

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION  
ADMINISTRATIVE CODE

CHAPTER 335-15-1  
GENERAL

TABLE OF CONTENTS

335-15-1-.01	Purpose
335-15-1-.02	Definitions

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.

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

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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.

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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION  
ADMINISTRATIVE CODE

CHAPTER 335-15-2  
PARTICIPATION

TABLE OF CONTENTS

335-15-2-.01	Property Eligibility Criteria
335-15-2-.02	Application Participation Criteria
335-15-2-.03	Variances Criteria

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.

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

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

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

(a) Submit to the Department a complete application with applicable registration fee as cited in ~~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.

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**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).

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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
LAND DIVISION  
ADMINISTRATIVE CODE

CHAPTER 335-15-4  
TECHNICAL INFORMATION

TABLE OF CONTENTS

335-15-4-.01	Purpose
335-15-4-.02	Limitation Of Liability Qualifications
335-15-4-.03	Voluntary Property Assessment Plans
335-15-4-.04	Voluntary Cleanup- <del>Work</del> Plans
335-15-4-.05	Cleanup Requirements
335-15-4-.06	Certificate Of Compliance-Letter Of Concurrence

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.

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

(1) Limitation of liability criteria. To qualify for a limitation of liability as provided in the Code of ~~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.

**History: New Rule:** Filed April 11, 2002; effective 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](#)

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](#)

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

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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.

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

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

**TABLE OF CONTENTS**

<b>335-15-8-.01</b>	<b>Purpose</b>
<b>335-15-8-.02</b>	<b>Applicability</b>
<b>335-15-8-.03</b>	<b>Criteria for Eligibility and Reimbursement</b>
<b>335-15-8-.04</b>	<b>Use of Brownfield Remediation Reserve Funds</b>
<b>335-15-8-.05</b>	<b>Applications for Reimbursement</b>
<b>335-15-8-.06</b>	<b>Fund Reimbursement Procedures</b>

**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