ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION ADMINISTRATIVE CODE

CHAPTER 335-15-7
ALABAMA LAND RECYCLING REVOLVING LOAN FUND

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335-15-7-.01 Purpose.

This Chapter is promulgated for the following purposes:

(a) To implement the purposes and objectives of the Federal Comprehensive Environmental Response, Compensation, and Liability Act, and the Alabama Land Recycling Authority Act;

(b) To establish procedures for the distribution of funds appropriated pursuant to the Federal Comprehensive Environmental Response, Compensation, and Liability Act, and any other monies appropriated to the Alabama Land Recycling Revolving Loan Fund, for the purpose of providing financial assistance to public bodies through the issuance of Fund loans to defray the costs of remediation of contaminated property in rural and urban areas of the state;

(c) To protect the public and the State by ensuring that appropriated fund monies are spent in a proper manner and for the intended purposes;

(d) To assure the distribution and use of Fund monies are consistent with the laws and policies of the State and Federal Government;

(e) To ensure proper administration of Fund monies;

(f) To establish accounting procedures for the administration of Fund monies; and

(g) To establish Fund loan repayment requirements.

Author: Aubrey H. White, Lawrence A. Norris
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335-15-7-.02 Applicability.

This Chapter shall constitute the rules of the Alabama Department of Environmental Management governing the disposition of appropriations pursuant to the Federal Comprehensive Environmental Response, Compensation, and Liability Act and the Alabama Land Recycling Authority Act or other monies appropriated to Alabama's Land Recycling Revolving Loan Fund (ALRRLF).

Author: Aubrey H. White, Lawrence A. Norris, Vernon H. Crockett, Sonja B. Favors, Anna M. Ennis
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335-15-7-.03 Definitions.

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise.

(a) "Act" means the Alabama Land Recycling Authority Act.

(b) "Allowable costs" are those costs that are eligible, reasonable, necessary, and allocable to the project; permitted by generally accepted accounting principles; and approved by the Department in the Fund loan agreement.

(c) "Authority" means the corporation organized pursuant to the provisions of the Act as a public corporation, agency and instrumentality of the State and known as the Alabama Land Recycling Finance Authority.

(d) "Authorizing resolution" means a resolution or order adopted by the Board of Directors of the Authority authorizing the issuance of agreements and related matters.

(e) "Board of Directors" means the Board of Directors of the Alabama Land Recycling Finance Authority, consisting of the Governor, Lieutenant Governor, Speaker of the House of Representatives, Director of the Alabama Department of Environmental Management, and Director of Finance.

(f) "Bonds" means revenue bonds, notes or obligations or other evidence of indebtedness issued by the Authority under the provisions of the Act.

(g) "Bond proceeds" means the direct proceeds of the sale of bonds or notes, and the income derived from the investment of such proceeds.

(h) "Certified mail" means any means of delivery where proof of receipt is obtained and date of receipt is recorded.

(i) "Eligible property" means property which qualifies under 335-15-2-.01 for participation in the voluntary cleanup program, and which is owned and operated by a loan applicant or loan applicants which qualify for the limitations of liability as described in 335-15-4-.02.

(j) "Federal Comprehensive Environmental Response, Compensation, and Liability Act" (CERCLA) means the Act of Congress so designated (42 U.S.C. s/s 9601 et seq. 1980), as amended from time to time.

(k) "Federal grant" means a grant awarded pursuant to CERCLA for the purpose of capitalizing an Alabama Land Recycling Revolving Loan Fund and any amendments or supplements thereto.

(l) "Fund" means the Alabama Land Recycling State Revolving Fund established pursuant to Section 22-30F-4 of the Act.

(m) "Fund loan" means a loan from the Alabama Land Recycling Revolving Loan Fund for the allowable costs of a project.

(n) "Fund loan agreement" is the legal instrument executed between the Authority and the public body for the remediation of contaminated property.

(o) "Loan applicant" means any public body which applies for a Fund loan pursuant to the provisions of these rules and regulations.

(p) "Local governmental unit" means a city, town, county, district, association, State agency, or other public body (including an inter-municipal agency of two or more) of the foregoing entities created under State law.

