

335-5-1-.05 Registry of Environmental Covenants.

(1) The Department shall establish and maintain a registry that contains all environmental covenants and any amendment or termination of those covenants executed pursuant to 335-5.

(2) In addition to the requirements of 335-5-1-.05(1), the registry may contain any other information concerning environmental covenants and the real property subject to them which the Department considers appropriate.

(3) The full text of the covenant, amendment, or termination and any other information required by ADEM shall be submitted to ~~ADEM—the Department within thirty (30) days of its recording in the land records of the county where the property is located~~ for inclusion in the ADEM Registry of Environmental Covenants within 30 days of ADEM approval of the draft covenant. The person submitting the covenant may be the owner, operator, other responsible person, grantor or any holder of the covenant.

Authors: James L. Bryant; Lawrence A. Norris; Sonja B. Favors.

Statutory Authority: Code of Alabama 1975, §§35-19-12; 35-19-13.

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335-5-1-.06 Fees. The Department may assess fees to implement the provisions of the Act.

(~~a~~1) A Processing and Review Fee shall be required to cover the cost of processing the covenant application and for reviewing the draft and final covenants. For sites utilizing both institutional controls and engineering controls, the processing and review fees shall be the greater of the applicable fees.

(~~2~~b) A Registry Recording Fee shall be required to cover cost of establishing and maintaining the ADEM Registry of Environmental Covenants, for entering the site in this Registry, and for performing routine inspections at the site ~~for a period of thirty (30) years~~ to determine compliance with the covenant restrictions. For sites with more than one classification of institutional or engineering control, the Registry Recording Fee shall be the greater of the applicable fees.

(~~3~~e) An owner or operator or other responsible person desiring to enter an environmental covenant shall submit a draft environmental covenant and all required fees.

(~~4~~d) Fees required pursuant to this section are included in 335-1-6-.04, Schedule J.

(~~5~~e) Exemptions. The following sites are exempt from paying fees in 335-1-6-.04, Fee Schedule J and in 335-5-1-.06, as specified below. These sites will be entered in the ADEM Registry of Environmental Covenants.

(~~1~~a.) A site that is enrolled in the ADEM Voluntary Cleanup Program pursuant to 335-15 is exempt from paying processing and review fees in Fee Schedule J.

(~~2~~b.) A site regulated under the programs listed in 335-5-1-.02(2) that has a provision for a post-closure permit which is renewable by payment of a permit fee and a provision for routine inspection by the Department or other environmental regulatory agency is exempt from paying all fees in Fee Schedule J.

(~~c~~3.) A site regulated under the programs listed in 335-5-1-.02(2) that has a provision for cost reimbursement to the Department as contained in a cooperative agreement, a memorandum of agreement or an administrative order is exempt from paying the Processing and Review Fees in Fee Schedule J, to the extent such costs are reimbursable under these agreements.

(~~f~~6) An owner or operator or other responsible person desiring to enter an environmental covenant for an environmental response project containing multiple individually deeded parcels off-site of the property or site which are subject to the environmental response project plan may submit an alternative fee schedule to the Department as part of its formal submittal of the environmental covenant in lieu of fees required in 335-1-6-.04, Fee Schedule J.

(~~a1.~~) If submitting an alternative fee schedule, the owner or operator or other responsible person shall be required to pay the applicable processing and review fees found in 335-1-6-.04, Fee Schedule J for each individually worded covenant for off-site property that is different from land use controls or restrictions found in other covenants utilized for other individually deeded parcels off-site of the property or site subject to the environmental response project plan.

(~~b2.~~) If submitting an alternative fee schedule, the owner or operator or other responsible person shall propose how to reimburse the Department for the registry recording fee which covers its cost to inspect each individually deeded off-site parcel to determine compliance with the covenant. The method to reimburse the Department shall be included in an order or agreement executed between the owner or operator or other responsible person and the Department. The length of time in years over which inspections will be conducted by the Department shall be negotiable and included in the covenant.

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335-5-1-.07 Process for Entering a Covenant.

