating such projections. Loan applicants shall secure all Fund loans in a manner acceptable to the Authority, pledging to provide funds to repay the debt, even if the Fund loan is terminated pursuant to Rule 335-15-7-.34;

(n) A completed voluntary property assessment or voluntary cleanup plan approved by the Department under 335-15-4-.03 and .04;

(o) Information regarding the loan applicant's environmental compliance history;

(p) A viable redevelopment plan for the project site; and,

(q) Such other information as the Department may require.

(3) Loan applicants shall obtain all necessary Federal, State and local permits and approvals prior to the award of a loan. Excluded from prior acquisition are permits and approvals that are impractical to obtain prior to the loan award (e.g., road opening permit, blasting permit, etc.).

(4) Submissions not substantially complying with this Chapter shall not be processed, and shall be returned.

Author: Aubrey H. White, Lawrence A. Norris, Vernon H. Crockett, Sonja B. Favors, Anna M. Ennis

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: **New Rule:** Filed October 21, 2004; effective November 25, 2004. **Amended:** Published February 28, 2020; effective April 13, 2020.

335-15-7-.09 Information Disclosure.

All loan applications and other submissions, when received by the Department, constitute public records. The Department shall make them available to persons who request their release to the extent required by Alabama and/or Federal law.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.10 Application Evaluation.

(1) The Department shall notify the loan applicant that it has received the application and is evaluating it pursuant to this section. Each application shall be subject to:

- (a) Preliminary administrative review to determine the completeness of the application. The loan applicant will be notified of the completeness or deficiency of the application;
- (b) Programmatic, technical, and scientific evaluations to determine the relevance of the project to the objectives of the Act;
- (c) Budget evaluation to determine if proposed project costs are reasonable, applicable, and allowable; and
- (d) Financial Capability.

(2) Upon completion of an evaluation of an application, the Department shall either approve the application or make the determination that the Fund loan award shall be deferred.

(3) The Department shall promptly notify loan applicants in writing of any deferral action, indicating the reasons for the deferral and a timeframe for the resolution of any outstanding issues. A deferral action shall result in one of the following:

- (a) An approval of the application if the outstanding issues are addressed to the satisfaction of the Department within the specified time frame; or
- (b) A disapproval of the application if the outstanding issues are not addressed to the satisfaction of the Department within the specified timeframe.
- (c) Insufficient funds to meet the applicant's needs.

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(4) The Department shall promptly notify loan applicants in writing of any disapproval. A disapproval shall not preclude reconsideration if resubmitted. Reconsideration of a revised Fund loan application and/or processing of a Fund loan agreement within the current fiscal year may be bypassed, precluding funding of the project until a future fiscal year. Affected loan applicants shall be notified in writing of such action.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.11 Supplemental Information.

At any stage during the evaluation process, the Department may require supplemental documents or information necessary to complete the review. The Department may suspend its evaluation until such additional information or documents have been received.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.12 Fund Loan Agreement.

The Authority shall prepare and transmit the Fund loan agreement to the loan applicant.

(a) The loan applicant shall execute the Fund loan agreement and return it within 30 calendar days of receipt. The Authority may, at its discretion, extend the time for execution. The Fund loan agreement shall be signed by a person authorized by resolution to obligate the loan applicant to the terms and conditions of the Fund loan agreement being executed. The authorizing resolution shall accompany the executed Fund loan agreement.

(b) The Fund loan agreement shall set forth the terms and conditions of the Fund loan, approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project and major phases thereof.

(c) The Fund loan agreement shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process.

(d) The Fund loan agreement shall not be executed by the Authority if the loan applicant is in current default on any State or Federal loan.

(e) Upon completion of the internal processing of the Fund loan agreement, a copy of the executed Fund loan agreement shall be transmitted to the recipient.

(f) The Authority shall establish remedies for default in the loan agreement.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.13 Effect Of Loan Award.

(1) At the time of execution of the Fund loan agreement by the Authority and the recipient, the loan shall become effective and shall constitute an obligation of the Fund in the amount and for the purposes stated in the Fund loan agreement.

