ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION
ADMINISTRATIVE CODE

CHAPTER 335-15-2
PARTICIPATION

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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., §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., §9601 et seq.

(d) It must not be a hazardous waste treatment, storage, or disposal facility subject to the permitting requirements of 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 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".

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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 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 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 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 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 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, or corrective action requirements of Code of 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 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 person has applied to participate in the voluntary cleanup program at the subject property, and,

(c) 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 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 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 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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