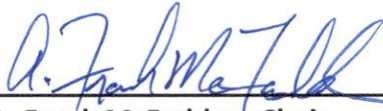


**4/15/24**

**Minutes  
Environmental Management Commission Meeting  
Alabama Department of Environmental Management Building  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2400  
February 9, 2024**

**This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Alabama Environmental Management Commission on February 9, 2024.**

A handwritten signature in blue ink, appearing to read "A. Frank McFadden", is written over a horizontal line.

**A. Frank McFadden, Chair**

**Alabama Environmental Management Commission**

**Certified this 12th day of April 2024.**

**Minutes  
Environmental Management Commission Meeting  
Alabama Department of Environmental Management Building  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2400  
February 9, 2024**

**Convened: 11:00 a.m.  
Adjourned: 11:50 a.m.**

**Part A**

**Transcript  
Word Index**

**Part B**

**Attachment Index  
Attachment 1  
Attachment 2  
Attachment 3  
Attachment 4**

**Part A**

MEETING OF THE  
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

LOCATION: ALABAMA DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT (ADEM) BUILDING

ALABAMA ROOM

1400 COLISEUM BOULEVARD

MONTGOMERY, ALABAMA 36110-2400

DATE: FRIDAY, FEBRUARY 9, 2024

TIME: 11:00 A.M.

\*\*\*\*\*

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REPORTED BY: JEANA S. BOGGS, CCR

Commissioner for the

State of Alabama at Large

1 APPEARANCES

2 COMMISSION MEMBERS:

3 A. FRANK McFADDEN, P.E., CHAIR

4 KEVIN MCKINSTRY, VICE CHAIR

5 JOHN (JAY) H. MASINGILL, III

6 RUBY L. PERRY, D.V.M.

7 H. LANIER BROWN, II, ESQ.

8 J. PATRICK TUCKER, M.D.

9 MARY J. MERRITT

11 ALSO PRESENT:

12 LINDSAY BARTON, ESQ., EMC LEGAL COUNSEL

13 LANCE LEFLEUR, ADEM DIRECTOR

14 DEBI THOMAS, EMC EXECUTIVE ASSISTANT

1 MR. MCFADDEN: Okay. Let's get  
2 started if we will. All right. Welcome,  
3 everyone. I call the meeting to order.  
4 And it looks like we have a 100%  
5 attendance, so we do have a quorum.

6 All right. Agenda Item Number 1  
7 is consideration of the minutes and from  
8 the December 8th, 2023, Commission  
9 meeting. And I will entertain a motion  
10 to -- regarding those minutes.

11 DR. PERRY: I move to adopt.

12 DR. TUCKER: Second.

13 MR. MCFADDEN: Move to adopt the  
14 minutes of the December 8th, 2023,  
15 Commission meeting as circulated is the  
16 motion.

17 Do I have a second?

18 DR. TUCKER: Second.

19 MR. MCFADDEN: Okay. Any  
20 discussion or questions anybody has?

21 (No response).

22 MR. MCFADDEN: All right. I  
23 call for the question. Everyone, who is

1 in agreement to pass the motion, raise  
2 your hand.

3 (All Commission Members  
4 raising hands).

5 MR. MCFADDEN: Okay. Thank you.

6 All right. Item -- Agenda Item

7 2 is Report from the Director, Lance.

8 MR. LEFLEUR: Good morning and  
9 good morning to all who are in the room  
10 today.

11 This is the third meeting of the  
12 Alabama Environmental Management  
13 Commission for fiscal year 2024.

14 It's my practice to periodically  
15 report on the state of the environment in  
16 Alabama to see if our efforts have  
17 resulted in measurable improvements to the  
18 environment in our state. Today's report  
19 will update you on the latest information  
20 concerning the condition of Alabama's  
21 environment.

22 In looking at the state of the  
23 environment in Alabama, I'll also contrast

<p style="text-align: right;">Page 5</p> <p>1 the environmental quality data that can be  2 measured to the public perceptions of the  3 quality of the environment in Alabama.  4 I'll also report on the status of our  5 Mobile Field Office. And finally, I'll  6 introduce one of our personnel who has  7 achieved a significant professional  8 milestone.  9 The Department seeks to measure  10 its results in many ways. At the October  11 23 Commission meeting, performance against  12 the annual Operating Plan was analyzed.  13 At the Commission meeting in April of  14 2024, we will do the annual review of the  15 EPA-generated quantitative compliance and  16 enforcement metrics comparing all states.  17 When the EPA – When the EPA  18 State Review Framework audit is performed  19 every five years, as it was last year,  20 that information is also provided. And  21 then periodically we also review the  22 latest information on the trends in the  23 environmental quality in Alabama.</p>	<p style="text-align: right;">Page 6</p> <p>1 Today, we'll look at the state  2 of the environment in Alabama to see if  3 the efforts have actually resulted in a  4 measurably better quality environment in  5 Alabama.  6 The last report on the state of  7 the environment was one year ago. The  8 state of the environment takes the longer  9 view and compares the quality of Alabama's  10 environment when reliable records were  11 first available 20 to 30 years ago versus  12 where it is now to see if Alabama's  13 environment is improving.  14 The following series of slides  15 will show that comparison for air, water,  16 and land media. Unlike the quantitative  17 performance metrics available from EPA,  18 comparable environmental quality data from  19 the other states is not available.  20 In this report on the state of  21 the environment in Alabama, we'll do  22 something a little different from past  23 years. We will still review the quality</p>
<p style="text-align: right;">Page 7</p> <p>1 measures over the last 20 to 30 years, but  2 we will also use information from a survey  3 of public perceptions to see if the  4 public's perceptions match up with the  5 actual data.  6 Every five years since 1998, the  7 Department has contracted with one of our  8 state universities to perform a survey of  9 public perceptions regarding several  10 aspects of environmental quality in our  11 state. The same questions are asked each  12 time to allow us to see trends. The  13 participants do not know ADEM commissioned  14 the survey. As you will see, the public  15 has both correct and incorrect  16 perceptions. One of our endeavors is to  17 improve communications with the public and  18 help the public develop accurate  19 perceptions about the state of the  20 environment in Alabama.  21 We begin with air data: There  22 are six basic air quality standards:  23 Carbon monoxide, oxides of nitrogen,</p>	<p style="text-align: right;">Page 8</p> <p>1 sulfur dioxide, fine particles, ozone, and  2 lead. There is also a regional haze goal.  3 Over time, most of the standards have been  4 revised, each time becoming more  5 stringent. In 2008, EPA set a 2018 goal  6 for local reductions in haze.  7 As this slide shows, one by one  8 Alabama has been able to attain individual  9 air quality standards statewide, even as  10 those standards have become tighter. The  11 carbon monoxide standard was first met in  12 1971. The NO<sub>x</sub> standard was also met back  13 in 1971; SO<sub>2</sub> in 1977. The fine particles  14 standard was first met in 2013 followed by  15 Ozone in 2014 and lead in 2015. In 2015,  16 for the first time since the Clean Air Act  17 was enacted in 1971, the state reached  18 attainment for all air quality standards.  19 In addition, Alabama met the 2018 regional  20 haze goal in 2013, five years early.  21 This graph shows air emissions  22 from major sources in Alabama since 1990.  23 The red arrows correspond to the date that</p>

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1 particular standard was achieved. The  
 2 carbon monoxide, NO<sub>x</sub>, and SO<sub>2</sub> arrows to  
 3 the left reflect that those standards were  
 4 achieved prior to the 1990 timeframe for  
 5 the graph, while the three arrows to the  
 6 right represent the fine particles, ozone,  
 7 and lead attainment dates of 2013, 2014,  
 8 and 2015 respectively. As you can see,  
 9 emissions have declined materially and  
 10 improvement continues even after those  
 11 ever more stringent air quality standards  
 12 were attained.

13 Overall, the trend of declining  
 14 emissions last reported on the state of  
 15 the environment in Alabama in 2023  
 16 continues. The air quality in Alabama  
 17 clearly has improved since 1990, and it  
 18 continues to improve.

19 Our recent survey shows that  
 20 about 51% of the public correctly  
 21 perceived that the air quality in Alabama  
 22 has improved during their lifetime. About  
 23 36% think the air quality has stayed about

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1 the same, and about 13% think the air  
 2 quality has declined.

3 Looking further into the  
 4 public's perception, respondents were  
 5 asked to choose from a multiple-choice  
 6 list: "What is the biggest source of air  
 7 pollution in Alabama?" From the ten  
 8 choices available, the top three answers  
 9 were: 42% said industrial and power  
 10 plants are the largest sources of air  
 11 pollution, while 25% said motor vehicles,  
 12 and about 11% said open burning of debris.

13 In reality, during the summer  
 14 ozone season, which is the time of primary  
 15 air pollution concern, industrial and  
 16 power plants accounted for less than  
 17 one-half the amount of nitrogen oxide  
 18 emissions, a precursor of ozone, as do  
 19 motor vehicles, 31% for industrial and  
 20 power plants versus 65% for motor  
 21 vehicles.

22 As the actual data versus public  
 23 opinion shows, there is room for

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1 improvement in educating the public.

2 Moving on to water data, the  
 3 water media, we'll look at drinking water  
 4 data first because of its importance in  
 5 that it directly impacts every individual  
 6 in Alabama.

7 Potential contaminants in  
 8 drinking water fall into four categories:  
 9 Organic chemicals, inorganic chemicals,  
 10 radionuclides, and microbes. In 1982,  
 11 when the Department was created, there  
 12 were 23 drinking water contaminants  
 13 regulated. That number is currently 89,  
 14 as it has been for several years, with  
 15 most of the increase being in the organic  
 16 chemicals category. We do expect an  
 17 increase of six in the number of drinking  
 18 water contaminants regulated in the future  
 19 because of pending federally mandated  
 20 maximum contaminant levels for per- and  
 21 polyfluoroalkyl substances.

22 We're obviously regulating more  
 23 potential contaminants in drinking water.

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1 With more contaminants to monitor, how  
 2 well are the other water systems doing?

3 In 1982, 82% of the water  
 4 systems in Alabama were consistently in  
 5 compliance with the standards for the 23  
 6 regulated contaminants. Today, 98% of the  
 7 water systems in Alabama are continuously  
 8 in compliance with the health-based  
 9 standards for the 89 contaminants now  
 10 regulated. This is the same as it was in  
 11 2022. As I've noted in the past, only the  
 12 state of Hawaii has had a lower number of  
 13 drinking water violations than here in  
 14 Alabama. The people of Alabama can have  
 15 great confidence in the quality of their  
 16 drinking water.

17 Another measure of water quality  
 18 looks at the impairments to surface waters  
 19 in the state. Section 303(d) of the Clean  
 20 Water Act calls for a listing of impaired  
 21 waterbodies, which are those not meeting  
 22 federally approved water quality standards  
 23 for various pollutants, such as nutrients,

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1 pathogens, metals, and suspended solids.  
 2 This chart couples both the area  
 3 of impairments and the number of  
 4 pollutants. For example, if one mile of  
 5 stream or one acre of surface water is  
 6 impaired for nutrients and pathogens, that  
 7 would be counted as two combination miles  
 8 of impaired stream or two combination  
 9 acres of surface water. Twenty-five  
 10 percent (25%) of the 59,000 miles of  
 11 perennial rivers and streams and 93% of  
 12 the more than one million acres of lakes,  
 13 reservoirs, ocean, and estuaries in the  
 14 state have now been fully assessed for  
 15 impairment. Over the years, as more  
 16 waterbodies have been assessed, more  
 17 impairments have been identified and  
 18 listed.  
 19 During the period between 1998  
 20 and 2023, more than 13,000 combination  
 21 miles of impaired rivers and streams were  
 22 identified and added to the 303(d) list.  
 23 In 2023, there remained about 4500

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1 combination miles of impaired rivers and  
 2 streams as a result of 9000 combination  
 3 miles being removed from the list due to  
 4 improved water quality or being addressed  
 5 through development of a Total Maximum  
 6 Daily Load (TMDL) determination. A TMDL  
 7 sets strict limits for the discharge of  
 8 pollutants into the assessed waterbody  
 9 that will bring that waterbody into  
 10 compliance with water quality standards.  
 11 During the period from 1998  
 12 through 2023, more than 1.1 million  
 13 combination acres of impaired lakes,  
 14 reservoirs, ocean, and estuaries were  
 15 added to the 303(d) list when identified.  
 16 In 2023, there remained about  
 17 660,000 combination acres of impaired  
 18 lakes, rivers, ocean, and estuaries as a  
 19 result of more than 450,000 combination  
 20 acres being removed from the list due to  
 21 improved water quality or being addressed  
 22 by TMDL development. As with rivers and  
 23 streams, this shows ongoing improvement.

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1 Overall, impaired waterbodies  
 2 have seen significant improvement over the  
 3 years and that improvement continues.  
 4 Now, the 303(d) list identifies  
 5 impaired waterbodies. Waterbodies are  
 6 also tracked by an assigned designation or  
 7 use classification. The data in this  
 8 slide will go back to 1982, which is a bit  
 9 further back than the previous slide.  
 10 Looking at the three highest  
 11 classifications and designations:  
 12 Outstanding National Resource Waters;  
 13 Outstanding Alabama Waters; and, Treasured  
 14 Alabama Lakes, as you can see, in 1982, no  
 15 State waters were yet determined to have  
 16 met the requirements to be designated in  
 17 the highest categories.  
 18 By 2023, Alabama was recognized  
 19 to have a total of more than 1100 miles  
 20 and nearly 5600 acres in the two combined  
 21 designations of natural waters of  
 22 outstanding quality that are considered  
 23 important to Alabama and the nation.

