

Summary of Reasons

Supporting the Adoption of the Proposed Amendments to the Alabama Department of Environmental Management's Administrative Code 335-6-16 (Administrative Guidelines and Procedures for the Alabama Underground and Aboveground Storage Tank Trust Fund).

These revisions were approved by the Alabama Tank Trust Fund Management Board, July 28, 2020.

ADEM Admin. Code r. 335-6-16-.02 Definitions

The Department proposes to revise Rule 335-6-16-.02 to add certain definitions for clarification and to reorder all definitions alphabetically.

ADEM Admin. Code r. 335-6-16-.06 Loss and Restoration of Tank Trust Fund Eligibility

The Department proposes to revise Rule 335-6-16-.06 to replace the word "Director" with the word "Department."

ADEM Admin. Code r. 335-6-16-.07 Trust Fund Fee and Charge

The Department proposes to revise Rule 335-6-16-.07 to reflect the revised Trust Fund Charge of \$0.012 per gallon as directed by the Alabama Tank Trust Fund Management Board.

ADEM Admin. Code r. 335-6-16-.08 Authorized ADEM Disbursements of Tank Trust Funds

The Department proposes to revise Rule 335-6-16-.08 to (1) clarify that the Department will assign an incident release number to eligible releases, (2) to clarify that Trust Fund monies are dispersible to third parties who obtain settlement agreements approved by the Attorney General, and (3) to provide the Department a process to complete Tank Trust Fund supported clean-ups at inactive sites.

ADEM Admin. Code r. 335-6-16-.09 Scope of Tank Trust Fund Coverage

The Department proposes to revise Rule 335-6-16-.09 to make grammatical clarifications and to correct typographical errors.

ADEM Admin. Code r. 335-6-16-.10 Requirements for Tank Trust Fund Coverage of Response Action Costs for UST and AST systems

The Department proposes to revise Rule 335-6-16-.10 to clarify that:

- (1) In the event that a tank owner or operator retains a different Approved Response Action Contractor, a contractual agreement must be established between the owner or operator and the new Approved Response Action Contractor, and the Department must be provided a copy of the contractual agreement within 20 days of execution of the contract;
- (2) Tank Trust Fund Reasonable Rates must be utilized in cost proposals, where applicable;
- (3) The Department will utilize the submitted data and other data available to the Department to determine cost projections for the total estimated cleanup costs for an occurrence; and

(4) The Department must act on cost proposals within 120 days of receipt as required by law.

ADEM Admin. Code r. 335-6-16-.11 Requirements for Tank Trust Fund Coverage of Third Party Claims

The Department proposes to revise Rule 335-6-16-.11 to clarify that (1) the Tank Trust Fund must be named as a litigant in any third party liability suit; and (2) an approved settlement, obtained in lieu of a final judgement, is required for trust fund coverage of any third party liability claim.

ADEM Admin. Code r. 335-6-16-.13 Tank Trust Fund Ineligible Costs

The Department proposes to revise Rule 335-6-16-.13 to grammatical clarifications and correct typographical errors; and to clarify that costs associated with discontinuing trust fund participation are ineligible for reimbursement from the Tank Trust Fund.

ADEM Admin. Code r. 335-6-16-.14 Application for Payment

The Department proposes to revise Rule 335-6-16-.14 to:

(1) Add language to the owner's or operator's certification statement clarifying that they have personally examined and are familiar with the information submitted in payment requests, that supporting documentation is true, accurate, and complete, and that this payment request does not duplicate any request for payment for any charge previously submitted to the Department;

(2) To add the phrase "review of documentation" to 335-6-16-.14(6), clarifying that discrepancies between work performed and work addressed in a payment application discovered during a review of documents (e.g. invoices, site records, etc.) could result in the Department's denial of a payment application; and

(3) To extend the time allowed for the Department to receive an application for payment to eighteen (18) months from the date of the approval of the associated cost proposal.

ADEM Admin. Code r. 335-6-16-.15 Tank Trust Fund Payment Procedures

The Department proposes to revise Rule 335-6-16-.15 to correct grammatical errors and to clarify that funding for response actions will be obligated before third party claims, as required by law.

ADEM Admin. Code r. 335-6-16-.16 Approval of Response Action Contractors

The Department proposes to revise Rule 335-6-16-.16 to correct typographical errors.

ADEM Admin. Code r. 335-6-16-.17 Insufficient Funds

The Department proposes to revise Rule 335-6-16-.17 for consistency with applicable statutes.

ADEM Admin. Code r. 335-6-16-.19 Adjustment of Limit of Owner or Operator's Financial Responsibility

The Department proposes to revise Rule 335-6-16-.19 for consistency with applicable statutes.

ADEM Admin. Code r. 335-6-16-.20 Use of Alternate Financial Assurance Mechanisms

The Department proposes to revise Rule 335-6-16-.20 to add new requirements for sites using financial assurance mechanisms apart from the Tank Trust Fund.

ADEM Admin. Code r. 335-6-16-.21 Severability

The Department proposes to revise Rule 335-6-16-.21 to correct numerical order after the addition of Rule 335-6-16-.20.