ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION ADMINISTRATIVE CODE

CHAPTER 335-15-5
FINANCIAL ASSURANCE

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335-15-5-.01 Purpose.

To establish minimum standards for the demonstration of financial assurance adequate to cover the cost of the voluntary cleanup. The financial assurance mechanism used must satisfy the following criteria:

(a) It must ensure funds sufficient to cover the cost of the voluntary cleanup;

(b) It must provide for availability of funds when needed;

(c) It must be obtained by the applicant prior to the approval of cleanup activities and maintained throughout the life of those activities, and

(d) It must be legally valid, binding, and enforceable under Alabama and Federal law.

Author: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb
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335-15-5-.02 Financial Assurance.

The applicant shall demonstrate proof of financial assurance of his or her ability to implement the Voluntary Cleanup Plan, including operations and maintenance activities, in accordance with r. 335-15-5-.02 for any voluntary cleanup plan that requires operation and maintenance (e.g. groundwater monitoring, groundwater remediation, maintenance of cap, operation of treatment system) for the site following the initial cleanup activity (e.g. removal action, risk assessment, etc.) no later than 60 days following approval of the plan. Types of financial assurance include:

(a) Assets of the applicant. A certified financial report demonstrating suitable financial integrity and available resources sufficient to satisfy the projected cleanup cost.

(b) Cleanup trust fund.

1. A cleanup trust fund which conforms to the requirements of 335-15-5-.02(b)2. An applicant must submit an originally signed duplicate of the trust agreement to the Department no later than 30 days following establishment of the trust fund or within 60 days after a change in the current cleanup cost estimate.

2. Payments into the fund shall be made quarterly for short term remedial actions and annually for long term remedial actions. The pay-in-period is equal to one-half of the estimated remedial action period. The first payment must be made at the time the trust fund is established and receipt from the trustee must be submitted by the applicant to the Department no later than 30 days following the payment date. Subsequent payments must be made no later than 30 days after the anniversary date of the first payment. The amount of each payment shall be determined by the following formula:

$$Payment\ Method\ =\ \frac{CE-CV}{Y}$$

where

CE is the remedial action cost estimate at the time of the payment;

CV is the current value of the trust fund at the time of the payment; and

Y is the number of remaining quarter years for short term cleanup or years for long term remediation in the pay-in-period, at the time of the payment.

3. The applicant may accelerate payments into the trust fund or deposit the full amount of the current remedial action cost estimate at the time the fund is established. However, the value of the fund must be maintained at no less than the value that the fund would have if annual payments were made as specified in 335-15-5-.02(b)2.

4. If during the remedial action period, the value of the trust fund is greater than the total amount of the current remedial action cost estimate, the applicant may submit a written request to the Department for release of the amount in excess of the current remedial action cost estimate.

5. After the pay-in-period is completed, the Department may approve a release of funds during the remedial action period, if the applicant demonstrates to the Department that the value of the trust fund exceeds the remaining cost of remedial action.

6. The Department will agree to termination of the trust when:

(i) An applicant substitutes alternate financial assurance as specified in 335-15-5-.02(b); or

(ii) The Department releases the applicant from the requirements of 335-15-5-.02(2) in accordance with 335-15-5-.02(6).

(c) Surety bond. An applicant may obtain a surety bond and submit the same to the Department.

(d) Remedial action letter of credit. An applicant may obtain an irrevocable standby letter of credit and submit the same to the Department.

(e) Multiple financial mechanisms. An applicant may establish more than one financial mechanism per site. These mechanisms are limited to those specified in 335-15-5-.02 (a), (b) and (c), respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current remedial action cost estimate. If an applicant uses a trust fund in combination with a surety bond or a letter of credit, the trust fund may be used as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for remedial action of the site.

(f) Release of the applicant from the requirements of 335-15-5-.02(b). Within 60 days after receiving certification that remedial action has been completed in accordance with the approved voluntary cleanup plan, the Department will relieve the applicant of the requirement to maintain financial assurance unless the Department has reason to believe that remedial action does not comply with the approved voluntary cleanup plan. The Department shall provide the applicant with the reason(s) for non-release.

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