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1 Alabama also has more than  
 2 40,000 acres of exceptionally high quality  
 3 waters resulting from the manmade  
 4 impoundment of water courses into  
 5 reservoirs with the Treasured Alabama  
 6 Lakes designation.  
 7 Conversely, at the other end of  
 8 the scale, the number of miles of  
 9 watercourses in the lowest use  
 10 classification, which is below fish and  
 11 wildlife classification and suitable only  
 12 for industrial and agricultural use, has  
 13 declined from more than 700 miles to just  
 14 over 100 miles.  
 15 Since 1982, Alabama has seen  
 16 dramatic increase in waters qualifying for  
 17 the highest quality designations and use  
 18 classifications and likewise a dramatic  
 19 decrease in those falling into the lowest  
 20 classifications.  
 21 As measured by drinking water,  
 22 impaired waterbodies, and waterbody  
 23 designations and use classifications,



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1 water quality in Alabama is exceptionally  
 2 good and continues to improve.  
 3 Looking at how the public  
 4 perceives water quality improvement during  
 5 their lifetime, about 59% rated water  
 6 quality as improved, 28% saw no change,  
 7 and 13% rated water quality lower over  
 8 their lifetime.  
 9 The data shows very clearly that  
 10 water quality has been dramatically  
 11 improving, so there is an opportunity for  
 12 us to get that message out more  
 13 effectively.  
 14 Moving on to data from the land  
 15 media, we begin by looking at landfills.  
 16 Landfills are a necessary feature if we  
 17 are to dispose of solid waste generated by  
 18 each of us in a safe, efficient, and  
 19 effective manner.  
 20 In 1989, Alabama had 141 unlined  
 21 municipal solid waste landfills. All of  
 22 those have been closed.  
 23 Today, there are 30

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1 state-of-the-art lined MSW permitted  
 2 landfills handling all the municipal solid  
 3 waste in Alabama.  
 4 Alabama, like other states, has  
 5 had to deal with not only permitted  
 6 landfills, but also with unauthorized  
 7 solid waste dumps.  
 8 Since 2009, nearly 2300  
 9 unauthorized solid waste dumps have been  
 10 remediated. This is up 3.3% over 2022.  
 11 Nearly 1700 of those have been  
 12 remediated by actions against responsible  
 13 parties, while nearly 600, representing  
 14 innocent landowners, have been cleaned up  
 15 using funds provided by the one dollar per  
 16 ton fee on solid waste disposed of in  
 17 landfills, which was initiated in 2009.  
 18 The responsible party number is up 3.6%,  
 19 and the innocent landowner number is up  
 20 2.4% compared to 2022.  
 21 In addition to safely disposing  
 22 of solid waste, efforts have been  
 23 expanding to reduce the total amount of

Page 19

1 solid waste in Alabama by promoting  
 2 recycling. Once again, significant  
 3 progress has been made since our last  
 4 report in 2023, just as it has been in  
 5 prior years.  
 6 The solid waste reduction rate  
 7 in Alabama today is more than five times  
 8 what it was in 1989 and has now surpassed  
 9 the 25% recycling goal set back in 1991  
 10 and compares very favorably with national  
 11 averages. The total recycling volume now  
 12 comes to 3.9 million tons per year, about  
 13 the same as it was in 2022. A robust  
 14 recycling grant program administered by  
 15 ADEM since 2010 has provided more than \$30  
 16 million in grants to help achieve this  
 17 success.  
 18 Scrap tires present special  
 19 problems as fire hazards and breeding  
 20 grounds for vectors. Since 2006, 386  
 21 illegal scrap tire dumps containing more  
 22 than 11 million tires have been cleaned  
 23 up. The number of scrap tire dumps

Page 20

1 cleaned up is up 4% over what it was in  
 2 2022.  
 3 Today, solid waste in Alabama  
 4 environment is being dealt with  
 5 responsibly.  
 6 In the past, underground storage  
 7 tanks typically found at gas stations have  
 8 been subject to leaks due to corrosion or  
 9 physical damage. Leaking petroleum  
 10 products contaminate both soil and  
 11 groundwater. New regulations and  
 12 technology now prevent or provide for  
 13 early detection of leaks from tanks  
 14 installed in recent years, but many legacy  
 15 sites exist in Alabama and throughout the  
 16 nation.  
 17 Since 1989, more than 12,400  
 18 leak sites have been identified in  
 19 Alabama. More than 11,500 – 93% of which  
 20 is about the same as 2022 – have been  
 21 cleaned up with 826 additional sites in  
 22 some stage of cleanup process.  
 23 Groundwater contamination from

Page 21

1 underground storage tanks continues to  
 2 decline.  
 3 This slide shows what's been  
 4 happening with other contaminated legacy  
 5 sites known as "brownfields." These most  
 6 often are old industrial sites. As with  
 7 underground storage tanks, new regulatory  
 8 programs and technology have all but  
 9 halted the creation of new brownfield  
 10 sites.  
 11 The Brownfields Program has  
 12 identified 678 legacy brownfield sites in  
 13 Alabama. Since 2001, 448, or about  
 14 two-thirds of those sites, totaling 6400  
 15 acres, have been returned to productive  
 16 use. This is a .9% increase in the number  
 17 of sites returned to productive use and a  
 18 .7% increase in acreage returned to  
 19 productive use since 2022.  
 20 Ninety-four (94) of the  
 21 remaining sites, totaling more than 8100  
 22 acres, are actively enrolled in the  
 23 Brownfields Program.

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1 to choose from a multiple-choice list:  
 2 "What is the biggest source of water  
 3 pollution in Alabama?" From the ten  
 4 choices, the top four answers were illegal  
 5 dumping of litter and waste by individuals  
 6 at 33%, industrial plants at 21%,  
 7 municipal sewage treatment plants at 10%,  
 8 and storm water at 8.4%. By far the  
 9 largest source of water pollution in  
 10 Alabama is, in fact, storm water rather  
 11 than illegal dumping of solid waste.  
 12 The second question that  
 13 elicited a response directed at solid  
 14 waste regarding environmental quality was  
 15 also a multiple-choice question. When  
 16 asked what the respondent thought the most  
 17 important environmental problem facing  
 18 Alabama today is, of the nine choices:  
 19 Illegal dumps, garbage, solid waste, and  
 20 hazardous waste at 31% scored ahead of the  
 21 next two, water pollution at about 20% and  
 22 air pollution at about 12%.  
 23 Of course, there are several

Page 22

1 Work continues to identify,  
 2 enroll and clean up brownfield sites. The  
 3 land returned to productive use is very  
 4 often in prime areas for future industrial  
 5 development. Both the environment and  
 6 economic prospects in Alabama have been  
 7 improved since 2001 because of this  
 8 program.  
 9 In the June 12th, 2023,  
 10 Commission meeting, I reported on  
 11 brownfields legislation enacted during the  
 12 2023 legislative session that provides new  
 13 incentives intended to further accelerate  
 14 the cleanup of old industrial sites. You  
 15 will be considering rulemaking today to  
 16 implement that new legislation.  
 17 Our public opinion survey did  
 18 not have specific, direct questions about  
 19 trends in the management of solid waste,  
 20 but there were two questions that asked  
 21 about the role of solid waste in  
 22 contributing to environmental quality.  
 23 One question asked respondents

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1 plausible answers to that question; but  
 2 despite the significant progress shown on  
 3 the last few slides, various types of  
 4 solid waste are perceived as the most  
 5 important environmental problem facing  
 6 Alabama today.  
 7 The quality of Alabama's  
 8 environment, as measured by declining air  
 9 emissions that now meet National Ambient  
 10 Air Quality Standards, meeting or beating  
 11 water quality standards and the extensive  
 12 remediation of legacy solid waste  
 13 contamination, has been improving  
 14 continuously over the years, and it has  
 15 continued that improvement since we last  
 16 reviewed the data. Hard data shows the  
 17 progress. Results are what we all look  
 18 for, and this report is a look back at  
 19 some highlights of achievements and a  
 20 commitment to continue the work.  
 21 The state of the environment in  
 22 Alabama is much improved over what it was  
 23 20 to 30 years ago. It is improved over

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1 what it was in 2022. Our citizens breathe  
 2 much cleaner air, have higher quality  
 3 water, and can be assured that solid waste  
 4 management and contaminated land  
 5 remediation have significantly progressed.  
 6 The current state of the environment in  
 7 Alabama is very good and overall trends  
 8 are favorable.

9 The Department regulates 35,000  
 10 facilities in Alabama. Occasionally, some  
 11 of those 35,000 regulated facilities, as  
 12 well as entities not subject to ADEM  
 13 regulation, encounter problems that result  
 14 in adverse environmental impacts. This is  
 15 the case in every state in the nation.  
 16 Those affected by such events clearly have  
 17 reason to be concerned.

18 The Department undertakes  
 19 enforcement when warranted and works with  
 20 other federal, state and local  
 21 governmental organizations as necessary to  
 22 undertake corrective measures. Unwelcomed  
 23 as individual events causing great concern

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1 the Alabama Department of Finance's  
 2 Division of Construction Management, which  
 3 signaled substantial completion of the  
 4 facility. Move in has begun. There are  
 5 several punch list items that are  
 6 anticipated to be completed in the next 30  
 7 days. When the punch list is complete, a  
 8 ribbon cutting ceremony is planned, which  
 9 should be in mid-March. We will be  
 10 sending out a notice of the date and time  
 11 about two weeks before the event. We will  
 12 be arranging transportation for Commission  
 13 members who may be able to attend.

14 As you know, the Department  
 15 encourages our personnel to undertake  
 16 professional development. It's an  
 17 important element in our unified strategic  
 18 plan and our annual operating plans. It's  
 19 also part of our plan to recognize those  
 20 who have achieved significant milestones  
 21 in their professional development. I'm  
 22 pleased to introduce Dustin Stokes in our  
 23 Water Division, who recently -- stand up,

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1 may be, this report on the state of the  
 2 environment looks at the entire state of  
 3 Alabama over time and that also factors in  
 4 the various violations of environmental  
 5 regulations.

6 A final finding in our recently  
 7 completed survey of public opinion on the  
 8 environment in Alabama shows: Overall,  
 9 86% of the public considers the quality of  
 10 Alabama's environment to be good, while  
 11 12% consider it to be bad. With only 2%  
 12 answering "don't know," it's pretty  
 13 obvious nearly everyone has an opinion.

14 Despite some misperceptions on  
 15 various components of the environment,  
 16 people in Alabama seem to agree with the  
 17 actual data that the state of the  
 18 environment in Alabama is good and getting  
 19 better.

20 On February 1st, the Mobile  
 21 Field Office that has been under  
 22 construction for nearly two years passed  
 23 the life, health and safety inspection by

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1 Dustin, thank you -- who recently  
 2 completed the rigorous requirements to  
 3 earn the accreditation of Professional  
 4 Engineer. Keep standing, Dustin.

5 (Applause).

6 MR. MCFADDEN: Congratu-  
 7 lations.

8 MR. STOKES: Thank you.

9 MR. MCFADDEN: Dustin, you're  
 10 now on the list of all plaintiff lawyers  
 11 in the state.

12 MR. LEFLEUR: That completes my  
 13 report for today. If there are any  
 14 questions, I'll be pleased to answer them.

15 MR. MCFADDEN: Does anyone have  
 16 any questions?

17 (No response).

18 MR. MCFADDEN: Good report,  
 19 Lance. Thank you very much.

20 MR. LEFLEUR: Okay. Thank you.

21 MR. MCFADDEN: All right. I had  
 22 just a few short comments. Not so much a  
 23 report, but I'll just second what our

1 Director has said. I was just sitting  
2 there when you were going through the  
3 stream classifications and the miles and  
4 all, of course, that was my little corner  
5 of this agency back in the early '80s. We  
6 were measuring stream miles with a USGS  
7 quad map -- do you still do that, Jay? --  
8 and a little wheel thing, and I forgot the  
9 number. I think it was like 41,000 miles.  
10 I don't know. Jay, you may know what it  
11 is now, but it's a whole lot bigger than  
12 that.

13 So, when you add all that in, I  
14 think those statistics are even more  
15 profound because most of those streams  
16 that were not picked up by manual methods  
17 are in the rural, forested areas, which  
18 were supposedly, you know, unimpaired or  
19 in great shape.

20 So, I think we have come a long  
21 way. And I can tell you, I know JP back  
22 here and others of you have worked in  
23 other states, and it's some stark contrast

1 might the public and you who attend, and a  
2 lot of you know this. But, like, when we  
3 come here and we vote on a couple of  
4 things and we leave and go back to our  
5 responsibilities, we do. The meeting has  
6 run very well and very economical thanks  
7 to Ms. Thomas over here and how she and  
8 Ms. Cranage and the Director's Office and  
9 others, Marilyn and, you know, others that  
10 get the materials supplied to us.

11 And so, what actually happens is  
12 we spend about two hours, each of us  
13 separately, meeting with the Director  
14 before this meeting, sometime in the  
15 previous week or ten days or two weeks.  
16 And it's not a 20-minute little sprint  
17 just to say we met. It's like a marathon.  
18 Lance should have been a preacher, I  
19 think. Reverend, he might take your job  
20 one day.

21 REV. CODY GILLIAM: Hey, I've  
22 got two churches.

23 MR. MCFADDEN: He would be good.

1 to how well we do here compared to how  
2 some other states handle their  
3 environmental issues, the pluses and the  
4 minuses. I mean, we do a great job here  
5 thanks to our good staff and leadership.

6 So -- but in saying that, I've  
7 been on this Commission just a little over  
8 a year, and Dr. Tucker is our newest  
9 member here. We're looking forward to him  
10 getting up to speed. You'll be voted on  
11 next year and may end up in this chair.  
12 There was a hanging-chad issue or  
13 something in my vote, so I ended up here.  
14 But I appreciate your confidence.

15 And these folks are great to  
16 work with. They all have the heart of  
17 this state as primary concern. And we  
18 don't get everything right. No agency  
19 does, no department does or entity  
20 anywhere, but they do. So, I appreciate  
21 the hard work.

22 And in that regard, sitting here  
23 observing for the last year, thinking what

1 But -- so, that happens. And we  
2 are really informed on the details of  
3 everything that might come before this  
4 meeting and in the Department in general.

5 And then on top of that, we get  
6 daily and weekly news briefs that are put  
7 out by the Department. Debi, Ms. Thomas,  
8 over here gets us all correspondence that  
9 comes to the Commission and other  
10 correspondence that is relevant.

11 And so, we get a lot of  
12 information before this meeting happens.  
13 So, when it gets time for the meeting, we  
14 don't hold everybody up two or three hours  
15 and, you know, take more time than is  
16 needed and to give time for the public and  
17 those who are signed up to speak, you  
18 know, have time to do that.

