ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - SOLID WASTE PROGRAM ADMINISTRATIVE CODE

CHAPTER 335-13-11 SOLID WASTE FUND SITE REMEDIATION

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335-13-11-.01 Purpose.

The purpose of this chapter is to establish the procedures for the disbursement of monies from the Solid Waste Fund for use in assessing, investigating, conducting necessary remediation, and achieving closure of unauthorized solid waste dumps.
Author: Phillip D. Davis, Brent A. Watson
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335-13-11-.02 Solid Waste Fund.

(1) For the purposes of remediation conducted under the authority of this chapter, an innocent landowner shall mean an owner of real property upon which there is located an unauthorized dump and who meets all of the following conditions:

(a) The solid waste was disposed of on the property after the owner acquired title to the property or the waste was disposed of before the owner acquired title to the property and the owner lacked actual knowledge of the waste after conducting reasonable due diligence or title was acquired by bequest or devise.

(b) The owner did not have knowledge that the waste was being disposed of on the property or the owner took steps, including, but not limited to, posting signs to prevent disposal on the property.

(c) The owner did not participate in or consent to the disposal of solid waste on the property.

(d) The owner did not receive any financial benefit from the disposal of solid waste on the property.

(e) Title to the property was not transferred to the owner for the purpose of evading liability for operating an unauthorized dump.

(f) The person or persons responsible for disposing of the solid waste on the property, in doing so, was not acting as an agent for the owner.

(2) An unauthorized dumpsite will be eligible for remediation utilizing the Solid Waste Fund if either of the following occurs:

(a) The party or parties responsible for the creation, contribution to, and/or operation of an unauthorized dump cannot be identified and the site is located on property owned by an innocent landowner; or

(b) The party or parties responsible for the creation, contribution to, and/or operation of an unauthorized dump refuses to properly remediate the site.

(3) If the responsible party refuses to remediate an unauthorized solid waste dump site after notice from the Department, and the Solid Waste Fund is used to remediate the site, the Department may, through a civil action in circuit court, recover all costs incurred during the site remediation. Recoverable costs may include, but are not limited to, legal expenses for remediation or cost recovery, utilization of remediation contractors, vector control, disposal costs, administrative costs, and other associated costs.

(4) An innocent landowner shall not be liable for remediation costs if that person works cooperatively with the Department to remediate the site. The innocent landowner shall do all of the following:

(a) Sign a site access agreement and provide site access to Department personnel and contractors working under the Solid Waste Fund.

(b) Take reasonable measures to restrict site access to unauthorized parties.

(c) Provide all information the landowner may have regarding the source of the solid waste, and cooperate with the Department in the enforcement of the Solid Wastes and Recyclable Materials Management Act and its implementing regulations, in determining the responsible party and recovering the cost of remediation.

(d) Remove other materials or impediments to cleanup, if required, or grant permission to the Department or its authorized contractors to remove said materials or impediments to cleanup.

(e) Be in compliance with the applicable regulatory requirements of division 335-13.

(5) Should a landowner fail to comply with the requirements of rule 335-13-11-.02(4), said landowner shall not qualify as an innocent landowner, and shall be liable for remediation of the site in accordance with rule 335-13-1-.13.

(6) Obligation of Funds.

(a) Solid Waste Fund monies for remediation of sites shall be obligated from funds collected by the Alabama Department of Revenue, funds from prior years not previously expended, or funds recovered under rule 335-13-11-.02(3).

(b) Once a site has qualified for remediation using Solid Waste Fund monies, remediation activities shall be funded until the site is properly closed in accordance with the Remediation Plan, as required by rule 335-13-11-.03(3).

(7) Nothing in chapter 335-13-11 shall establish liability or responsibility on the part of the Department or the State of Alabama to pay remediation costs from a source other than the Solid Waste Fund, nor to make payments for remediation costs if the Solid Waste Fund is insufficient to do so.

(8) The Department and the State of Alabama shall have no liability or responsibility if the property owner or party responsible defaults in payment for remedial actions undertaken by the property owner or party responsible to remediate an unauthorized dump.

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335-13-11-.03 Remediation Of Sites.

(1) Any owner of an interest in a property suspected of containing unauthorized disposal of solid waste shall provide to authorized representatives of the Department access to the property for the purposes of evaluating the site as a potential threat to public health, the environment and safety, and for determining the site's compliance status with the applicable requirements of this division.