(2) The award of the Fund loan shall not commit or obligate the Authority to award any continuation Fund loan to cover cost overruns of the project. Cost overruns for any project or portion thereof shall be the sole responsibility of the recipient.

(3) The award of a Fund loan by the Authority shall not be used as a defense by the loan applicant to any action by any agency for the loan applicant's failure to obtain all required permits, licenses and operating certificates for its respective project.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.14 Loan Conditions.

(1) The following requirements, in addition to such statutes, rules, terms and conditions which may be applicable to particular loans, are applicable to disbursement under a Fund loan agreement:

(a) The recipient shall certify that it is maintaining its financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions;

(b) The recipient shall comply with all requirements of applicable permits issued by the Department;

(c) The recipient shall comply with all applicable requirements of Federal, State and local laws;

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(d) The recipient shall pay any unallowable project costs;

(e) The Fund loan agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project objectives or Department requirements;

(f) Implementation of the project, including letting of contracts in connection therewith, shall conform to applicable requirements of Federal, State, and local laws, ordinances, rules and regulations and contract specifications and requirements;

(g) No Fund loan monies shall be disbursed to a public body currently in default on any Fund loan. Nothing in this paragraph shall in any way limit any right or duty of the Authority to demand and collect at any time the total due under any such defaulted loan;

(h) The Authority may assess penalties to late loan repayments as appropriate and as specified in the Fund loan agreements;

(i) The recipient shall certify that the project, or phase of the project, will be initiated and completed in accordance with the time schedule specified in the Fund loan agreement;

(j) The recipient must submit proof that it, and its contractors and subcontractors, will comply with all insurance requirements of the Fund loan agreement and that it shall be able to certify that the insurance is in full force and effect and that the premiums have been paid.

(k) The Department may impose such other conditions as may be necessary and appropriate to effectuate the purpose and intent of the Act and to implement the CERCLA and other applicable laws of the State.

(2) The recipient shall certify that it is in compliance with all other requirements and conditions of the Fund loan agreement.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.15

Administration And Performance Of Loan.

The recipient bears primary responsibility for the administration and success of the project, including any sub-agreements made by the recipient for accomplishing the Fund loan objectives. Fund loan monies must be used in conformance with these rules and the Fund loan agreement shall achieve the Fund loan objectives and

ensure that the purposes set forth in the Act and the CERCLA are fully executed.

Author: Aubrey H. White, Lawrence A. Norris, Vernon H. Crockett, Sonja B. Favors, Anna M. Ennis

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004. **Amended:** Published February 28, 2020; effective April 13, 2020.

335-15-7-.16 Project Changes And Loan Modifications.

(1) A loan modification encompasses any written alteration of the Fund loan terms or conditions, budget or project method or other administrative, technical or financial agreements.

(2) There shall be no Fund loan modification increasing the funding amount beyond adjustments to cover the low bid cleanup costs. Adjustments due to the low bid cleanup costs will be made only after a subsequent passage of a legislative appropriations act or if funds exist which are unobligated or not already targeted for other projects on the priority list.

(3) The recipient shall promptly notify the Department in writing (certified mail, return receipt requested) of events or proposed changes which may require a loan modification, including but not limited to:

- (a) Rebudgeting;
- (b) Changes in approved plans for the project;
- (c) Changes which may affect the approved scope or objectives of the project;
- (d) Significant, changed conditions at the project site;
- (e) Acceleration or deceleration in the time for performance of the project or any major phase thereof; and
- (f) Changes which may increase or substantially decrease the total cost of a project.

(4) If the Authority decides a formal Fund loan amendment is necessary, the recipient shall be notified and a formal Fund loan amendment shall be processed in accordance with Rule 335-15-7-.17. If the Authority decides a formal Fund loan amendment is not necessary, the Department shall follow the procedures of Rule 335-15-7-.18 or .19, as applicable.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

335-15-7-.19

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.17 Formal Loan Amendments.

(1) The Authority may require a formal Fund loan amendment to change principal provisions of a Fund loan where project changes substantially alter the cost or time of performance of the project or any major phase thereof, or substantially alter the objective or scope of the project.