19 So, I just thought you ought to  
20 know that because sometimes optics are  
21 different. Like, well, we come up here  
22 once for an hour, hour-and-a-half every  
23 other month and turn around and leave, but

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1 that is not the case, I can assure you.  
 2 And it's been an honor to do that, to hear  
 3 how things are going in this state. They  
 4 are going well. There can be  
 5 improvements, as the Director has just  
 6 said, and we all strive for that. And so,  
 7 we will continue on.  
 8 So, anyway, with that, I'll say  
 9 no more and go to Item Number 4 I guess it  
 10 is.  
 11 So, we're talking about the  
 12 consideration of adoption of proposed  
 13 amendments to ADEM Administrative Code  
 14 335-1, which is the General Administration  
 15 Regulations. And so, we will hear from  
 16 the Department.  
 17 MR. KELLY: Good morning, Mr.  
 18 Chairman, members of the Commission. I'm  
 19 Russell Kelly, Chief of the Permits and  
 20 Services Division.  
 21 Like you say, we're here with  
 22 Division 1 before you. The Department  
 23 held a public hearing on December 14th for

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1 remain consistent with the Federal rules.  
 2 During the public comment  
 3 period, there were no comments received.  
 4 Therefore, at this time, I request your  
 5 favorable consideration and answer any  
 6 questions.  
 7 MR. MCFADDEN: How does this  
 8 affect overall funding in your section,  
 9 Russell?  
 10 MR. KELLY: The Title V? It  
 11 doesn't. Basically, what's happened here  
 12 is, through time, the Federal regulations  
 13 are always amended and changed. Some are  
 14 more critical than others. Some are more  
 15 time sensitive.  
 16 So, at various times, we will go  
 17 into any of the regulations and make sure  
 18 that the language mimics the Federal  
 19 language. We do that quite often so that  
 20 we're consistent. As I said, sometimes  
 21 it's more critical than others. This one,  
 22 not all that critical. It doesn't change  
 23 the Title V assessment at all. It simply

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1 the revisions to Division 1. The proposed  
 2 revisions include modifying, adding, and  
 3 deleting forms necessary for the  
 4 implementation of the Department's rules  
 5 and regulations. In total, there were 24  
 6 forms that were modified, two forms were  
 7 added, and three forms were deleted.  
 8 In addition, the Department is  
 9 proposing to revise ADEM Fee Schedule H,  
 10 that is the Brownfield Redevelopment and  
 11 Voluntary Cleanup Program. Those  
 12 revisions proposed to establish the  
 13 Brownfield Remediation Reserve Fund, and  
 14 that is in accordance with the new  
 15 legislative Act of 2023-356 passed this  
 16 previous legislative session.  
 17 The Department is also proposing  
 18 to add Administrative Code r. 335-1-5 in  
 19 order to adopt a Title VI grievance  
 20 procedure for the Department under 40 CFR  
 21 Section 7.9. Further changes are proposed  
 22 to the Administrative Code relating to the  
 23 Title V emission fee language in order to

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1 makes the language consistent with where  
 2 the Federal language is at this time.  
 3 MR. MCFADDEN: Good. Thank you.  
 4 Anybody else?  
 5 (No response).  
 6 MR. MCFADDEN: Okay. Thank you  
 7 very much.  
 8 MR. KELLY: Thank you, Mr.  
 9 Chairman. Thank you very much.  
 10 MR. MCFADDEN: Thank you.  
 11 All right. So, you heard from  
 12 Mr. Kelly, and I'll entertain a motion now  
 13 from the proposed amendments – regarding  
 14 the proposed amendments to the General  
 15 Administration Regulations. Do I have a  
 16 motion?  
 17 MR. MASINGILL: I move we adopt  
 18 the proposed amendments.  
 19 MS. MERRITT: Second.  
 20 MR. MCFADDEN: I have a motion  
 21 and a second. Any discussion regarding  
 22 it?  
 23 (No response).

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1 MR. MCFADDEN: Okay. Hearing  
 2 none, I'll call for the question. All  
 3 those in favor of the motion, raise your  
 4 hand, please.  
 5 (All Commission Members  
 6 raising hands).  
 7 MR. MCFADDEN: And all opposed?  
 8 (No response).  
 9 MR. MCFADDEN: So, unanimous.  
 10 And we'll sign some paperwork.  
 11 (Commission Members signing  
 12 paperwork).  
 13 MR. MCFADDEN: Okay. Paperwork  
 14 is done. It's done when the paperwork is  
 15 done, right?  
 16 Okay. I guess we're on Agenda  
 17 Number 5, if I haven't lost track already.  
 18 The Chair notes that Agenda Item 5 is  
 19 consideration of adoption of the proposed  
 20 amendments to ADEM Administrative Code  
 21 335-15, the Brownfield Redevelopment and  
 22 Voluntary Cleanup Program Regulations.  
 23 Mr. Cobb.

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1 The proposed regulations were  
 2 the subject of a public comment period  
 3 which ran from October 29th to December  
 4 14th of 2023. Public hearing was held at  
 5 the Department on December 14. No oral  
 6 comments were received during the hearing  
 7 and one written comment was received  
 8 during the public comment period.  
 9 Based on the comment received,  
 10 no changes were made to the proposed  
 11 regulations. The Department's response to  
 12 the comment received has been provided to  
 13 the Commission.  
 14 The revised regulations are  
 15 presented today for your consideration,  
 16 and we ask that you adopt the proposed  
 17 changes to Division 15. I'm happy to  
 18 answer any questions that you might have.  
 19 MR. MCFADDEN: You mentioned an  
 20 amended liability clause. Can you just  
 21 briefly explain what was different, what  
 22 they amended?  
 23 MR. COBB: The legislation put

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1 MR. COBB: Yes. Thank you, Mr.  
 2 Chairman, and good morning, Commissioners.  
 3 I'm Steven Cobb, Chief of the Land  
 4 Division.  
 5 I come today to recommend that  
 6 the Commission adopt amendments to the  
 7 Department's Division 15, Brownfield  
 8 Redevelopment and Voluntary Cleanup  
 9 Program Regulations.  
 10 Revisions to this division are  
 11 being proposed to comply with updated  
 12 state law from the 2023 Alabama  
 13 legislative session. These new rules  
 14 establish the administrative procedures --  
 15 guidelines and procedures to allow for  
 16 reimbursements from the Brownfield  
 17 Remediation Reserve Fund and amend the  
 18 limitation of liability qualifications for  
 19 responsible party applicants, as well as  
 20 amending release reporting obligations.  
 21 The revisions also include several  
 22 typographical and citation updates in the  
 23 existing regulations.

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1 in place a procedure by which responsible  
 2 parties, who apply and participate in the  
 3 Voluntary Cleanup Program, can accrue  
 4 certain liability protections which  
 5 protects future purchasers against changes  
 6 in the standards that would apply to a  
 7 given facility after a cleanup has been  
 8 done. I believe the goal of that was to  
 9 encourage more participation in the  
 10 Voluntary Cleanup Program and provide more  
 11 regulatory certainty for future owners of  
 12 that property.  
 13 MR. MCFADDEN: Okay. And did I  
 14 remember correctly that actually can be  
 15 handed down to the heirs and successors?  
 16 MR. COBB: Yes.  
 17 MR. MCFADDEN: Okay. Good. Any  
 18 other questions for Mr. Cobb?  
 19 (No response).  
 20 MR. MCFADDEN: Thank you, Steve.  
 21 MR. COBB: Thank you.  
 22 MR. MCFADDEN: All right. We do  
 23 have a motion -- or need a motion here to

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1 adopt the proposed amendments to the  
 2 Brownfield Redevelopment and Voluntary  
 3 Cleanup Program Regulations. Do I have a  
 4 motion?  
 5 MR. MASINGILL: I move to adopt  
 6 the proposed amendments.  
 7 MR. MCFADDEN: Okay.  
 8 DR. TUCKER: Second.  
 9 MR. MCFADDEN: I have a motion  
 10 and a second. Any additional discussion  
 11 on that from anyone?  
 12 (No response).  
 13 MR. MCFADDEN: Okay. No  
 14 discussion. Then I'll call for the  
 15 question. All in favor, raise your hand.  
 16 (All Commission Members  
 17 raising hands).  
 18 MR. MCFADDEN: All opposed?  
 19 (No response).  
 20 MR. MCFADDEN: It's unanimous  
 21 and the motion carries. Sign some more  
 22 papers.  
 23 (Commission Members signing

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1 paperwork).  
 2 MR. MCFADDEN: Okay. Thank you.  
 3 All right. Agenda Item Number  
 4 6, Other Business. Any other business to  
 5 come before the Commission?  
 6 (No response).  
 7 MR. MCFADDEN: Okay. Not  
 8 hearing any.  
 9 Item Number 7, Future Business.  
 10 Noting the date of the next Commission  
 11 meeting is April 12th, 2024. Is everyone  
 12 available if you know that now for that  
 13 meeting?  
 14 DR. TUCKER: Yes.  
 15 MS. MERRITT: Yes.  
 16 MR. MCFADDEN: Okay. We may be  
 17 one or two short pending medical  
 18 appointments. So, let us know as we get  
 19 closer to time if there's a problem so we  
 20 avoid not having a quorum if we can at  
 21 all.  
 22 All right. Okay. Let's see.  
 23 Did I skip something here? No.

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1 Now we're in the Public Comment  
 2 Period. I note that there has been one  
 3 person register from the public that has  
 4 signed up to make a brief statement. The  
 5 Chair notes it there. I'll call them that  
 6 person in just a second as the names  
 7 appear on the register, which is just one.  
 8 So, that shouldn't be a problem.  
 9 And I want to just note that the  
 10 speakers are encouraged to limit their  
 11 statements to matters that directly relate  
 12 to the Commission functions and ask to  
 13 observe a three-minute time limit or the  
 14 gong will come out.  
 15 So, names on – the name, if I  
 16 can find my paperwork, is Reverend Cody  
 17 Gilliam. Did I say that right, Reverend?  
 18 REV. CODY GILLIAM: You got  
 19 close enough, sir.  
 20 MR. MCFADDEN: All right. All  
 21 right.  
 22 REV. CODY GILLIAM: Giving a  
 23 preacher three minutes, man, that's hard

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1 stuff right there.  
 2 MR. MCFADDEN: I'm going to say  
 3 we need a big gong, don't we?  
 4 REV. CODY GILLIAM: Well, I'm  
 5 the pastor of Belle Mina Methodist Church  
 6 and Walnut Grove Cumberland Presbyterian  
 7 Church. I like to tell people at 9:00  
 8 a.m., I'm a Methodist, but at 11:00 a.m.,  
 9 I'm a Presbyterian.  
 10 MR. MCFADDEN: Well, you are  
 11 free to ask them for that.  
 12 REV. CODY GILLIAM: So, I'm  
 13 happy to be here with you. Yeah. I'm  
 14 happy to be with you today off of my  
 15 circuit. I'm a dying breed, a circuit  
 16 rider. I want to tell you a little bit  
 17 about Belle Mina.  
 18 Belle Mina was once considered  
 19 for the State Capitol of Alabama, but Old  
 20 Cahaba beat us out. So, we didn't get  
 21 that distinction. But the second governor  
 22 of Alabama owned a plantation there called  
 23 Belle Manor, but they came through with a

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1 railroad and asked people there what the  
 2 name of that plantation was. They said,  
 3 Belle Mina. And so, the name stuck. And  
 4 then they started calling the plantation  
 5 Belle Mina and the town Belle Mina.  
 6 That area is enriched in  
 7 history. People have lived there since  
 8 before the Stone Age, and people continue  
 9 to live there. Of course, Thomas Bibb and  
 10 some other characters, like the Sleeping  
 11 Preacher of North Alabama ended up there.  
 12 And he's done some things that I won't  
 13 scare you with, but I want to encourage  
 14 you to look him up a little bit.  
 15 But a little more modern history  
 16 is, Judge Horton was a member of my church  
 17 at Belle Mina Methodist Church. And if  
 18 you don't know who Judge Horton was, then  
 19 you need to look up the Scottsboro boys'  
 20 case. It was a very important case in  
 21 Alabama. And he went to our kneeling rail  
 22 and prayed to God to lead him in that  
 23 fight. And we believe that what he did

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1 McKinstry, I like your jacket there. I  
 2 feel like we might have similar taste.  
 3 And I just want to thank  
 4 everyone for this time. Look at me. I  
 5 even only didn't even use all my time.  
 6 But thank you so much for  
 7 letting me come and let me speak to you  
 8 and just wanted to bring awareness to this  
 9 potential PR problem that you might have.  
 10 MR. MCFADDEN: Thank you,  
 11 Reverend. We appreciate your comments.  
 12 And, yeah, we take all that very  
 13 seriously, and we'll do our best in the  
 14 Department to do what the law requires and  
 15 the best we can. So, thank you.  
 16 And that, we want to, as just an  
 17 added statement to -- not that particular,  
 18 but communication with the Department and  
 19 even the Commission is encouraged. I  
 20 think we had a meeting here a couple of  
 21 days ago with some environmental groups  
 22 with the Department that talk over issues.  
 23 And so, we certainly want to

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1 was one of the best things to ever happen  
 2 to racial justice laws in our country.  
 3 Along with that is a population  
 4 of people that are impoverished and that  
 5 descend from former slaves, and they live  
 6 right across the street from where this  
 7 quarry is going to go. And I just noticed  
 8 you spent a whole lot of time, Mr.  
 9 Director, on PR, and let me tell you  
 10 something, if this thing goes in, it won't  
 11 be good PR for you. It won't be good PR  
 12 for ADEM. It will be very, very poor PR  
 13 for everyone.  
 14 I think everyone involved  
 15 doesn't want this to happen. Everyone  
 16 involved wants this to go away. And I  
 17 just really want to do one thing today,  
 18 and that's thank ADEM for extending the  
 19 public comment period. I know you guys  
 20 get beat up a lot, but we just wanted to  
 21 come and thank you, and we appreciate how  
 22 you're doing your job.  
 23 And I just want to say, Mr.

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1 encourage that. So, thank you again.  
 2 And that's all we had on that  
 3 part of the agenda. So, we are basically  
 4 ready to adjourn.  
 5 MR. BROWN: So move.  
 6 MR. MCFADDEN: So, once someone  
 7 has a motion. That didn't take long.  
 8 All right. A motion to adjourn.  
 9 A second?  
 10 DR. PERRY: Second.  
 11 MR. MCFADDEN: Okay. Ms. Ruby  
 12 seconded the motion. And any discussion  
 13 on the adjournment?  
 14 (No response).  
 15 MR. MCFADDEN: If not, all those  
 16 in favor, raise your hand.  
 17 (All Commission Members  
 18 raising hands).  
 19 MR. MCFADDEN: All opposed?  
 20 (No response).  
 21 MR. MCFADDEN: So it passes.  
 22 We're adjourned.  
 23 Thank you-all for coming.