(2) The person or persons responsible for the creation, contribution to, and/or operation of an unauthorized dumpsite shall be responsible for the remediation of the site. If the responsible person or persons is not determined, the landowner shall be responsible for remediation of the site, unless the landowner qualifies as an innocent landowner. An innocent landowner is exempt from the remediation requirements of rule 335-13-11-.03, provided he complies with the requirements of rule 335-13-11-.02(4).

(3) A person remediating an unauthorized dump site at the direction of the Department under the authority of the Solid Waste Fund, shall submit a Remediation Plan prepared by an engineer which shall be used to direct remedial actions as necessary to comply with the closure requirements of rule 335-13-1-.13. The Department may waive the requirement for the submittal of a Remediation Plan prepared by an engineer based on the waste types, site geology or hydrology, or other factors as determined by the site ranking criteria under rule 335-13-11-.04. Notice of the waiving of this requirement will be made through the publication of the legal advertisement as set forth in rule 335-13-11-.05(1).

(4) Any required Remediation Plans must be approved by the Department prior to initiating remedial action, and must provide for the following as applicable:

(a) Removal of all solid wastes from the site, and transportation to an appropriate permitted solid waste landfill or management facility in accordance with Health Department transportation requirements, or delivery to an appropriate recovered materials processing facility for processing, reuse or recycling. Verification of removal and transport to an authorized facility shall be provided to the Department.

(b) Removal or treatment of substances that are a threat to human health and the environment that may have been released to the environment from the unauthorized accumulation, burning, processing or disposal of solid wastes and other materials.

(c) Restoration of the site by placing backfill in excavated areas, sloping and landscaping to minimize erosion and establishment of a vegetative cover over the site, or other best management practices to control storm water runoff.

(d) Securing the site by use of a barricade or other device or other methods as needed to address public safety concerns due to the proximity of the site to publicly-accessible areas such as roads and rights-of-way, or, when necessary to prevent further dumping, the posting of signs indicating the dump site is closed and the location of the nearest permitted landfill.

(e) Methods to remediate the site and to remove solid wastes, to include:

1. An estimate of the quantity of regulated wastes to be removed, including an estimate of the quantity of any materials recycled or reused.

2. A discussion of any procedures to be undertaken to manage any special wastes, such as medical wastes or industrial wastes, found during remediation of the site.

3. A description of the procedures to be utilized to determine if any wastes at the site are classified as hazardous waste, and if so, the procedures to be used to properly manage these hazardous wastes in accordance with applicable provisions of division 335-14.

(f) The implementation of an effective vector control plan, including baiting for at least two weeks following closure, to prevent vector migration to adjacent properties and spraying to control mosquitoes, or other vector control measures as determined necessary by the Department or the State Health Department.

(g) Storm water runoff control. It shall be the responsibility of the party conducting the remediation to comply with the applicable requirements of division 335-6.

(h) Fire protection measures.

(i) A schedule of proposed remediation work.

(j) Disposition of the materials removed from the site, whether for disposal, reuse, or recycling.

(k) The total estimated cost of remediation, with a breakdown of costs estimated by the remediation contractor.

(l) The steps taken to locate and protect from damage, all utilities that may be present at the site, such as electricity, gas, telephone, etc.

(5) When a Remediation Plan prepared by an engineer is not required by the Department, the party conducting the site remediation shall submit a general description of work to be performed, the proposed disposition of the solid waste removed from the site, the proposed site safety and security measures to be taken, including steps to locate and protect all utilities that may be present at the site such as electricity, gas, telephone, etc., and the proposed restoration of the site, prior to being directed by the Department to begin site remediation activities.
Author: Phillip D. Davis, Brent A. Watson

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335-13-11-.04 Site Ranking System.

(1) A site ranking system shall be used to determine priority for remediating existing unauthorized dumpsites utilizing Solid Waste Fund monies. Higher-ranking sites will be remediated before lower ranking sites, unless it is determined by the Department that sites in close proximity may be bid together in an effort to more efficiently utilize Solid Waste Fund resources. Sites shall be ranked utilizing the factors set out below:

(a) The presence of human or animal infections or diseases as reported by the State Health Department or the Centers for Disease Control and Prevention, including, but not limited to, West Nile Virus, Eastern Equine Encephalitis, and other infections or diseases as determined in conjunction with the Health Department or the CDC.

(b) The estimated amount of solid waste in the unauthorized dump.