(2) The Authority and recipient may affect a formal Fund loan amendment only by a written amendment to the Fund loan agreement executed by the Authority and the recipient.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.18 Administrative Loan Changes.

Administrative changes by the Department, such as a change in the office to which a report is to be transmitted by the recipient, or a change in the disbursement schedule for Fund loans, constitute changes to the Fund loan agreement (but not necessarily to the project work) and do not affect the substantive rights of the Department or the recipient. The Department may issue such changes unilaterally. Such changes shall be in writing and generally be affected by a letter (certified mail, return receipt requested) to the recipient.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.19 Other Changes.

All other project changes, which do not require a formal Fund loan amendment as stated in Rule 335-15-7-.20, shall be undertaken only upon written approval of the Director.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.20 Access.

(1) The recipient, its contractor and subcontractors shall provide Department personnel, authorized representative(s) of the Department, or representative(s) of the Environmental Protection Agency, access to the facilities, premises and records related to the project.

(2) The recipient shall submit to the Department such documents and information as requested by the Department;

(3) The recipient, and all contractors and subcontractors which contract directly with the recipient or receive a portion of State monies, are subject to a financial audit.

(4) Records shall be retained and available to the Department until the final Fund loan repayment has been made.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.21 Authority Disbursement.

Disbursement of Fund loan monies shall be made at intervals as work progresses and expenses are incurred, but at no greater frequency than monthly. In no event shall disbursement exceed the allowable costs that have been incurred at that time. No disbursement shall be made until the Department receives satisfactory cost documentation which shall include all forms and information required by the Department and completed in a manner satisfactory to the Department. Should the recipient be receiving Fund loan monies for expenditures incurred prior to the award of the Fund loan, the disbursement schedule shall be as indicated in the Fund loan agreement.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.22 Assignment.

The right of a recipient to receive disbursements from the Authority under a Fund loan may not be assigned, nor may repayments due under a Fund loan be similarly encumbered.

Author: Aubrey H. White, Lawrence A. Norris

335-15-7-.25

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: November 25, 2004.

335-15-7-.23 **Unused Funds.**

Where the total amount of the cleanup costs after bids are taken is less than the initial loan award, the Fund loan agreement shall be adjusted and the difference retained by the Fund to be reallocated to other projects.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.24 **Project Initiation.**

(1) The recipient shall expeditiously initiate and complete the project in accordance with the project schedule contained in the Fund loan agreement. Failure to promptly initiate and complete a project may result in the imposition of sanctions included in this Chapter.

(2) The recipient shall not advertise any contract until written notice of concurrence with the proposed agreement has been issued by the Department.

(3) Once bids for the project are received, the recipient shall not award the contract(s) until authorization to award has been given by the Department.

(4) The recipient and the contractor shall attend a pre-remediation conference with Department personnel prior to the issuance of a notice to proceed by the recipient.

(5) The recipient shall award the contract(s) and issue notice(s) to proceed, where required, for completing all "significant" elements of the project no later than 12 months after execution of the loan agreement, unless a specific extension has been approved by the Department.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.25 **Ineligible Fund Uses.**

(1) Loan funds shall not be used for the following activities:

(a) Cleanup of public or private drinking water supplies that have deteriorated through ordinary use.

(b) Monitoring and data collection necessary to apply for, or comply with, environmental permits under State or federal laws, unless such a permit is required as a component of the cleanup action;

(c) Development activities that are not removal actions, such as construction of a new facility or marketing of property; or,

(d) Job training activities.

(2) Loan funds shall not be used at any of the following sites:

(a) Listed, or proposed for listing, on the National Priorities List;

(b) Where a federal or State agency is planning or conducting a response or enforcement action; or

(c) At which a removal action must be taken within six months;

Author: Aubrey H. White, Lawrence A. Norris, Vernon H. Crockett, Sonja B. Favors, Anna M. Ennis

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004. **Amended:** Published February 28, 2020; effective April 13, 2020.

335-15-7-.26 Allowable Project Costs.