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(Meeting concluded at approximately 11:50 a.m.)

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REPORTER'S CERTIFICATE

\* \* \* \* \*

STATE OF ALABAMA  
TALLAPOOSA COUNTY

I, Jeana S. Boggs, Certified Professional Reporter and Notary Public in and for the State of Alabama at Large, do hereby certify on Friday, February 9, 2024, that I reported the meeting in the matter of:

MEETING OF THE  
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION  
ALABAMA DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT (ADEM) BUILDING  
ALABAMA ROOM  
1400 COLISEUM BOULEVARD  
MONTGOMERY, ALABAMA 36110-2400

That the foregoing 49 computer-printed pages contain a true and correct transcript of the meeting set out herein.

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I further certify that I am neither of relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in the results thereof. All rates charged are usual and customary.

I further certify that I am duly licensed by the Alabama Board of Court Reporting as a Certified Court Reporter as evidenced by the ABCR number following my name found below.

This 17th day of March, in the year of our Lord, 2024.

*Jeana S. Boggs*

Jeana S. Boggs  
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Commission expires: 8/9/2027

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	<u>7</u>		
<u>3</u>	7 42:9 51:15		
3.3 18:10	7% 21:18		
3.6 18:18	7.9 34:21		
3.9 19:12	700 16:13		
30 6:11 7:1			
17:23 19:15	<u>8</u>		
24:23 27:6	8.4 23:8		
303(d) 12:19	8/9/2027 51:16		
13:22 14:15	80s 29:5		
15:4	8100 21:21		
31% 10:19	82% 12:3		
23:20	826 20:21		
33% 23:6	86% 26:9		
335-1 33:14	89 11:13 12:9		
335-1-5 34:18	8th 3:8,14		
335-15 37:21			
35,000 25:9,11	<u>9</u>		
36% 9:23	9 1:9 50:11		
36110-2400 1:8	9% 21:16		
50:19	9/30/2024 51:15		
386 19:20	9:00 44:7		
	9000 14:2		
<u>4</u>	93% 13:11		
4 33:9	20:19		
4% 20:1	94 21:20		
40 34:20	98% 12:6		
40,000 16:2			
41,000 29:9			
42% 10:9			
448 21:13			
450,000 14:19			
4500 13:23			
49 50:21			
<u>5</u>			
5 37:17,18			

**Part B**

## **Attachment Index**

**Attachment 1 Agenda**

**Attachment 2 Director's Slides  
(Agenda Item 2)**

**Attachment 3 Resolution adopting amendments to ADEM Administrative Code Division  
335-1, General Administration Regulations, and Attachment A, Final Proposed  
Rules  
(Agenda Item 4)**

**Attachment 4 Resolution adopting amendments to ADEM Administrative Code Division  
335-15, Brownfield Redevelopment and Voluntary Cleanup Program  
Regulations, and Attachment A, Final Proposed Rules  
(Agenda Item 5)**

**Attachment 1**

1/10/24

AGENDA\*  
MEETING OF THE  
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: February 9, 2024

TIME: 11:00 a.m.

LOCATION: Alabama Department of Environmental Management (ADEM) Building  
Alabama Room (Main Conference Room)  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2400

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2. Report from the ADEM Director	2
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4. Consideration of proposed amendments to ADEM Administrative Code Division 335-1, General Administration Regulations	2
5. Consideration of proposed amendments to ADEM Administrative Code Division 335-15, Brownfield Redevelopment and Voluntary Cleanup Program Regulations	2
6. Other business	2
7. Future business session	2
PUBLIC COMMENT PERIOD	3
Brief statements by members of the public registered to speak	3

\* The Agenda for this meeting will be available on the ADEM website, [www.adem.alabama.gov](http://www.adem.alabama.gov), under Environmental Management Commission.

\*\* The Minutes for this meeting will be available on the ADEM website under Environmental Management Commission.

1. CONSIDERATION OF MINUTES OF MEETING HELD ON DECEMBER 8, 2023
2. REPORT FROM THE ADEM DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-1, GENERAL ADMINISTRATION REGULATIONS

The Commission will consider amendments to ADEM Administrative Code Division 335-1, General Administration Regulations. Revisions to the Division 1 Code are being proposed to incorporate changes to Schedule H – Brownfield Redevelopment and Voluntary Cleanup Program. These changes are necessary to comply with recent statutory changes. In addition, this modification will also address Title V emission fees, Title VI grievance procedures, and departmental forms by adding, modifying, and/or deleting certain forms. The Department held a public hearing on the proposed amendments on December 14, 2023.

5. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-15, BROWNFIELD REDEVELOPMENT AND VOLUNTARY CLEANUP PROGRAM REGULATIONS

The Commission will consider amendments to ADEM Administrative Code Division 335-15, Brownfield Redevelopment and Voluntary Cleanup Program Regulations. Revisions to the Division 15 Code are being proposed to incorporate needed updates from state statutory changes. The Department held a public hearing on the proposed amendments on December 14, 2023.

6. OTHER BUSINESS
7. FUTURE BUSINESS SESSION



PUBLIC COMMENT PERIOD

BRIEF STATEMENTS BY MEMBERS OF THE PUBLIC REGISTERED TO SPEAK

Members of the public that wish to make a brief statement at a Commission meeting may do so by first signing in on a register maintained by the Commission office prior to each regularly scheduled meeting. The register will close ten minutes prior to convening each meeting of the Commission. Following completion of all agenda items, the Commission Chair will call on members of the public wishing to make a statement in the order their names appear on the register. Speakers are encouraged to limit their statement to matters that directly relate to the Commission's functions. Speakers will be asked to observe a three minute time limit. While an effort will be made to hear all members of the public signed on the register, the Commission may place reasonable limitations on the number of speakers to be heard. (Guideline 11, Guidelines for Public Comment).

The Guidelines for Public Comment are used in the application of ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda and Public Participation. The Guidelines for Public Comment serve to educate and inform the public as to how the Commission interprets and intends to apply the Rule. The revised Rule 335-2-3-.05 was effective October 7, 2016.

**Attachment 2**

**Performance Measures**

- Performance vs Annual Operating Plan
- EPA Compliance and Enforcement Metrics vs All States
- EPA State Review Framework Audit vs EPA Region 4 States
- State of the Environment in Alabama

1

**State of the Environment  
in  
Alabama**

2

## AIR DATA

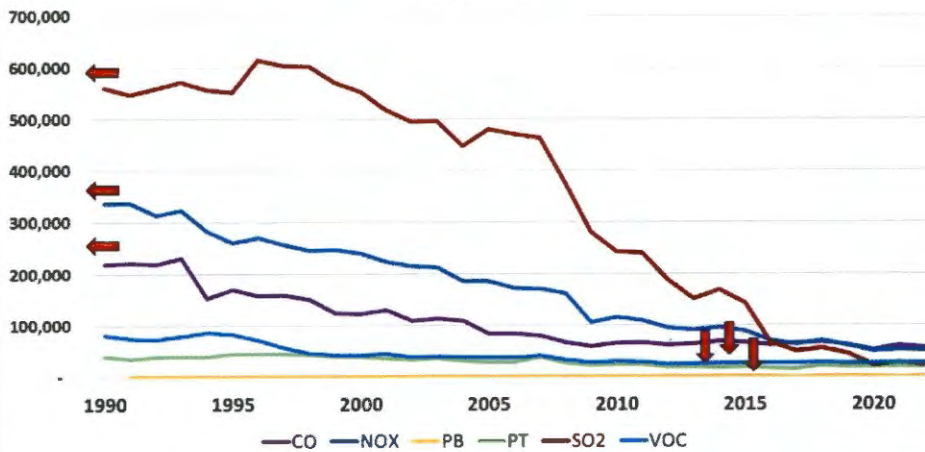
3

### Statewide Attainment of Air Quality and related standards

- CO – 1971
- NO<sub>x</sub> – 1971
- SO<sub>2</sub> – 1977
- PM2.5 – 2013
- Ozone – 2014
- Pb – 2015
- Haze – 2013

4

AL Emissions from Major Sources (tons)  
1990-2022



5

Public Opinion Survey - Air

Rate the improvement to air quality in Alabama during your lifetime:

Improved	51.4%
Same	35.8%
Worse	12.8%

6

**Public Opinion Survey - Air**

What is the biggest source of air pollution in Alabama?:

Industry & power plants	42.0%
Motor vehicles	25.0%
Open burning	10.8%

7

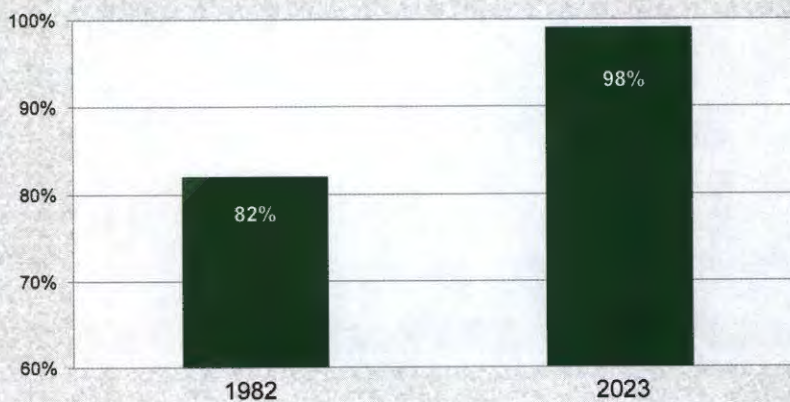
**WATER DATA**

8

**Number of Drinking Water Contaminants  
Regulated**

	<u>1982</u>	<u>2023</u>
• Organic chemicals	7	55
• Inorganic chemicals	10	19
• Radionuclides	3	7
• Microbes	3	8
Total	<u>23</u>	<u>89</u>

9

**Percentage of Public Water Systems in Compliance**

10

**303(d) Impaired water body / pollutant combinations 1998-2023**

	<u>Listed</u>	<u>Ending</u>
River/Stream (miles)	13,499	4,451
Lake/Reservoir (1000s ac)	568	213
Ocean/Estuary (1000s ac)	563	463

11

**Water Designations & Classifications**

	<u>1982</u>	<u>2023</u>
• Highest Quality Waters:		
– Outstanding National Resource Waters		
> miles	0	805
> acres	0	1,946
– Outstanding Alabama Waters		
> miles	0	343
> acres	0	3,651
– Treasured Alabama Lakes		
> acres	0	40,065
• Lowest Use Classifications:		
– Lower than Fish & Wildlife		
> miles	713	138

12



**Public Opinion Survey - Water**

Rate the improvement to water quality in  
Alabama during your lifetime:

Improved	58.6%
Same	28.2%
Worse	13.2%

13

**LAND DATA**

14

**Landfills**

- Improved landfills 1989 - 2023:
  - 141 unlined MSW landfills closed
  - 30 state-of-the-art lined MSW landfill permits today

15

**Unauthorized solid waste dumps (UAD)**

- 2,290 UADs remediated 2009 – 2023
  - 1,699 UADs remediated by responsible parties
  - 591 UADs innocent landowners held harmless

16

**Solid waste & Scrap tire recycling**

- Solid waste reduction since 1989
  - rate increased from 5% to >25%
  - rate increased from .2 million TPY to 3.9 million TPY
- Scrap tire cleanup since 2006
  - 386 illegal scrap tire dumps cleaned up
  - >11 million passenger tires cleaned up

17

**Underground Storage Tanks (UST)**

Since 1989:

- 12,421 UST leak sites identified
  - 11,580 UST sites cleaned up
  - 826 UST sites currently being cleaned up

18

**Brownfields (BF)**

- 678 BF sites identified 2001 – 2023
  - 448 BF sites returned to productive use
    - 6,469 acres returned to productive use
  - 94 BF sites currently actively enrolled
    - 8,182 acres currently actively enrolled

19

**Public Opinion Survey - Land**

Biggest source of water pollution in  
Alabama:

Illegal dump litter/waste	33.0%
Industrial	20.6%
Treated muni sewage	10.2%
Storm water	8.4%

20

**Public Opinion Survey - Land**

Most important environmental problem  
facing Alabama:

Dumps/garbage/solid/haz	31.2%
Water pollution	19.6%
Air pollution	11.6%

21

**Public Opinion Survey – Overall  
Environmental Quality**

Rate the overall quality of environment in  
Alabama:

Very / fairly good	86.4%
Fairly / very bad	11.6%
Don't know	2.0%

22

**Attachment 3**

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-1 of the Department's Administrative Division – General Administration Rules in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

WHEREAS, a public hearing was held before a representative of the Alabama Department of Environmental Management designated by the Environmental Management Commission for the purpose of receiving data, views and arguments on the amendment of such proposed rules; and

WHEREAS, the Alabama Department of Environmental Management has reviewed the oral and written submissions introduced into the hearing record, and has prepared a concise statement of the principal reasons for and against the adoption of the proposed rules incorporating therein its reasons for the adoption of certain revisions to the proposed rules in response to oral and written submissions, such revisions, where appropriate, having been incorporated into the proposed rules attached hereto; and

WHEREAS, the Environmental Management Commission has considered fully all oral and written submissions respecting the proposed amendments and the Reconciliation Statement prepared by the Alabama Department of Environmental Management.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-1 [rules 335-1-1-.07/ Departmental Forms, Instructions, and Procedures (Amend); 335-1-6-.07 (Fee Schedule E)/ Payment of Fees (Amend)] of the Department's Administrative Division – General Administration Rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

ADEM Admin. Code division 335-1 – of the Department’s Administrative Division – General  
Administration Rules


IN WITNESS WHEREOF, we have affixed our signatures below on this 9<sup>th</sup> day of  
February, 2024.