(q) "Project priority list" means the list developed by the State in conformance with the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1972 (33 U.S.C. 1251 et al.), and any amendatory or supplementary acts thereto.

(r) "Project" means projects eligible for assistance from the revolving loan fund as certified to the Authority by the Department, including, without limitation, the following:

1. Assessment and investigation of eligible property pursuant to Code of Ala. 1975, §22-30E-9(b).

2. Cleanup of eligible property pursuant to Code of Ala. 1975, §22-30E-9(c).

3. Any expenditure of a type or category determined by the Authority or the Department to be of such nature as will facilitate the timely assessment, cleanup, and subsequent redevelopment and return to productive use of an eligible property.

(s) "Public body" includes each county, state agency, incorporated city or town, public corporation, district, cooperative, association, authority or instrumentality thereof created by or pursuant to state law, including also a combination of two or more of the foregoing.

(t) "Recipient" means any local governmental unit, which has received a Fund loan pursuant to this Chapter.

(u) "Revolving loan fund" or "Alabama Land Recycling Revolving Loan Fund (ALFFLF)6 means a low interest loan program intended to finance remediation of contaminated brownfield sites in Alabama.

(v) "Substantial alteration" means any change, which results in an alteration of the project costs, or a change of 90 days or more in the project schedule.

Author: Aubrey H. White, Lawrence A. Norris, Vernon H. Crockett; Sonja B. Favors; Anna M. Ennis
Statutory Authority: Code of Ala. 1975, §§22-30F-3, 22-30F-4.
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335-15-7-.04 Alabama Land Recycling Revolving Loan Fund.

Proceeds of bond sales, Federal and State appropriations, payments of loan principal and interest, and interest earned on the fund shall be handled in the following manner:

(a) To make loans;

(b) To guarantee or subsidize loans via linked deposit or other appropriate means;

(c) As a source of revenue or security for the payment of principal and interest on revenue bonds issued by the Authority if the net proceeds of the sale of such bonds will be deposited in the Fund;

(d) Any Federal or State funds, which may be made available to the State for loans to any public body for the assessment and cleanup, of an eligible property, under the Act, may be deposited only to the Alabama Land Recycling Revolving Loan Fund.

(e) The monies in the Fund are specifically dedicated and for the purposes identified in Rule 335-15-7-.03; however, no monies shall be expended from the Fund for those purposes without the specific deposits thereof by the Authority.

(f) Payments of principal, interest and penalties on loans awarded from the Fund shall be made to the Fund pursuant to the Act.

(g) All interest earned shall be credited to the Alabama Land Recycling Revolving Loan Fund pursuant to the Act.

(h) Nothing in 335-15 shall establish liability or responsibility on the part of the Department, the Authority or

the State of Alabama to make loans from a source other than the Fund.

(i) The Department, the Authority or the State of Alabama shall have no liability or responsibility if the applicant defaults in payment for remedial actions or services undertaken to remediate the site.

Author: Aubrey H. White, Lawrence A. Norris, James L. Bryant
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
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335-15-7-.05 Terms Of The Loan.

(1) The Fund may offer loans for up to 100 percent of allowable project costs and may offer a range of options regarding the term, interest rate and level of loan funding. Such loans must be made at or below market interest rates as determined by the Authority.

(2) The total term of the loans shall not exceed 10 years. Repayments shall begin no later than one year after completion of remediation, or three years from the date of loan award, whichever comes first, and shall be repaid in full in no later than 10 years later. Thereafter, loan repayments shall be made in accordance with the repayment schedule indicated in the borrower's Fund loan agreement. Principal and accrued interest with respect to a particular Fund loan may, however, be prepaid in accordance with the provisions of the relevant Fund loan agreement. Interest shall accrue from the date of delivery of the Authority's bonds in a leveraged loan program. In a direct loan program, interest accrues from the date of the execution of the loan agreement.

(3) Loans shall be made only to local governmental units that:

(a) Are on the State project priority list;

(b) Demonstrate tangible financial capacity to assure sufficient revenues to repay the loan;

(c) Provide security for repayment of the loan as required by the Authority;

(d) Agree to maintain records in accordance with governmental accounting standards and to conduct an annual audit of the facility's financial records;

(e) Provide such assurances as reasonably required by the Authority and the Department;

(f) Are not currently, or have been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan;

(g) Are not currently, or have been, a generator or transporter of contamination at the site subject to the loan; and,

(h) Are exempt from liability under CERCLA for the site subject to the loan.