(1) The Department shall not provide Fund loan monies for costs of work that it determines do not comply with the Act or CERCLA. In general, allowable costs may include, but may not be limited to, the following:

(a) Costs for construction or remediation contracts;

(b) Professional and consultant services;

(c) Project feasibility and engineering reports;

(d) Costs of complying with the National Environmental Policy Act, including costs of public notices and hearings;

(e) Fences, warning signs, or other security or site control precautions;

(f) Drainage controls necessary to reduce migration of hazardous substances or pollutants or contaminants off-site or

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to prevent entry of precipitation or runoff from other sources into the release area(s);

(g) Stabilization of berms, dikes, or impoundments for drainage, or draining or closing of lagoons where needed to maintain the integrity of the structures;

(h) Capping of contaminated soils or sludges where needed to reduce migration of hazardous substances, pollutants, or contaminants into soil, ground or surface water, or air;

(i) Using chemicals and other materials to retard the spread of the release or to mitigate its effects;

(j) Excavation, consolidation, or removal of highly contaminated soils from drainage or other areas, where such actions will reduce the spread of, or direct contact with, the contamination;

(k) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants, or contaminants, where removal will reduce the likelihood of spillage, leakage, exposure to humans, animals or food chain exposure;

(l) Project identification signs;

(m) Costs of complying with procurement requirements; and,

(n) Reasonable costs of public participation incurred by the loan applicant which are identified in a public participation work plan, or which are otherwise approved by the Department, shall be allowable.

(2) Reimbursement for administrative costs shall not exceed 10 percent of the loan amount, unless specifically approved by the Department.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.27

Pre-award Costs.

(1) The Department shall not award loan assistance for costs incurred prior to the award of the Fund loan for the project.

(2) If the Department approves preliminary cleanup activities prior to loan closing, such approval is not an actual or implied commitment of Fund loan monies and the public body proceeds at its own financial risk. The public body shall receive cost

reimbursement of approved activities only upon execution of a binding loan agreement.

Author: Aubrey H. White, Lawrence A. Norris, Vernon H. Crockett, Sonja B. Favors, Anna M. Ennis

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004. **Amended:** Published February 28, 2020; effective April 13, 2020.

335-15-7-.28 Project Closeout.

As directed by the Department, the Fund loan recipient shall supply a complete project closeout report. Projects must be complete within the timeframe specified in the approved cleanup plan, unless an extension is granted by the Department.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.29 Fraud And Other Unlawful Or Corrupt Practices.

(1) The recipient shall administer Fund loans, acquire property pursuant to the award documents, and award contracts and subcontracts pursuant to those loans free from bribery, graft, and other corrupt practices. The recipient bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The State shall also have the right to pursue administrative or other legally available remedies.

(2) The recipient shall pursue available judicial and administrative remedies and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The recipient shall immediately notify the Director when such allegation or evidence comes to its attention, and shall periodically advise the Director of the status and ultimate disposition of any related matter.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.30 Debarment.

(1) No recipient shall enter into an agreement with any contractor that is debarred, suspended or disqualified.

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(2) The recipient, prior to acceptance of Fund loan monies, shall certify that no contractor or subcontractor is included on the list of debarred, suspended and disqualified bidders as a result of action by a Federal agency. If Fund loan monies are used for disbursement to a debarred firm, the Authority reserves the right to immediately terminate the Fund loan and/or take such other action as is appropriate.

(3) Whenever a bidder is debarred, suspended, or disqualified, the recipient may take into account the loss of Fund loan monies under these regulations which result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsive and responsible bidder pursuant to laws, and the recipient may advise prospective bidders that these procedures shall be followed.

(4) Any person included on the Federal list as a result of action by a Federal agency, who is or may become a bidder on any contract which is or shall be funded by a Fund loan under this section, may present information to the Department why this section shall not apply to such person. If the Department determines that it is essential to the public interest, the Department may grant an exception from the application of this section with respect to a particular contract.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.31 Noncompliance.

In addition to any other remedies as may be provided by law or in the Fund loan agreement, in the event of noncompliance with any loan condition, requirement of this Chapter, or contract requirement or modification, the Authority may take any of the following actions or combinations thereof:

(a) Issue a notice of noncompliance pursuant to Rule 335-15-7-.32;

(b) Withhold Fund loan monies pursuant to Rule 335-15-7-.33;

(c) Terminate the Fund loan pursuant to Rule 335-15-7-.34.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.32 Notice Of Noncompliance.