APPROVED:

  
\_\_\_\_\_  
Mary J. Merritt, Commissioner

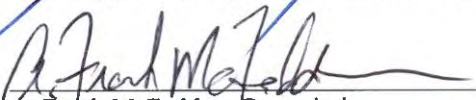
  
\_\_\_\_\_  
H. Lanier Brown, II, Commissioner

  
\_\_\_\_\_  
J. Patrick Tucker, Commissioner

  
\_\_\_\_\_  
Kevin McKinstry, Commissioner

  
\_\_\_\_\_  
John (Jay) H. Masingill, III, Commissioner

  
\_\_\_\_\_  
Ruby L. Perry, Commissioner

  
\_\_\_\_\_  
A. Frank McFadden, Commissioner

DISAPPROVED:

\_\_\_\_\_  
Mary J. Merritt, Commissioner

\_\_\_\_\_  
H. Lanier Brown, II, Commissioner

\_\_\_\_\_  
J. Patrick Tucker, Commissioner

\_\_\_\_\_  
Kevin McKinstry, Commissioner

\_\_\_\_\_  
John (Jay) H. Masingill, III, Commissioner

\_\_\_\_\_  
Ruby L. Perry, Commissioner

\_\_\_\_\_  
A. Frank McFadden, Commissioner



**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

**ABSTAINED:**

\_\_\_\_\_  
Mary J. Merritt, Commissioner

\_\_\_\_\_  
H. Lanier Brown, II, Commissioner

\_\_\_\_\_  
J. Patrick Tucker, Commissioner

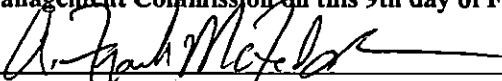
\_\_\_\_\_  
Kevin McKinstry, Commissioner

\_\_\_\_\_  
John (Jay) H. Masingill, III, Commissioner

\_\_\_\_\_  
Ruby L. Perry, Commissioner

\_\_\_\_\_  
A. Frank McFadden, Commissioner

\_\_\_\_\_  
**This is to certify that this Resolution is a true and accurate  
account of the actions taken by the Environmental  
Management Commission on this 9th day of February 2024.**

  
\_\_\_\_\_  
**A. Frank McFadden, Chair  
Environmental Management Commission  
Certified this 9th day of February 2024**

335-1-1-.07

Departmental Forms, Instructions, And  
Procedures.

(1) Designation as the State Environmental Control Agency. The Department is the State Environmental Control Agency for the purposes of federal environmental law including the Federal Clean Air Act, 42 U.S.C. 7401 et seq., as amended; the Federal Clean Water Act, 33 U.S.C. 1251 et seq., as amended; the Federal Safe Drinking Water Act, 42 U.S.C. A 201 et seq., as amended. The Department is authorized to take all actions necessary and appropriate to secure the benefits of federal environmental laws. The Department operates in conformity with such federal laws, policies, and procedures, as provided in the Act.

(2) Policies and Procedures. The Commission, through the adoption of rules pursuant to Code of Ala. 1975, §22-22A-7(c) (6), establishes environmental policies and procedures.

(3) Form and Instructions. The Director may require such forms within the rules as he deems necessary. The content of such forms and instructions for their completion may be prescribed by the Director including the changes of such from time to time. Federal forms as published by the Environmental Protection Agency may be used in lieu of state developed forms. Departmental forms prescribed by the Director shall be identified and numbered as follows:

Name of Forms	Form Number
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Ed. Note: Forms are available on the ADEM website at [www.adem.alabama.gov](http://www.adem.alabama.gov).

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335-1-6-.07

Payment Of Fees.

(1) Payment of permit application/registration fees required under subparagraphs (1)(a) and (1)(b) or paragraph (2) of Rule 335-1-6-.04 shall be included with the permit application/registration. No permit application shall be processed without payment of such fees.

(2) Any fee required under subparagraph (1)(c) of Rule 335-1-6-.04 shall be billed to the applicant. Payment of such fee shall be made within thirty days of the invoice date. No final decision regarding the permit application shall be made until after payment of such fee. Failure to make payment as provided herein shall constitute cause for non-processing/denial of the permit application.

(3) Payment of fees required under Rule 1-6-.05 shall be made within thirty days of the date of the invoice which the Department shall send to the person making the application or request or requiring the certificate.

(4) Payment of fees required under Rule 335-1-6-.06 shall be included with the application for such license, variance or certification. No application shall be processed without payment of such fees.

(5) All fees paid pursuant to the requirements of this Chapter shall be non-refundable.

(6) All fees and remittances shall be made payable to the Alabama Department of Environmental Management.

**SCHEDULE A**

**AIR QUALITY PERMITS**

<u>Type of Activity</u>	<u>Fee</u>
Permit Preparation (Per Permit)	\$1,465
State Regulations Only (Per Permit)	\$575
Public Comment Period (Per Application)	\$740
NSPS Review (Per Permit/Per NSPS)	\$2,795
NESHAPS Review (Per Permit/Per NESHAP)	\$2,795
MACT/112(g) Determination (Per Pollutant/Per Determination)	\$940
PSD Review (Per Application)	\$2,410
BACT Determination (Per Pollutant)	\$940
Non-Attainment Review Submittal Fee (Per Application)	\$2,410
LAER Determination (Per Permit per Pollutant/Per Determination)	\$940
Plantwide Applicability Limits (PAL) Review (Per Pollutant)	\$11,830
Non-Criteria Air Pollutant Review (Per Pollutant)	\$1,895
<b>Modeling Review</b>	—
Modeling Protocol Review	\$2,575
Modeling Review	\$19,060
Class 1 Modeling Review	\$2,575



Emission Inventory Preparation	\$1,460 + \$150/ point/pollutant
Meteorological Data	\$1,085
Adequacy Determination of Preconstruction Monitoring Network/Data	\$7,435
Soil Remediation Plan Review	\$650
Certification and Recertification of Asbestos Removal Contractors	\$740
Name Change	\$800 + \$150 per permit

**FEE SCHEDULE B  
COASTAL USE PERMITS STATEWIDE WATER QUALITY CERTIFICATION AND PROJECT  
REVIEWS**

<u>Type of Activity</u>	<u>Fee</u>
<u>Commercial and/or Residential Development</u>	—
a) Commercial and Residential Development greater than 5 acres and less than 25 acres in size.	\$9,025
b) Commercial and Residential Development 25 acres or greater and less than 100 acres in size.	\$19,070
c) Commercial and Residential Development 100 acres or greater in size.	\$25,920
Groundwater extraction from a well having capacity of 50 gpm or more (335-8-2-.09).	\$3,995
<u>Construction on Beaches and Dunes (335-8-2-.08)</u>	—
a) 1 single family dwelling or 1 duplex.	\$1,330
b) 2 single family dwellings or 2 duplexes.	\$1,750
c) Commercial (non-residential) structure, multi-unit residential structure having more than 2 units, or any other combination of living units not covered under a) or b) above.	\$17,765
d) Hardened erosion control structure, including retaining walls, seawalls, bulkheads and similar structure, or the placement of rip-rap.	\$2,035
<u>Beach Nourishment Projects on Gulf Beaches</u>	—
a) Gulf Beach Nourishment Project filling less than 1,000 square feet of State waterbottoms.	\$1,895
b) Gulf Beach Nourishment Project filling 1,000 square feet to 100,000 square feet of State waterbottoms.	\$3,785

**FEE SCHEDULE B**  
**COASTAL USE PERMITS STATEWIDE WATER QUALITY CERTIFICATION AND PROJECT**  
**REVIEWS**

<u>Type of Activity</u>	<u>Fee</u>
c) Gulf Beach Nourishment Project filling greater than 100,000 square feet of State waterbottoms.	\$6,985
<u>Projects Impacting Wetlands</u>	—
a) Project involving the dredging or filling of less than 1,000 square feet of wetlands.	\$2,125
b) Project involving the dredging or filling of 1,000 square feet or more of wetlands.	\$4,235
c) Pile Supported residential, multifamily or commercial structure (does not include piers, walkways, gazebos).	\$3,940
<u>Projects Impacting Water Bottoms</u>	—
a) Project involving the filling of less than 1,000 square feet of water bottom.	\$2,125

**FEE SCHEDULE B  
COASTAL USE PERMITS STATEWIDE WATER QUALITY CERTIFICATION AND PROJECT  
REVIEWS**

<u>Type of Activity</u>	<u>Fee</u>
b) Project involving the filling of 1,000 square feet or more of water bottom.	\$4,235
c) Project involving the dredging of less than 10,000 cubic yards of material from the water bottom.	\$2,125
d) Project involving the dredging of 10,000 cubic yards to 100,000 cubic yards of material from the water bottom.	\$4,235
e) Project involving the dredging of greater than 100,000 cubic yards of material from the water bottom.	\$7,855
f) Project which involves the construction of coastal or inland marinas, canals, or creek relocation or modification.	\$4,235
g) Raised creek crossing.	\$800
<u>Shoreline Stabilization of Non Gulf-Fronting Properties</u>	
a) Shoreline stabilization project involving less than 200 feet of shoreline stabilization, including bulkhead construction or placement of rip-rap.	\$800
b) Shoreline stabilization project involving greater than 200 feet of shoreline stabilization including bulkhead construction or placement of rip-rap.	\$1,330
Groin, jetty, and/or other sediment catching shoreline structure.	\$1,680
Construction of pile supported pier, dock, boardwalk, or other similar structure.	\$800
Siting, construction and operation of energy facility.	\$24,480
Mitigation bank project.	\$8,730
State agency permits subject to review, not otherwise specified in Schedule B.	\$1,680

**FEE SCHEDULE B  
COASTAL USE PERMITS STATEWIDE WATER QUALITY CERTIFICATION AND PROJECT  
REVIEWS**

<u>Type of Activity</u>	<u>Fee</u>
Federal license or permits not otherwise specified in Schedule B.	\$1,680
Project requiring certification for a Federal Energy Regulatory Commission permit or authorization.	\$6,550
All other projects and/or consistency reviews not otherwise specified in Schedule B which are subject to ADEM's Division 8 regulations.	\$800
Certification transfer or to change the name of the applicant only.	\$800
Modifications, and/or time extension, not requiring public notice.	\$800
Modifications and/or time extension, requiring public notice shall be one-half the fee listed in schedule B but in no case less than \$800.	½ or \$800
Additive fee for variance request.	\$3,275

**FEE SCHEDULE C  
HAZARDOUS WASTE PERMITS**

<u>TYPE OF ACTIVITY</u>	<u>INITIAL UNIT (1)</u>	<u>NEW DESIGN/ ADDITIONAL UNIT (2)</u>	<u>MINOR MOD (3)</u>	<u>MAJOR MOD (4)</u>	<u>CLOSURE PLAN (5)</u>
Permit Type (6)	—	—	—	—	—
Transport-Hazardous Waste/Used Oil	\$2,105	-----	\$1,138	\$2,105	-----
Base Application (Non Transporter) (25)	\$6,985	-----	-----	-----	-----
	\$36,475	\$27,520	\$2,320	\$9,025	\$8,154

**FEE SCHEDULE C  
HAZARDOUS WASTE PERMITS**

<u>TYPE OF ACTIVITY</u>	INITIAL UNIT (1)	NEW DESIGN/ ADDITIONAL UNIT (2)	MINOR MOD (3)	MAJOR MOD (4)	CLOSURE PLAN (5)
Storage (Container/ Tank/Containment Building)					
Drip Pad	\$36,475	\$27,520	\$2,320	\$9,025	\$8,154
Treatment (7)	\$46,315	\$34,820	\$2,915	\$11,430	\$9,760
Thermal Treatment (8)	\$111,550	\$83,740	\$7,205	\$27,740	\$9,760
Land Treatment	\$62,550	\$47,035	\$3,940	\$15,515	\$18,590
Waste Pile	\$52,795	\$39,760	\$3,275	\$13,030	\$19,590
Surface Impoundment	\$85,410	\$64,225	\$5,400	\$21,185	\$19,590
Landfill	\$475,000	\$450,000	\$6,860	\$26,585	\$19,590
Post-Closure (9)	\$82,135	\$61,760	\$5,110	\$20,395	-----
SWMU Only (10)	\$16,310	-----	\$1,025	\$4,070	-----
Miscellaneous Units	\$93,780	\$70,475	\$5,820	\$23,300	-----
Corrective Action Management Unit (17)	\$42,380	\$31,825	\$2,770	\$10,640	Varies (18)
Non-Unit Specific Modifications (11)	-----	-----	\$1,160	\$5,400	-----
Modifications to Incorporate Final Corrective Measures	-----	-----	-----	\$14,550	-----
ADDITIVE FEES (12)	-	-	-	-	-
Groundwater Contamination (13)	-	-	-	-	-
Plume Undefined	\$61,960	\$46,460	-----	-----	-----
Plume Defined	\$32,615	\$24,410	-----	-----	-----
Trial Burn (14)	\$16,310	-----	-----	-----	-----
RCRA Facility Assessment (RFA) (24)	\$16,310	-----	-----	-----	-----
RCRA Facility Investigation (RFI) Certification (15)	\$24,470	\$18,790	-----	-----	-----

**FEE SCHEDULE C  
HAZARDOUS WASTE PERMITS**

<u>TYPE OF ACTIVITY</u>	INITIAL UNIT (1)	NEW DESIGN/ ADDITIONAL UNIT (2)	MINOR MOD (3)	MAJOR MOD (4)	CLOSURE PLAN (5)
Corrective Action Program (CAP) or Corrective Measures Implementation (CMI) Plan Certification (16)	\$42,390	\$31,825	\$2,780	\$10,640	-----
Temporary Unit	\$35,890	\$26,946	\$2,330	\$8,950	\$8,155
Off-Site Waste Analysis Certification (19)	\$8,155	-----	\$810	\$2,125	-----
Indirect Risk Assessment (20)	\$163,105	-----	-----	-----	-----
Landfill 5-Year Review Certification (25)	\$450,000	\$450,000	-----	-----	-----
Confirmatory Sampling (CS) Work Plan Certification (21)	\$20,395	\$15,305	-----	-----	-----
Interim Measures (IM) Work Plan Certification (22)	\$20,395	\$15,305	-----	-----	-----
Corrective Measures Study (CMS) Certification (23)	\$24,755	\$18,935	-----	-----	-----

—  
**FEE SCHEDULE C (Continued)**

**EXPLANATORY NOTES**

- 
- (1) Fee applies to initial unit (design) of a given type at a facility.
  - (2) Fee applies to additional designs and/or units of the same type unit or process at a given facility.
  - (3) Refer to rule 335-14-8-.04(3) for classification of minor mods. Each separate mod request requires a separate fee payment. Multiple changes to a permit consolidated in one mod request will be charged a single fee for each applicable unit. (e.g., A facility permitted

for container storage and a landfill who requests modifications to both units will be charged the appropriate fee for each unit.)