(1) The owner or operator, the other responsible person or the person conducting an environmental response project may use land use control in lieu of remediating the property to a level supporting unrestricted use. The ADEM organizational unit under which the response action is being conducted shall approve the environmental response project plan which proposes a land use control.

(2) For properties not remediated to a level supporting unrestricted use, an environmental covenant is required in accordance with 335-5-1-.02. To enter an environmental covenant, the owner or operator, the other responsible person or the person conducting an environmental response project shall submit the following to the ADEM organizational unit under which the response action is being conducted:

- (a) A draft of the proposed environmental covenant.
- (b) The applicable fees in Fee Schedule J of 335-1-6 and 335-5-1-.06.
- (c) All pertinent information required in 335-5-2-.01(1).

(3) ADEM shall review and approve the draft covenant or request modifications. If requesting modifications to the draft covenant, ADEM shall provide the applicant with its reasons for requesting change. Upon submittal by the applicant of acceptable modifications, ADEM shall approve the draft covenant.

(4) Within 30 days Following of ADEM's ~~review and~~ approval of the draft covenant, the applicant shall submit ~~two~~one copyies of the final covenant signed by the Grantee, which complies with 335-5-2 for ~~signature execution~~ by the Director or his designee. Upon execution by the ~~Department~~director, the signed~~both~~ copyies shall be returned to the applicant.

(5) Upon receiving the executed copyies of the covenant from ADEM, the applicant shall have the covenant or an ADEM approved recording instrument, as described in 335-5-3-.02(3), recorded in the land records of the county where the site is located, in compliance with 335-5-3-.02.

(6) ~~One Documentation of copy of the~~ recorded covenant or an the ADEM approved recording instrument shall be submitted to ADEM within 30 days of recording in compliance with 335-5-~~13~~.052(3) ~~for entry into the ADEM Registry of Environmental Covenants~~.

Authors: James L. Bryant; Lawrence A. Norris; Sonja B. Favors, Lynn T. Roper.

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335-5-3-.02 Recording of Covenants.

(1) An environmental covenant and any amendment or termination of the covenant must be recorded by the owner or operator or other responsible person in every county where any portion of the real property subject to the covenant is located. The environmental covenant shall be indexed to the grantor's property in the land records. For purposes of indexing, a holder shall be treated as a grantee.

(2) Except as otherwise provided in 335-5-4-.01(3), an environmental covenant is subject to the laws of the State governing recording and priority of interests in real property.

(3) Content of Recording Instrument. In lieu of recording the entire covenant, [an ADEM approved](#) notice may be recorded which must contain all of the following:

(a) A legally sufficient description and any available street address of the real property subject to the covenant.

(b) The names and addresses of the owner of the fee simple interest in the real property, the Department, and the holder if other than the Department.

(c) A statement that the covenant, amendment, or termination is available in a registry at the Department.

(d) A statement that the notice is notification of an environmental covenant executed pursuant to this Act.

(4) The requirements of 335-5-3-.02(3) are satisfied with a statement, executed with the same formalities as a deed in the State of Alabama, in substantially the following form:

(a) This notice is filed in the land records of the Probate Office of _____ County, Alabama, pursuant to Section 12 of the Alabama Uniform Environmental Covenants Act.

(b) This notice and the covenant, amendment, or termination to which it refers may impose significant obligations with respect to the property described below.

(c) A legal description of the property is attached as Exhibit A to this notice. The address of the property that is subject to the environmental covenant is [insert address of property] [or](#) [not available].

(d) The name and address of the owner of the fee simple interest in the real property on the date of this notice is [insert name of current owner of the property and the owner's current address as shown on the tax records of the jurisdiction in which the property is located].

(e) The environmental covenant, amendment, or termination was signed by the Director of the Alabama Department of Environmental Management or his designee.

(f) The environmental covenant, amendment, or termination was filed in the registry on [insert date of filing].

(g) The full text of the covenant, amendment, or termination and any other information required by the Department is on file and available for inspection and copying in the registry maintained for that purpose by the Alabama Department of Environmental Management.

Authors: James L. Bryant; Lawrence A. Norris; Sonja B. Favors, Lynn T. Roper.
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