Where the Department determines that the recipient is in noncompliance with any condition or requirement of these rules or requirements, it shall notify the recipient of the noncompliance. The Department may require the recipient to take and complete corrective action within 10 working days of receipt of notice. If the recipient fails to take corrective action or if the action taken is inadequate, then the Department may withhold disbursement. The Department may, however, withhold disbursement pursuant to Rule 335-15-7.33 without issuing a notice pursuant to this section.

Author: Aubrey H. White, Lawrence A. Norris, Vernon H. Crockett, Sonja B. Favors, Anna M. Ennis

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004. **Amended:** Published February 28, 2020; effective April 13, 2020.

335-15-7-.33 Withholding Of Funds.

The Department may withhold, upon written notice to the recipient, a Fund loan disbursement or any portion thereof when it determines that a recipient has failed to comply with any loan condition, provision of this Chapter, or contract specification or requirement.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.34 Termination Of Loans.

(1) Termination of loans by the Authority shall be accomplished as follows:

(a) The Authority may terminate a Fund loan in whole or in part for good cause. The term "good cause" shall include but not be limited to:

1. Substantial failure to comply with the terms and conditions of the Fund loan agreement:
2. Default by the recipient;

3. A determination that the Fund loan was obtained by fraud;

4. Without good cause therefore, substantial performance of the project work has not occurred;

5. Gross abuse or corrupt practices in the administration of the project; or

6. Fund monies have been used for non-allowable costs.

(b) The Authority shall give written notice to the recipient (certified mail, return receipt requested) of its intent to terminate a Fund loan, in whole or in part, at least 30 days prior to the intended date of termination.

(c) The Authority shall afford the recipient an opportunity for consultation prior to any termination. After such opportunity for consultation, the Authority may, in writing (certified mail, return receipt requested), terminate the Fund loan in whole or in part.

(2) Project termination by the recipient shall be subject to the following:

(a) A recipient shall not unilaterally terminate the project work for which a Fund loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the Department of any complete or partial termination of the project work.

(b) If the Department determines that there is good cause for the termination of all or any portion of a project for which the Fund loan has been awarded, the Authority may enter into a termination agreement or unilaterally terminate the Fund loan effective with the date of cessation of the project work by the recipient. The determination to terminate the Fund loan shall be solely within the discretion of the Authority. If the Authority determines not to terminate, the recipient shall remain bound by the terms and conditions of the Fund loan agreement.

(c) If the Authority determines that a recipient has ceased work on a project without good cause, the Authority may unilaterally terminate the Fund loan pursuant to this section.

(3) The Authority and recipient may enter into a mutual agreement to terminate at any time pursuant to terms which are consistent with this Chapter. The agreement shall establish the effective date of termination of the project and the schedule for repayment of the Fund loan.

(4) Upon termination, the recipient may be required to immediately refund or repay to the Authority the entire amount of the Fund loan money received. The Authority may, at its discretion, authorize the immediate repayment of a specific portion of the Fund loan and allow the remaining balances to be repaid in accordance with a revised Fund loan repayment schedule.

(5) The recipient shall reduce the amount of outstanding commitment insofar as possible and report to the Department the uncommitted balance of Fund monies awarded under the Fund loan. The recipient shall make no new commitments without the Department's specific approval thereof. The Department shall make the final determination of the eligibility of termination costs.

(6) In addition to any termination action, the Authority retains the right to pursue other legal remedies as may be available under Federal, State and local law as warranted.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: November 25, 2004.

335-15-7-.35 Severability.