- (4) Refer to rule 335-14-8-.04(2) for classification of major mods. Each separate mod request requires a separate fee payment. Multiple changes to a permit consolidated in one mod request will be charged a single fee for each applicable unit. (e.g., A facility permitted for container storage and a landfill who requests modifications to both units will be charged the appropriate fee for each unit.)
- (5) If clean closure is not attained and a post-closure permit is required, then the cost is credited to the post-closure permit fee. Closure plan fees shall be charged per unit to be closed.
- (6) Fees for miscellaneous units (rule 335-14-5-.24) and for other units not specifically listed shall be assessed based on the fees established for the permit type most closely analogous to the activity in question. For example, an open burning/open detonation unit would be assessed fees for thermal treatment; a stabilization unit would be assessed fees for treatment; etc.
- (7) Fee applies to all treatment units except land treatment units and thermal treatment units.
- (8) Fee applies to incinerators, boilers, industrial furnaces, and other thermal treatment units.
- (9) Fee applies to each hazardous waste management unit which is subject to post-closure permitting requirements. Multiple units which are closed under a single (common) cap will be charged the fee for a single post-closure unit. Fee also applies to certification of post-closure plans required by order.
- (10) Fee applies to permits which include solid waste management unit (SWMU) requirements (pursuant to ADEM Admin. Code rs. 335-14-5-.06(12), 335-14-5-.19, 335-14-8-.02(5) (d), but do not include regulated hazardous waste management unit requirements. This fee applies to facilities which have completed all closure and post-closure requirements for regulated hazardous waste management units, but do not complete all SWMU requirements. Fee applies to modifications which are not unit specific (i.e., mods not affecting the unit type, design, or configuration). Examples: contingency plan changes, transfer of ownership, personnel training plan changes, changes to groundwater monitoring system, etc.
- (11) Additive fees are levied in addition to base application fees as applicable. Total fees due are sum of base application fees and additive fees applicable to a given facility/application.



- (12) Initial fee applies to the first contaminant plume at a facility. The additional unit fee will be charged for each additional, separate plume at the same facility.
- (13) Fee applies to each trial burn performed.
- (14) Initial fee applies to the first investigation at a facility imposed by the Department under ADEM Admin. Code r. 335-14-5-.06(12). The fee is applicable at the time the investigation is imposed. The additional unit fee will be charged for each additional, separate investigation at the same facility (e.g. an investigation of a newly discovered area of contamination). This fee is also applicable to any investigation required by statute or order that is designed to assess the extent of contamination at a facility or a single unit within a facility.
- (15) Fee applies to each separate corrective action program proposal or corrective measures implementation plan submitted. CAPs which integrate multiple technologies (e.g., pump and treat, biological, chemical, physical, etc.) into a single system shall be charged a single fee for the system. Facilities which have multiple separate programs (e.g., two separate groundwater contamination plumes, one remediated using pump and treat and the other using vapor extraction) shall be charged a separate fee for each separate system. This fee is also applicable to passive corrective measures (e.g. land-use restrictions, monitored natural attenuation).
- (16) Fee applies to each separate corrective action management unit (CAMU) designated/approved at a facility. This fee is in addition to any other fees applicable to any hazardous waste management units included within a CAMU.
- (17) Fee determined based on type of units (Storage - \$4,855; Treatment [except Land Treatment] - \$5,820; Disposal/Land Treatment - \$11,650).
- (18) Fee applies to facilities which receive hazardous waste from off-site sources (e.g., commercial facilities).
- (19) Fee applies to thermal treatment units required to conduct indirect risk assessments.
- (20) Initial fee applies to the first CS work plan at a facility. The additional unit fee will be charged for each additional, separate CS workplan at the same facility.
- (21) Initial fee applies to the first IM work plan at a facility. The additional unit fee will be charged for each additional, separate IM workplan at the same facility.

- (22) Initial fee applies to the first CMS work plan at a facility. The additional unit fee will be charged for each additional, separate CMS workplan at the same facility.
- (23) Fee is charged per each RFA Report prepared for a given facility.
- (24) Landfill 5-Year Review Certification fee applies to operating hazardous waste land disposal facilities subject to 335-14-5-.05.

**FEE SCHEDULE. D  
WATER PERMITS**

<u>Type of Activity</u>	<u>Initial Registration/ Issuance Reissuance or Modification (effluent limit change) (injection zone change or compatibility study)</u>	<u>Modification (no effluent limit change) (no injection zone change or no compatibility study)</u>
Major Industrial Discharger	\$17,990	\$3,940
Minor Industrial Discharger	\$5,615	\$3,120
Major Municipal & Private	\$7,060	\$3,140
Minor Municipal & Private & Water Treatment	\$4,290	\$2,250
Municipal Stormwater (MS-4)	\$7,060	\$3,275
—	—	—
Mineral/Resource Extraction Mining, Storage Transloading, Dry Processing	\$5,820	\$3,400
	\$6,860	\$3,940

**FEE SCHEDULE D  
WATER PERMITS**

<u>Type of Activity</u>	<u>Initial Registration/ Issuance Reissuance or Modification (effluent limit change) (injection zone change or compatibility study)</u>	<u>Modification (no effluent limit change) (no injection zone change or no compatibility study)</u>
Wet Preparation, Processing, Beneficiation		
Coalbed Methane	\$6,860	\$3,940
General Permit	\$1,385	\$800
Minor NPDES Modifications	-----	\$800
<b>ADDITIVE FEES</b>	-	-
Modeling with Data Collection (10 Stations)	\$60,390	\$60,390
Modeling with Data Collection (5 Stations)	\$49,315	\$49,315
Modeling - desktop	\$4,855	\$4,855
Review of Model Performed by Others	\$2,705	\$2,705
Seasonal Limits	\$4,855/ additional season	\$4,855/ additional season
Biomonitoring & Toxicity Limits	\$1,015	\$1,015
316b Phase I, Phase II, and	\$5,065	0

**FEE SCHEDULE D  
WATER PERMITS**

<u>Type of Activity</u>	<u>Initial Registration/ Issuance Reissuance or Modification (effluent limit change) (injection zone change or compatibility study)</u>	<u>Modification (no effluent limit change) (no injection zone change or no compatibility study)</u>
Phase III Facilities [Permit Issuance/ Re-issuance Modification]	\$40,525 <u>[1]</u>	0
Review of Site Specific Impingement and Entrainment Studies and/or Comprehensive Demonstration Studies		
<b>SID</b>	—	—
Indirect Discharge (SID)	\$3,850	\$2,125
Indirect Discharge with EPA Established Categorical Effluent Guidelines	\$4,375	\$2,520
<b>UIC</b>	—	—
Class III Well	\$33,650	\$2,250
Class V Well	\$4,290	\$2,250
General Permit	\$1,385	\$800
<b>WATER SUPPLY</b>	—	—
Surface Water Treatment Plant/System	\$4,595	\$2,250
Distribution System	\$2,995	\$1960
	\$3,715	\$1960

**FEE SCHEDULE D  
WATER PERMITS**

<u>Type of Activity</u>	<u>Initial Registration/ Issuance Reissuance or Modification (effluent limit change) (injection zone change or compatibility study)</u>	<u>Modification (no effluent limit change) (no injection zone change or no compatibility study)</u>
Groundwater Supply (Well/System)	-----	\$800
Name Change/Permit Minor Mod	-----	-----
	\$7,435	\$5,820
<b>AFO/CAFO Individual Permit</b>		
<b>AFO/CAFO Registration:</b>		
AFO	\$450	\$150
CAFO:		
1-999 Animal Units	\$725	\$450
1,000-1,499 Animal Units	\$1,390	\$815
1,500-1,999 Animal Units	\$2,060	\$1,175
2,000 or more Animal Units	\$2,725	\$1,550

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[1] Due upon submittal of CDS

**FEE SCHEDULE E**

**SOLID WASTE PERMITS/REGISTRATION**

<u>Type of Activity</u>	<u>Initial Issuance</u>	<u>Modification</u>	<u>Reissuance</u>
Medical Waste Transfer Facility	\$2,035	\$725	\$1,330
New Technology Review	\$10,205	-----	-----
Commercial Treatment Facility	\$16,460	\$7,280	\$9,180
Commercial Transportation of Medical Waste	\$3,490	\$1,460	\$2,035
Storage of Untreated Medical Waste	\$2,630	\$665	\$1,960
Municipal Solid Waste Landfill/CCR Unit	\$83,880	-----	\$37,270
Minor Mod. (1) *	-----	\$3,275	-----
Major Mod. (2) *	-----	\$32,615	-----
Construction/Demolition Waste Landfill	\$7,145	-----	\$5,400
Minor Mod. (1) *	-----	\$1,460	-----
Major Mod. (2) *	-----	\$2,915	-----
Industrial Waste Landfill	\$12,670	-----	\$8,150
Minor Mod. (1) *	-----	\$1,460	-----
Major Mod. (2) *	-----	\$4,375	-----
Compost Facility	\$4,860	—	\$3,670
Minor Mod.	—	\$1,225	—
Major Mod	—	\$1,945	—
Additive Fees	—	—	—
Geological Review	\$4,865	\$3,275	\$3275

Solid Waste Disposal Notification	\$215	\$215	\$215
Variance Request	\$1,460	\$1,460	\$1,460
Beneficial Use Facility Registration	—	\$550	—
Beneficial Use Generator	\$1,680	---	\$1,680
Beneficial Use Distributor	\$3,360	---	\$3,360
Beneficial Use FPR Treatment Facility	\$5,050	---	\$5,050

—  
\*1. These are modifications as included in ADEM Admin. Code rule 335-13-5-.06(2).

\*2. These are modifications as included in ADEM Admin. Code rule 335-13-5-.06(1).

—  
FEE SCHEDULE F

[RESERVED]

**(Repealed 10/6/17)**

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**FEE SCHEDULE G  
 VARIANCES, CERTIFICATIONS AND LICENSES**

<u>Type of Activity</u>	<u>Initial Issuance</u>	<u>Reissuance</u>
Well Driller's License	\$200	\$200
<b><u>Water and Wastewater Operator Certification</u></b>		
Examination Fee	\$325	-----
Water and Wastewater Operator Certification Issuance Fee	\$125	-----
Water and Wastewater Operator Certification Renewal via Internet	-----	\$70
Water and Wastewater Operator Certification Renewal via Mail	-----	\$95
Water and Wastewater Operator Certification Renewal Late Fee	-----	\$215 <u>[2]</u>
Water and Wastewater Operator Reciprocal Certification	\$180	-----
Microbiological lab certification	\$360	\$360
<b><u>Chemical laboratory certification</u></b>		



**FEE SCHEDULE G  
 VARIANCES, CERTIFICATIONS AND LICENSES**

<u>Type of Activity</u>	<u>Initial Issuance</u>	<u>Reissuance</u>
Metals	\$360	—
Pesticides	\$360	—
Herbicides	\$360	—
Volatile Organic Chemicals	\$360	—
Synthetic Organic Chemicals	\$540	—
Disinfection Byproducts	\$540	—
Inorganics	\$360	—
Radiologicals	\$360	—
Asbestos	\$360	—
Dioxin	\$360	—
Maximum annual chemical lab certification fee	\$1,460	—
<b>Coastal Variance See Schedule B</b>	—	—

[2] See ADEM Admin. Code r. 335-10-1-.11(3)

**FEE SCHEDULE G  
VARIANCES, CERTIFICATIONS AND LICENSES**

<u>Type of Activity</u>	<u>Initial Issuance</u>	<u>Reissuance</u>
Well Driller's License	\$200	\$200
<b><u>Water and Wastewater Operator Certification</u></b>	—	—
Examination Fee	\$325	-----
Water and Wastewater Operator Certification Issuance Fee	\$125	-----
Water and Wastewater Operator Certification Renewal via Internet	-----	\$70
Water and Wastewater Operator Certification Renewal via Mail	-----	\$95
Water and Wastewater Operator Certification Renewal Late Fee	-----	\$215 <u>[1]</u>
Water and Wastewater Operator Reciprocal Certification	\$180	-----
Microbiological lab certification	\$360	\$360
<b><u>Chemical laboratory certification</u></b>	—	—
Metals	\$360	—
Pesticides	\$360	—
Herbicides	\$360	—
Volatile Organic Chemicals	\$360	—
Synthetic Organic Chemicals	\$540	—
Disinfection Byproducts	\$540	—
—	—	—
Inorganics	\$360	—
Radiologicals	\$360	—
Asbestos	\$360	—

**FEE SCHEDULE G  
VARIANCES, CERTIFICATIONS AND LICENSES**

<u>Type of Activity</u>	<u>Initial Issuance</u>	<u>Reissuance</u>
Dioxin	\$360	-
Maximum annual chemical lab certification fee	\$1,460	-
<b>Coastal Variance See Schedule B</b>		-

[1] See ADEM Admin. Code r. 335-10-1-.11(3)

**FEE SCHEDULE G  
VARIANCES, CERTIFICATIONS AND LICENSES**

<u>Hazardous Waste</u>	<u>Initial Issuance</u>	<u>Modification</u>	<u>Reissuance</u>	-
Disposal Certification of Waste at a Commercial Hazardous Waste Landfill	\$360	\$360	\$360	-
Variance from Classification as a Solid Waste Pursuant to ADEM Admin. Code r. 335-14-1-. 03(10)	\$16,310	-----	\$16,310	-
Delisting Certification Pursuant to ADEM Admin. Code r. 335-14-1-.03(2)	\$16,310	-----	-----	-
Variance from a Hazardous Waste Treatment Standard Pursuant to ADEM Admin. Code r. 335-14-9-.04(5)	\$4,375	-----	\$4,375	-
Notification of Regulated Waste Activity	\$180	-----	\$180	-
Variance to be classified as a boiler pursuant to ADEM Admin. Code r. 335-14-1-.03(12)	\$4,375	-----	\$4,375	-
Variance to extend the effective date of a LDR on a case-by-case basis	\$4,375	-----	\$4,375	-

**FEE SCHEDULE G  
VARIANCES, CERTIFICATIONS AND LICENSES**

<u>Hazardous Waste</u>	<u>Initial Issuance</u>	<u>Modification</u>	<u>Reissuance</u>	—
Variance to allow land disposal of a prohibited waste	\$4,375	-----	\$4,375	—
Hazardous Waste Generator Closure Certification	\$4,375	-----	\$4,375	—

<b>Type of Activity</b>	<b>Initial Issuance</b>	<b>Reissuance</b>	<b>Reissuance After Expiration</b>
<b>Solid Waste Landfill Operator Certification</b>	—	—	—
Landfill Operator Certification Issuance Fee	\$125	-----	-----
Landfill Operator Certification Renewal Fee	-----	\$95	-----
Landfill Operator Certification Late Renewal Fee	-----	-----	\$310
Landfill Operator Reciprocal Certification Fee	\$180	-----	-----

