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

Unless otherwise defined in 335-15-1 through 335-15-8, the following words and terms shall have the meanings given below:

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

(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.

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

(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.

(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.

(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.

(k) "Cleanup" means the cleaning up, remediation, mitigation, control, or removal of contaminants from the environment in accordance with an approved "Voluntary Cleanup Plan".

(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.

(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 Alabama 1975, §22-22A-3.

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

(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 335-13); or

2. Petroleum product(s).

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

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

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

(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.

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

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 335-5-1-.03.

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

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

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

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

(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.

(bb) "Hazardous waste" means any solid waste as defined in 335-14.

(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 335-14-8.

(dd) "Land Use Controls" means any restriction or control, which serves to protect human health 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, 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.

(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.

(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.

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

(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.

(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.

(ll) "Owner or Operator"

1. The definition includes the following:

(i) In the case of a facility, any person 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 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, 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.

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

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

(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.

(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.

(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.]

(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 which occurred prior to an applicant's application for a limitation of liability pursuant to 335-15-4-.02.

(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.

(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.

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

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

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

(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.

(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.

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

(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, 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.

(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., §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., §9601 et seq. as amended on January 11, 2002.

(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.

(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.

(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.

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

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

(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.

(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.

(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 x 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.

(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.

(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.

(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.

(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.

(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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