If any section, subsection, provision, clause or portion of this Chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter shall not be affected thereby.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION-BROWNFIELD REDEVELOPMENT AND VOLUNTARY CLEANUP
PROGRAM
ADMINISTRATIVE CODE**

**CHAPTER 335-15-8
BROWNFIELD REMEDIATION RESERVE FUND**

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335-15-8-.06	Fund Reimbursement Procedures

335-15-8-.01 **Purpose.**

This chapter is promulgated to establish administrative guidelines and procedures to determine the manner in which reimbursements are made from the Brownfield Remediation Reserve Fund as defined in Code of Alabama 1975, §22-30E-5 and to implement the purposes and objectives of the Brownfield Remediation Reserve Fund Act of 2023 (Act Number 2023-356 2023 Regular Session.

Author: Crystal L. Collins; Pamela W. Luckie

Statutory Authority: Code of Ala. 1975, §22-30E-5.

History: New Rule: Published February 29, 2024; effective April 14, 2024.

335-15-8-.02 **Applicability.**

(1) The Department will deposit all Brownfield Remediation Reserve Fund contributions into the Brownfield Remediation Reserve Fund.

(2) The Department shall collect from each responsible person applicant a Brownfield Remediation Reserve Fund Contribution in the amount of five hundred dollars (\$500) per acre for each qualifying property in addition to the Voluntary Cleanup Program application and oversight fees as described in 335-15-4.

[Note: Application and associated oversight fees are not deposited into the Brownfield Remediation Reserve Fund]

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(3) The Contribution to the Brownfield Remediation Reserve Fund will function solely for the administration and purpose of this chapter.

(4) These regulations apply for the Department to use the amounts in the Brownfield Remediation Reserve Fund for post-remediation costs at a qualifying property, provided the amount does not exceed four million dollars (\$4,000,000) per property.

(5) The obligations of the Department for the application of amounts in the Brownfield Remediation Reserve Fund, as provided in this chapter, shall not constitute a work of internal improvement, a loan of money, or an extension of credit by the state to any private or corporate enterprise or any individual, association, or corporation. To the extent there are insufficient funds in the fund to be used to pay for remediation costs or post-remediation costs, the Department shall have no obligations or responsibility to pay for or conduct cleanup activities.

Author: Crystal L. Collins; Lynn T. Roper; Sonja B. Favors; Pamela W. Luckie

Statutory Authority: Code of Ala. 1975, §22-30E-5.

History: New Rule: Published February 29, 2024; effective April 14, 2024.

335-15-8-.03 Criteria For Eligibility And Reimbursement.

(1) Properties are eligible for the Brownfield Remediation Reserve Fund reimbursement provided the following criteria are met:

(a) Initial Voluntary Cleanup Program Cleanup at the qualifying property was conducted by a responsible person applicant pursuant to 335-15-4 after December 31, 2023;

(b) Contamination was cleaned up, remediated, and documented as outlined in 335-15-8-.03(1)(a) in a Voluntary Assessment Report or Voluntary Cleanup Plan/Report that was approved by the Department pursuant to 335-15-4;

(c) Expenditures incurred must qualify as post-remediation costs as defined in 335-15-1-.02;

(2) Applicants, as defined in 335-15-1-.02, requesting an eligibility determination for reimbursement from the Brownfield Remediation Reserve Fund shall submit a formal request to the Department which shall include the following:

(a) A full explanation of the changes proposed to address the required post-remediation modification. The explanation must include a detailed description of the actions to be performed and how it will address the risk reduction.

(b) A copy of the Letter of Concurrence with Conditions for the qualifying property which includes the assigned Voluntary Cleanup Program project number;

(c) The nature and extent of the contamination identified that requires additional cleanup;

(d) Detailed explanation of the work to be performed; and,

(e) A cost estimate that includes itemization of all potential post-remediation costs including but not limited to labor hours and rates, analytical charges, equipment charges, and other categories which shall be identified by the Department, or which the applicant may wish to provide.

(3) Requests for reimbursement shall be submitted within 180 days of the Department's approval for work to commence.

(4) Any deviations from the Department approved land-use controls do not qualify for reimbursement under this fund.

Note: Any modification to the Department approved Assessment or Cleanup Plan will follow the requirements of Division 15 and may be subject to the Public Participation requirements.

Author: Crystal L. Collins; Sonja B. Favors; Lynn T. Roper; Pamela W. Luckie

Statutory Authority: Code of Ala. 1975, §22-30E-5.