**FEE SCHEDULE H**

**BROWNFIELD REDEVELOPMENT AND VOLUNTARY CLEANUP PROGRAM**

Non-Responsible **Party**Person Applicant

<u>TYPE OF ACTIVITY</u>	<u>REVIEW FEE</u>	<u>MINOR MODIFICATION</u>	<u>MAJOR MODIFICATION</u>
Application (1)	\$5,060	\$250	\$500
With Variance	\$16,855	NA	NA
Assessment Review (2)	\$6,740	\$1,680	\$2,570
Assessment Report	\$4,260	—	—
Cleanup Review (2)	\$12,470	\$1,680	\$2,570
Cleanup Report	\$7,720	—	—
Letter of Concurrence	—	—	—
Unconditional	\$1,680	NA	NA
Conditional	\$4,210	NA	NA
Property Eligibility Determination (3)	\$670	NA	NA

Responsible **Party**Person Applicant

Application <sup>(1)</sup>	\$5,060	\$250	\$500
With Variance	\$16,855	NA	NA
Assessment Review <sup>(2)</sup>	\$24,470	\$2,770	\$9,840
Assessment Report	\$10,520	—	—
Cleanup Review	\$43,065	\$2,770	\$9,840
Cleanup Report	\$17,635	—	—
Letter of Concurrence	—	—	—
Unconditional	\$1,680	NA	NA
Conditional	\$4,210	NA	NA
Property Eligibility Determination <sup>(2)</sup>	\$670	NA	NA
—			—
		<b>Additive Fees<sup>(4)</sup></b>	
Public Notice <sup>(5)</sup>		\$800	—
Groundwater Monitoring <sup>(6)</sup>		\$1,000	—
Risk Management RM-1		\$1,700	—
Risk Management RM-2		\$4,350	—
Operation and Maintenance Plan <sup>(6)</sup>		\$1,500	—
<del>(6)</del> <u>Brownfield Remediation Reserve Fund</u>		—	—
<u>Contribution</u>		<u>\$500</u>	—

(1) Submittal of the appropriate application fee is required prior to the review of any plans, reports, and, or certifications.

(2) An Assessment and/or Cleanup Review fee is assessed when review of a plan and report is required as determined by the Department.

(3) Property eligibility determinations are valid for a period of one year from date of issuance.

(4) Additive fees are levied on the assessment or cleanup fees as applicable. Total fees due are a sum of assessment and/or cleanup fees and additive fees applicable to a given applicant.

(5) A Public Notice fee is assessed on any Plan or Report which proposes final cleanup remedy recommendations, such as removal of contaminants and/or an Environmental Covenant.

(6) These fees are assessed annually until required activities are complete and/or terminated by the Department.

(7) Fee is added to a Cleanup Review and/or Report fee, when an Operation and Maintenance (OAM) is required as a part of the approved remedy. Modification of OAM activities would require a modification of the Cleanup Report and submittal of required fees.

(8) This fee applies only to Responsible Party Applicants and is assessed **per acre** of each qualifying property in addition to the voluntary cleanup program application and oversight fees.

\* This fee is enacted by Act 2023-356 of the 2023 Alabama Legislative Session.

## FEE SCHEDULE I

### SCRAP TIRE PROGRAM PERMITS/REGISTRATIONS

<u>Type of Activity</u>	<u>Initial Issuance</u>	<u>Modification</u>	<u>Reissuance</u>
Class One Processor Permit	\$3,040	\$755	\$1,510
Class Two Processor Permit	\$2,525	\$635	\$1,260
Class Three Processor Permit	\$2,525	\$635	\$1,260
Scrap Tire Transporter Permit	\$1,015	\$260	\$510
Limited-use Transporter Permit (see Notel)	\$260	-----	\$260
Registration as an Exempt Processor	\$1,015	\$260	\$510
Registration for Engineered Use of Tire Materials	\$1,015	-----	-----

Notel: A limited-use transporter permit is available to property owners remediating a scrap tire pile on their own property, and shall be issued for a limited amount of time and under conditions as prescribed by ADEM.

See ADEM Admin. Code r. 335-4-3-.03(b) for definitions of processors

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**Fee Schedule J**

**Environmental Covenants Fees**



<u>Type of Activity</u>	<u>Initial Issuance</u>	<u>Modification</u>
Processing and Review Fee	—	—
Institutional Controls	\$4,285	\$1,070
Engineering Controls	\$6,425	\$1,610
—	—	—
Registry Recording Fee	—	—
For Class 1 controls*	\$13,705	\$635
For Class 2 controls*	\$9,420	\$635
For Class 3 controls*	\$5,245	\$635

\* - For classification of institutional and engineering controls, see ADEM Admin. Code Rule. 335-5-1-.03(i).

Registry Recording Fee also includes costs of performing inspections for a 30-year period.

For sites utilizing both institutional controls and engineering controls, the processing and review fees shall be the greater of the applicable fees.

For sites with more than one classification of institutional or engineering control, the registry recording fee shall be the greater of the applicable fees.

For a property or site containing multiple individually deeded parcels covered by one or more similar covenants, the owner or operator may pay all applicable fees listed in Fee Schedule J or the owner or operator or other responsible party may include a provision in an order or agreement executed between the owner or operator or other responsible person and the Department to pay fees as provided in 335-5-1-.06(6).

**Author:** Marilyn Elliott, Russell A. Kelly, Brian C. Espy

**Statutory Authority:** Code of Ala. 1975, §22-22A-5.

**History:** Effective February 13, 1985. **Amended:** Filed December 12, 1996; effective January 16, 1997. **Amended:** Filed February 24, 1999; effective March 31, 1999. **Amended:** Filed December 5, 2001; effective January 9, 2002. **Amended (Schedule H only):** Filed April 11, 2002; effective May 16, 2002. **Amended (Schedules B, C, D, E, & F only):** Filed August 29, 2002; effective October 3, 2002. **Amended (Added Schedule I only):** Filed June 30, 2004; effective August 4, 2004. **Amended (Schedules A-H only):** Filed

December 6, 2005; effective January 10, 2006. **Amended (Schedules D & G only)**: Filed June 6, 2006; effective July 11, 2006. **Amended (Schedules A-I only)**: Filed October 10, 2006; effective November 14, 2006. **Amended (Schedules A thru I only)**: Filed December 18, 2007; effective January 22, 2008. **Amended (Schedule G only)**: Filed December 15, 2009; effective January 19, 2010. **Amended (Text and Schedules A thru J)**: Filed October 25, 2011; effective November 29, 2011. **Amended (Schedules A thru J only)**: Filed June 25, 2013; effective July 30, 2013. **Amended (Schedules A thru J only)**: Filed December 21, 2016, effective January 25, 2017. **Amended (Schedule E only)**: Filed April 24, 2018, effective June 8, 2018. **Amended (Schedule E only)**: Filed June 25, 2019; effective August 9, 2019. **Amended (Schedules E, H, and J only)**: Published February 28, 2020; effective April 13, 2020. **Amended (Schedules C and J only)**: Published December 31, 2020; effective February 14, 2021. **Amended (Schedule H only)**: Published April 29, 2022; effective June 13, 2022. **Amended (Fee Schedule E only)**: Published December 30, 2022; effective February 13, 2023; **Amended:** **Proposed: October 20, 2023.**

335-1-7-.03

Exemptions.

(1) Stationary sources which are not major sources as defined in 335-1-7-.02 are exempt from annual fee payments.

~~(2) Stationary sources which are subject to Phase I of Title IV in the 1990 Clean Air Act Amendments are exempt from the payment of fees for the calendar years through 1999.~~

~~(3) Fugitive emissions shall be exempt from the fees paid in Schedules A and B of this Chapter.~~

~~(4)~~ Stationary sources within the boundaries of Jefferson County and the City of Huntsville shall be exempt from the payment of fees if each said source pays an equivalent amount to either the Jefferson County Department of Health or the City of Huntsville Department of Natural Resources and Environmental.

**Author:** Richard E. Grusnick, Ronald W. Gore.

**Statutory Authority:** Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: December 19, 1991. **Amended:** January 16, 1997; Amended: Proposed: October 20, 2023.

~~(1) Major sources which have actual emissions of 1000 tons or more per year of an affected pollutant in the calendar years 1991, 1992, and 1993 shall pay permit fees to the Department according to Schedule A of this Chapter for pollutants which are limited by Division 335-3 regulations or by a permit condition developed pursuant to these requirements.~~

~~(2) Major sources which have actual emissions of 100 tons or more per year but less than 1000 tons per year of an affected pollutant in the calendar years 1992 and 1993 shall pay permit fees to the Department according to Schedule B of this Chapter for pollutants which are limited by Division 335-3 regulations or by a permit condition developed pursuant to these requirements.~~

~~(3) Beginning in the calendar year 1995, fees~~Fees will be due on October 31 for every major source at the rate established by the Department to fund Title V activities of the Department, ~~not to exceed \$25 per ton plus the difference in the CPI of the year the fees were assessed and the CPI of 1989~~ for each regulated pollutant, except carbon monoxide, as defined in 335-1-7-.02(g), for the actual emissions during the previous calendar year. ~~Prior to 1997, fees were due on May 1 for every major source at the rate of \$25 per ton plus the difference in the CPI of the year the fees were assessed and the CPI of 1989 for each regulated pollutant, except carbon monoxide, as defined in 335-1-7-.02(g), for the actual emissions during the calendar year 1994. Each subsequent year until 1997, fees were due on May 1 for the emissions of regulated pollutants during the year which precedes the year the fees are due by one year.~~

~~(4)~~(2) Emissions from a major source of any pollutant subject to fees in this chapter which are emitted at a rate greater than 4000 tons per year shall be defined as 4000 tons per year for the purposes of assessing fees for each said pollutant.

~~(5)~~(3) Emissions of a regulated pollutant shall not be counted more than once in determining fees.

~~(6) Facilities having paid fees for 1991 and/or, 1992, and/or 1993 emissions as assessed according to Fee Schedules A or B shall be given credit on the amount owed in the following five years (1995-1999), until the sum of the amount paid in 1992, 1993, and 1994 equals the amount of credit allowed. The fee credits shall be subtracted from the total fees due the~~

~~Department under paragraph (3) above. The annual total due to the Department shall be calculated as follows: \_~~

~~1995 fees assessed minus 30% 1992-1994 Total~~

~~1996 fees assessed minus 25% 1992-1994 Total~~

~~1997 fees assessed minus 20% 1992-1994 Total~~

~~1998 fees assessed minus 15% 1992-1994 Total~~

~~1999 fees assessed minus 10% 1992-1994 Total~~

~~(7) Fees required under paragraph (3) of this Rule may be reduced to reflect the budgetary circumstances of the Air Division.~~

**Author:** Richard E. Grusnick, Ronald W. Gore.

**Statutory Authority:** Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: December 19, 1991. **Amended:** Filed November 23, 1993; effective December 28, 1993. **Amended:** Filed December 12, 1996; effective January 16, 1997; **Amended:**

Proposed: October 20, 2023.

335-1-7-.05

Payment Of Fees.

(1) ~~Payment of operating permit fees required under 335-1-7-.04 shall be made on or before May 1 of each year beginning in 1992. However, payment~~ of operating permit fees required under 335-1-7-.04 shall be made on or before October 31 of each year ~~beginning in 1997.~~

(2) Failure to submit payment as required in this Chapter shall be cause for revocation of air permit(s).

(3) Failure to make payment of fees within 30 days of the date the fees are due as provided in 335-1-7-.05(1) shall be cause for the Department to assess a late fee of 3% (of the original fee) per month or fraction thereof.

(4) All fees paid pursuant to the requirements of this Chapter shall be non-refundable.

(5) All fees and remittances shall be made payable to the Alabama Department of Environmental Management.

(6) On or before June 30th of each year, the source shall submit its estimate of emissions for the previous calendar year. The Department shall advise the source that it agrees with the actual emission estimate used to calculate the fees, disagrees with the actual emission estimate used to assess the fees or needs additional information. When the Department sends a notification agreeing with actual emission estimates, it may not reassess the fees for the year in question unless it determines that the source intentionally provided erroneous information.

(7) All fees generated by this program will be used to directly and indirectly support the Air Program.

**Author:** Richard E. Grusnick, Ronald W. Gore

**Statutory Authority:** Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: December 19, 1991. **Amended:** Filed December 12, 1996; effective January 16, 1997; **Amended:**

**Proposed: October 20, 2023.**

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
GENERAL ADMINISTRATION  
ADMINISTRATIVE CODE

CHAPTER 335-1-5  
~~RESERVED~~ TITLE VI COMPLAINT SUBMISSION

TABLE OF CONTENTS

335-1-5-.01            Title VI Complaint Submission

335-1-5-.01            Title VI Complaint Submission.

Members of the public alleging discrimination by the Department in violation of Title VI of the Civil Rights Act of 1964, may submit a complaint by completing ADEM Form 572 and submitting it to the Department's Nondiscrimination Coordinator for investigation.

Author: Marilyn G. Elliott

Statutory Authority: Code of Alabama 1975, §§ 22-22A-2, 22-22A-4, and 22-22A-5.

History: New Proposed: October 20, 2023

# Alabama Department of Environmental Management

## Title VI Complaint Form 572

Available in the following locations:

Department website: [www.adem.alabama.gov](http://www.adem.alabama.gov)

Hard copy:

ADEM - Main Office  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110

ADEM – Birmingham Field Office  
110 Vulcan Road  
Birmingham, Alabama 35209

ADEM – Decatur Field Office  
2715 Sandlin Road, S.W.  
Decatur, Alabama 35603

ADEM – Mobile Coastal Field Office  
3664 Dauphine Street, Suite B  
Mobile, Alabama 36608

Available in appropriate language for LEP populations.

<b>Section I:</b>		
Name:		
Address:		
Telephone (Home):	Telephone (Work):	
Email Address:		
<b>Section II:</b>		
Are you filing this complaint on your own behalf?	Yes*	No
*If you answered "yes" to this question, go to Section III.		
If not, please supply the name and relationship of the person for whom you are complaining:		
Please explain why you have filed for a third party:		
Please confirm that you have obtained the permission of the third party if you are filing on their behalf.	Yes	No
<b>Section III:</b>		
I believe the discrimination I experienced was based on (check all that apply):		
<input type="checkbox"/> Race <input type="checkbox"/> Color <input type="checkbox"/> National Origin <input type="checkbox"/> Age <input type="checkbox"/> Sex <input type="checkbox"/> Disability		
Date of Alleged Discrimination (Month, Day, Year): _____		
Explain as clearly as possible what happened and why you believe you were discriminated against. Describe all persons who were involved. Include the name and contact information of the person(s) who discriminated against you (if known) as well as names and contact information of any witnesses. If more space is needed, please use additional pages.		