(c) The proximity of an unauthorized dumpsite to:

1. Schools, hospitals, nursing homes, assisted living and other health care facilities.

2. Churches, businesses, residential areas, recreational areas and other populated structures or areas.

3. Public water supply systems or sources, or coastal area beaches and dunes.

4. Gas pipelines, electrical power lines, phone lines, and cable lines.

5. Roadways, railroads, and other transportation resources.

6. Private drinking water wells.

(d) Fire hazard due to the lack of availability of adequate fire protective equipment or services, or to inadequate access control.

(e) The presence or suspected presence of special wastes, such as medical or infectious wastes and industrial waste, or the presence of hazardous waste as defined by division 335-14.

(f) The location of the site in an area of minority and/or low-income populations pursuant to Executive Order 12898, "*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.*"

(g) The known or potential for adverse impacts to surface water or groundwater water quality due to the location of the unauthorized dump.

(h) Other factors as determined relevant by the Department.

(2) In the case of sites with mixed wastes of solid waste and scrap tires, sites may be determined to be ineligible for cleanup utilizing the Solid Waste Fund if scrap tires and tire materials are a large percentage of wastes present. In these circumstances, remediation of the site may fall under the authority of the Scrap Tire Fund, as specified under chapter 335-4-2.

(3) Sites for which the Solid Waste Fund has been utilized to perform a previous cleanup may be given lower priority than other sites that have not yet been remediated. Utilizing Solid Waste Fund monies for cleanup of a site that was previously remediated will be at the discretion of the Department and costs associated with further remediation activities may be determined to be the responsibility of the landowner or responsible party.

(4) The Department shall review site rankings periodically, and if necessary, adjust the unauthorized solid waste dumpsite cleanup priority list based on new information regarding previously ranked sites. The priority list shall be adjusted when remediation has been completed on a site and it is removed from the priority list, or when a new site is identified and sufficient information is gathered to rank the new site.
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335-13-11-.05 Remediation Contracting.

(1) The Department will extend an Invitation to Bid to prospective remediation contractors by posting the solicitation on the Department's website and other media as required by the State of Alabama's contracting laws and rules.

(a) The Invitation to Bid shall identify the site, scope of work, and a deadline for submitting of bid proposals.

(b) Interested remediation contractors submitting bid proposals shall include:

1. A remediation plan prepared in accordance with 335-13-11-.03(4) for closure of the unauthorized dump, if required; and

2. Documentation of all required licenses, bonds, or other documents or approvals necessary to perform work under applicable Alabama contracting laws and regulations.

(c) No later than sixty days after the deadline for accepting bid proposals, the Department shall select the remediation contractor submitting the lowest responsible bid proposal that meets all requirements of the scope of work in the Invitation to Bid.

(d) A contract between the Department and the remediation contractor will be executed in compliance with State of Alabama contracting procedures. The contract shall contain the following items:

1. Detailed scope of work.

2. Schedule for completion of the work.

3. Recordkeeping and reporting requirements.

4. Maximum amount of remediation cost reimbursement.

5. Methods of payment to the contractor.

6. Provisions for removing the contractor for inadequate performance.

7. Financial assurance for the completion of the contract, if required by the Department.

8. Provisions for monetary penalties for failure to complete the work as stipulated in the contract in a timely manner.

(e) The Department may utilize processes available under state law for contractor selection and contract execution.

(2) Misrepresenting any information in the bid proposal may be cause to disqualify the contractor from future unauthorized dump remediation projects.

(3) A contractor may lose authorization to perform work under the Solid Waste Fund if the contractor fails to make progress in completing work at funded sites due to poor quality or untimely work, or if they are found to be significantly noncompliant with any environmental regulation or statute.

(4) The acceptance of a bid proposal from a remediation contractor shall in no way establish liability or responsibility on the part of the Department or the State of Alabama with regard to the services provided by the contractor or circumstances that may occur as a result of the services, nor shall it guarantee that the contractor will receive future Solid Waste Fund work.

(5) Contractor Performance.

(a) The contractor must follow the approved Remediation Plan to be reimbursed for all associated costs by the Department.

(b) If, after the contract is executed, the Department determines that the activities in the approved scope of work need to be revised, an amended Remediation Plan shall be submitted that details the additional efforts that are to be undertaken to accomplish the revised remediation activities and the estimated cost increases proposed. The Department shall review the amended Plan, and, if cost projections are justified, shall approve the amended remediation plan, modify the approved scope of work, and obligate more funds from the Fund before the additional work may proceed. However, there shall be a presumption against allowing amendments to Remediation Plans for failure to adequately estimate costs.

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