History: New Rule: Published February 29, 2024; effective April 14, 2024.

335-15-8-.04 Use Of Brownfield Remediation Reserve Funds.

(1) Remediation Reserve Funds may be used for any qualifying property in the state for which remediation reserve fund contributions have been made after December 31, 2023, for which there is not a responsible person.

(2) Use of funds:

(a) To pay the post-remediation costs as defined in 335-15-1-.02 for any qualifying property as described in 335-15-8-.03(1) in the state which was cleaned up or remediated in accordance with the Department approved Voluntary Cleanup Plan, and

(b) Where the established risk reduction standards upon which a cleanup or remediation was previously conducted have changed.

(3) The Brownfield Remediation Reserve Fund may not be used to pay or reimburse any costs incurred for:

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- (a) Long-term groundwater monitoring;
- (b) Utilization of a soil management plan; or
- (c) As a result of non-compliance with the applicable response action or land use controls within an environmental covenant.

(4) All reimbursements shall be subject to approval by the Department. Should a site inspection, a review of documentation or other information available to the Department reveal a discrepancy between the work necessary to comply with the post-remediation costs and the expenditures incurred, the Department may deny the application for reimbursement.

Author: Crystal L. Collins; Sonja B. Favors; Lynn T. Roper; Pamela W. Luckie

Statutory Authority: Code of Ala. 1975, §22-30E-5.

History: New Rule: Published February 29, 2024; effective April 14, 2024.

335-15-8-.05 Applications For Reimbursement.

(1) Applications for reimbursement for post remediation costs shall be submitted on a form established by the Department which shall include an itemization of all charges according to labor hours and rates, analytical charges, equipment charges, and other categories which may be identified by the Department, or any other information the Department requests. Documentation of charges to include actual invoices must be submitted as part of the application, as required by the Department.

(2) The application shall contain the following statement which shall be signed by the owner, operator, or the project manager of the contracting firm responsible for performance of post-remediation work where applicable:

I certify to the best of my knowledge and belief: that the costs presented herein represent actual costs incurred in the work performed related to this site during the period of time indicated on this application; and that no charges are presented as part of this application that did not result from the post-remediation costs which were necessary due to the standards outlined in 335-15-8-.04 at this site. I have personally examined and am familiar with the information submitted in this reimbursement request and all attachments and, based on my inquiry of those persons immediately responsible for obtaining the information contained in this reimbursement request, I certify that the information is true, accurate, and complete, and that this reimbursement request does not duplicate any request for reimbursement for any charge previously submitted to the Department.

(3) Applications for reimbursements shall be submitted following acceptance by the Department of completed post-remediation costs. Such post-remediation costs may include but are not limited to the following:

(a) Completion, submittal and/or implementation of a Department approved Voluntary Property Assessment Plan/Report or Voluntary Cleanup Plan;

(b) Completion and submittal of a Risk Assessment; or

(c) Completion and submittal of an Environmental Covenant.

(4) Applications for reimbursement for the implementation of post-remediation activities shall be submitted ninety (90) days following initiation of work to be performed and at ninety (90) day intervals thereafter.

Author: Crystal L. Collins; Sonja B. Favors; Lynn T. Roper; Pamela W. Luckie

Statutory Authority: Code of Ala. 1975, §22-30E-5.

History: New Rule: Published February 29, 2024; effective April 14, 2024.

335-15-8-.06 Fund Reimbursement Procedures.

(1) Reimbursement from the Brownfield Remediation Reserve Fund will be made directly to the eligible owner or operator in cases where the owner or operator submits documentation verifying the owner or operator has paid for the post-remediation costs.

(2) Where the owner or operator has submitted a complete application for reimbursement for the post-remediation costs conducted in accordance with 335-15-8, but has not paid for these activities or claims, reimbursement will be made to the contractor who provided the investigative response action service.

Author: Crystal L. Collins; Sonja B. Favors; Lynn T. Roper; Pamela W. Luckie

Statutory Authority: Code of Ala. 1975, §22-30E-5.

History: New Rule: Published February 29, 2024; effective April 14, 2024.