**Attachment 4**

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-15 of the Department's Land Division – The Brownfield Redevelopment and Voluntary Cleanup Program in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

WHEREAS, a public hearing was held before a representative of the Alabama Department of Environmental Management designated by the Environmental Management Commission for the purpose of receiving data, views and arguments on the amendment of such proposed rules; and

WHEREAS, the Alabama Department of Environmental Management has reviewed the oral and written submissions introduced into the hearing record, and has prepared a concise statement of the principal reasons for and against the adoption of the proposed rules incorporating therein its reasons for the adoption of certain revisions to the proposed rules in response to oral and written submissions, such revisions, where appropriate, having been incorporated into the proposed rules attached hereto; and

WHEREAS, the Environmental Management Commission has considered fully all oral and written submissions respecting the proposed amendments and the Reconciliation Statement prepared by the Alabama Department of Environmental Management.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-15 [rules 335-15-1-.01/ Purpose (Amend); 335-15-1-.02/ Definitions (Amend); 335-15-2-.01/ Property Eligibility Criteria (Amend); 335-15-2-.02/ Applicant Participation Criteria (Amend); 335-15-2-.03/ Variance Criteria (Amend); 335-15-4-.02/ Limitation of Liability Qualifications (Amend); 335-15-4-.03/ Voluntary Property Assessment Plans (Amend); 335-15-4-.04/ Voluntary Cleanup Plans (Amend); 335-15-4-.06/ Certification of Compliance-Letter of Concurrence (Amend); 335-15-8-.01/

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

Purpose (New); 335-15-8-.02/ Applicability (New); 335-15-8-.03/ Criteria for Eligibility and Reimbursement (New); 335-15-8-.04/ Use of Brownfield Remediation Reserve Funds (New); 335-15-8-.05/ Applications for Reimbursement (New); 335-15-8-.06/ Fund Reimbursement Procedures (New) ] of the Department's Department's Land Division – The Brownfield Redevelopment and Voluntary Cleanup Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.


**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

ADEM Admin. Code division 335-15 – The Brownfield Redevelopment and Voluntary Cleanup  
Program


IN WITNESS WHEREOF, we have affixed our signatures below on this 9<sup>th</sup> day of  
February, 2024.

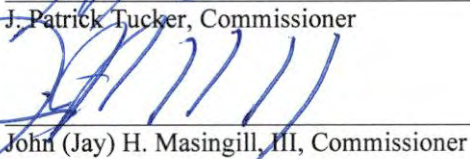
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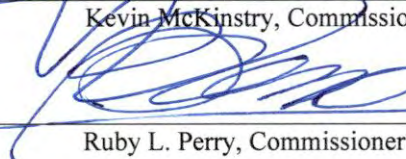
  
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Mary J. Merritt, Commissioner

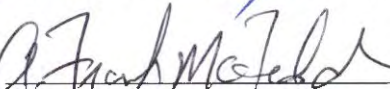
  
\_\_\_\_\_  
H. Lanier Brown, II, Commissioner

  
\_\_\_\_\_  
J. Patrick Tucker, Commissioner

  
\_\_\_\_\_  
Kevin McKinstry, Commissioner

  
\_\_\_\_\_  
John (Jay) H. Masingill, III, Commissioner

  
\_\_\_\_\_  
Ruby L. Perry, Commissioner

  
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A. Frank McFadden, Commissioner

DISAPPROVED:

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Mary J. Merritt, Commissioner

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H. Lanier Brown, II, Commissioner

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J. Patrick Tucker, Commissioner

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Kevin McKinstry, Commissioner

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John (Jay) H. Masingill, III, Commissioner

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Ruby L. Perry, Commissioner

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A. Frank McFadden, Commissioner

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

ABSTAINED:

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Mary J. Merritt, Commissioner

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H. Lanier Brown, II, Commissioner

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J. Patrick Tucker, Commissioner


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Kevin McKinstry, Commissioner

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John (Jay) H. Masingill, III, Commissioner

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Ruby L. Perry, Commissioner

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A. Frank McFadden, Commissioner

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**This is to certify that this Resolution is a true and accurate  
account of the actions taken by the Environmental  
Management Commission on this 9th day of February 2024.**

  
\_\_\_\_\_  
**A. Frank McFadden, Chair  
Environmental Management Commission  
Certified this 9th day of February 2024**

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION  
ADMINISTRATIVE CODE

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.~~Alabama, 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 reuse rural and urban areas of~~ 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.

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

**Statutory Authority:** Code of ~~Ala.~~Alabama 1975, §§22-30E-1, 22-30E-2, 22-30E-4.

**History: New Rule:** Filed April 11, 2002; effective May 16, 2002. **Amended:** Filed October 21, 2004; effective November 25, 2004. **Amended:** ~~Filed October 21, 2004; effective November 25, 2004.~~ **Amended:** ~~Published April 29, 2022; effective June 13, 2022.~~ Published April 29, 2022; effective June 13, 2022.  
Proposed: October 20, 2023

335-15-1-.02            **Definitions.**

Unless otherwise defined in ~~ADEM Admin. Code 335-15-1 through 335-15-7~~335-15-1 through 335-15-8, the following words and terms shall have the meanings given below:

~~(a)~~ "~~Alabama Land Recycling and Economic Redevelopment Commission~~" is the commission as established in the Code of Ala. 1975, ~~§22-30E-12~~.

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

~~(e)~~ (b) "Applicant" is the owner, operator or prospective purchaser of a qualifying property seeking to participate in the voluntary cleanup program by submission of an application under 335-15-2-~~.02~~.

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

~~(e)~~ (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.

~~(f)~~ (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.

~~(h)~~ (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.



~~(i)~~ "Cleanup" means, for purposes of 335-15, the (k) "Cleanup" means the cleaning up, remediation, mitigation, control, or removal of contaminants from the environment in accordance with an approved "Voluntary Cleanup Plan".

~~(j)~~ (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.

~~(k)~~ (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 ~~Ala.~~Alabama, 1975, §22-22A-3~~(4)~~.

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

~~(m)~~ "Contaminant" means any substance which (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 ~~ADEM Admin. Code~~ 335-13); or
2. Petroleum product(s).

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

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

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

~~(q)~~ (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.

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

~~(s)~~ 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 within the State of Alabama or under the jurisdiction of the State of Alabama.

(v) "Environmental Covenant" as defined in ~~"Environmental Covenant" as defined in ADEM Admin. Code 335-5-1-.03.~~

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

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

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

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

~~(x)~~ (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.

~~(y)~~ "Hazardous waste" means any solid waste as defined in ~~ADEM Admin. Code~~ (bb) "Hazardous waste" means any solid waste as defined in 335-14.

~~(z)~~ (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 ~~ADEM Admin. Code~~ 335-14-8.

~~(aa)~~ (dd) "Land Use Controls" means any restriction or control, which serves to protect human health ~~and/or the environment, by limiting the use of and/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, ~~stormwater~~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.

~~(bb)~~ (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.

~~(ee)~~ (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.

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

~~(ee)~~ (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.

~~(ff)~~ (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.

~~(gg)~~ (ll) "Owner or Operator"

1. The definition includes the following:

(i) In the case of a facility, any person ~~owning or operating such~~ 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 ~~conveyance of title to a unit of state or local government or control of the facility due to bankruptcy, foreclosure, tax delinquency, or abandonment~~ 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, ~~acted~~ 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.

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

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

~~(jj) "Person" means an individual, corporation, partnership, association, a governmental body, a~~ (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.

~~(kk)~~ (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.

~~(ll)~~ (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.]

~~(mm)~~ (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 ~~"Preexisting release" means a release, as that term is defined in 335-15-1-.02,~~ which occurred prior to an applicant's application for a limitation of liability pursuant to 335-15-4-.02.

~~(nn)~~ (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.

~~3. A parcel of land defined by the boundaries in the applicable deed.~~

~~(oo)~~ (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.

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

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

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

~~(ss)~~ (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.

~~(tt)~~ (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.

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

~~(vv)~~ (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, ~~or to prevent~~ 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.

~~(ww)~~ ~~"Responsible person~~ (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., ~~Section 9601~~, § 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., ~~Section 9601~~, § 9601 et seq as amended on January 11, 2002.

~~(xx)~~ (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.

~~(yy) "Risk assessment" means the process used to determine the risk posed by contaminants that have been released into the environment at a~~ (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.



~~(zz)~~ (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.

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

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

~~(ccc) "Third party" means one not a party to an agreement or to a transaction but who may have rights therein.~~

~~(ddd)~~ (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.

~~(eee)~~ (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.

~~(fff)~~ (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  $1 \times 10^{-6}$  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.

~~(ggg)~~ (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.

~~(hhh)~~ (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.

~~(iii)~~ ~~"Voluntary Property Assessment 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.

~~(jjj)~~ (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.

~~(kkk)~~ (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.

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

**Statutory Authority:** Code of ~~Ala.~~ Alabama, 1975, §22-30E-3.

**History: New Rule:** 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.

Proposed: October 20, 2023

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION  
ADMINISTRATIVE CODE

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. ~~Section 9601,~~ §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. ~~Section 9601,~~ §9601 et seq.

(d) It must not be a hazardous waste treatment, storage, or disposal facility subject to the permitting requirements of ~~ADEM Admin. Code R.~~ 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 ~~with~~ 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".

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

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

**History: New Rule:** Filed April 11, 2002; effective May 16, 2002. **Amended:** Filed October 21, 2004; effective November 25, 2004. Proposed: October 20, 2023

### **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 ~~ADEM Admin. Code R.~~ 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 ~~ADEM Admin. Code R.~~ 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. Alabama, 1975, §§22-30E-6, 22-30E-7.

**History: New Rule:** Filed April 11, 2002; effective May 16, 2002. **Amended:** Filed October 21, 2004; effective November 25, 2004. Proposed: October 20, 2023

335-15-2-.03

Variances 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 party 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 does 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 Ala. 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, and/or corrective action requirements of Code of Ala. 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 ~~such sites, but shall not serve to limit the applicability or enforcement of requirements at such 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 party~~No other qualified person has applied to participate in the voluntary cleanup program at the subject property, and,

(c) ~~it~~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 ~~Ala.~~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 ~~such conditions upon the granting of a variance as it deems appropriate including and~~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 ~~such conditions, the Department may modify or withdraw such~~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).

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

Statutory Authority: Code of ~~Ala.~~Alabama 1975, §§22-30E-4, 22-30E-7.

History: **New Rule:** Filed April 11, 2002; effective May 16, 2002. **Amended:** Filed October 21, 2004; effective November 25, 2004. Proposed: October 20, 2023

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
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CHAPTER 335-15-4  
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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 ~~Ala-Alabama~~, 1975, §22-30E-9.

**History: New Rule:** Filed April 11, 2002; effective May 16, 2002. **Amended:** Filed October 21, 2004; effective November 25, 2004. ~~**Amended:** Filed October 21, 2004; effective November 25, 2004.~~ **Amended:** Published April 29, 2022; effective June 13, 2022.

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 ~~Ala-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.

(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 Ala. 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 Ala.-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 Ala.-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 Ala.-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 or §22-30E-9(f), such extension of the limitation of liability shall not operate to absolve from liability any party~~ 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. ~~Upon the Department's approval of a voluntary property assessment plan, voluntary~~

~~cleanup plan, or a certification of compliance, an applicant who is not a responsible person at the qualifying property, shall not be liable to the state or any third party for costs incurred in the investigation or cleanup of, or~~ 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, 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 Ala. 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.

~~(8)~~ (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 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 Ala-Alabama, 1975, §§22-30E-4, 22-30E-8, 22-30E-9, 22-30-10.

**History: New Rule:** Filed April 11, 2002; effective May 16, 2002. **Amended:** Filed October 21, 2004; effective November 25, 2004. **Amended:** Published April 29, 2022; effective June 13, 2022. Proposed: October 20, 2023

### **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 ~~and/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 ~~on-~~ site 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~~responsible party must delineate the horizontal and vertical extent of contamination in groundwater on-site and off-site beyond the property boundary~~. 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 ~~non-responsible party must delineate the horizontal and vertical extent of contamination in groundwater on-site~~ only 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 Ala-Alabama 1975, §22-30E-10. The applicant will be provided with written notification specifying the basis for making ~~such~~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 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

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

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335-15-4-.04

Voluntary Cleanup-Work 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 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;

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 ~~party~~ 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 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~~ 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 Ala.-Alabama 1975, §§34-11-1 to 34-11-37; and/or the practice of geology, as that term is defined in Code of Ala.-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

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

**History:** May 16, 2002. **Amended:** 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. **Amended:** Published April 29, 2022; effective June 13, 2022. Proposed: October 20, 2023

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  $1 \times 10^{-4}$  and  $1 \times 10^{-6}$  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~~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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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.

(4) Deed Records. The applicant shall comply with the requirements of ~~ADEM Admin. Code~~ 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, ~~Department's approval of the submitted Certification of Compliance described in 335-15-4-.06, an applicant who is not a responsible person, as defined in 335-15-1-.02, at the qualifying property, shall not be liable to the state or any third party~~ 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 Ala-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 Ala-Alabama, 1975, §§22-30E-5, 22-30E-9, 22-30E-10.

**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. Proposed: October 20, 2023

**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-.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 Alabama, 1975, §22-30E-5.

**History:** June 1, 2023. Proposed Rule: October 20, 2023

**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]**

(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 Alabama, 1975, §22-30E-5.

**History:** June 1, 2023. Proposed Rule: October 20, 2023

**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 Alabama, 1975, §22-30E-5

**History:** June 1, 2023. Proposed Rule: October 20, 2023

**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:

(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 Alabama, 1975, §22-30E-5

**History:** June 1, 2023. Proposed Rule: October 20, 2023

**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 Alabama, 1975, §22-30E-5

**History:** June 1, 2023. Proposed Rule: October 20, 2023

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 Alabama, 1975, § 22-30E-5

**History:** June 1, 2023. Proposed Rule: October 20, 2023