(4) Fund loan payments will be disbursed to recipients at intervals as work progresses and expenses are incurred and approved, but not more often than once a month.

(5) The specific terms and conditions of the Fund loan shall be incorporated in the Fund loan agreement to be executed by the recipient and the Authority.
Author: Aubrey H. White, Lawrence A. Norris, James L. Bryant, Vernon H. Crockett, Sonja B. Favors, Anna M. Ennis
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
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335-15-7-.06 Criteria For Project Loan Priority.

Each year the Department shall develop a project priority list for the forthcoming Federal fiscal year. The priority system evaluates projects individually for their anticipated environmental and economic impacts. Annually, the project priority list shall be the subject of a public notice, including a public comment period. A public body desiring to be placed on the list shall make a request for placement by June 1 of each year, or as otherwise established by the Department. The requests will be ranked in accordance with the priority system and placed on the list. The following shall be submitted by the authorized representative of the public body when requesting placement on the list:

(a) Brief description of the project indicating need;

(b) Brief description of existing site conditions;

(c) Estimated costs associated with the project; and

(d) Projected public and economic value after remediation.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: **New Rule:** Filed October 21, 2004; effective November 25, 2004.

335-15-7-.07 Pre-application Procedures.

(1) Public bodies are urged to be familiar with the requirements of this Chapter and to contact the Department early in the planning process so projects are in a position to proceed.

(2) Each pre-application for a Fund loan shall be submitted to the Department, typically on a quarterly basis. The preapplication shall include full and complete documentation that a loan applicant is required to furnish.

(3) The Department may require a preapplication conference with potential loan applicants prior to submission of a formal application for a Fund loan.
Author: Aubrey H. White, Lawrence A. Norris, Vernon H. Crockett, Sonja B. Favors, Anna M. Ennis
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
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335-15-7-.08 Application Procedures.

(1) Each application for a Fund loan shall be submitted by the established deadline. The application shall include complete documentation required for processing.

(2) The following shall be submitted when applying for a Fund loan:

(a) An application form for a Fund loan. Each application shall constitute a commitment by the loan applicant to comply with the requirements of this Chapter and, upon execution of the agreement by the Authority and the loan applicant, acceptance of the terms and conditions of the Fund loan agreement;

(b) A resolution passed by the local governmental unit authorizing the filing of an application for a Fund loan and specifying the individual authorized to sign the Fund loan application. If two or more local governmental units are involved, a resolution is required from each, indicating the lead loan applicant and the authorized representative;

(c) Statement of assurances in conformance with Rule 335-15-7-.14;

(d) Department approval with assessment and cleanup plans and reports, if applicable;

(e) Project cost breakdown;

(f) Projected cash flow schedule;

(g) Project remediation schedule;

(h) Certificate (legal opinion) from counsel and the authorized representative as to title or mechanism to obtain title necessary for project sites and easements;

(i) A certification that required local, State and federal permits and approvals, if applicable, were received;

(j) A statement from the loan applicant indicating that it has not violated any Federal, State or local law pertaining to fraud, bribery, graft, kickback, collusion or conflicts of interest relating to, or in connection with, the planning and implementation of the project;

(k) A statement from the loan applicant indicating if the services of a person, whose name appears on the Federal list of debarments, suspensions and voluntary exclusions, were used for planning or design of the project;

(l) Executed inter-municipal agreements, if required;

(m) A plan for how the loan applicant plans to repay the Fund loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement the plan, and steps it plans to take before receiving the Fund loan that shall guarantee that at the time of the signing of the Fund loan agreement it shall be irrevocably committed to repay the Fund loan and pay any other expenses necessary to fully complete, implement, operate and maintain the project. The description shall include: pro forma projections of the loan applicant's financial operations during the remediation period of the project and five years thereafter; a summary of the sources and uses of all funds anticipated to be used for the Fund loan project; and a statement of the assumptions used in creating such projections. Loan applicants shall secure all Fund loans in a manner acceptable to the Authority, pledging to provide funds to repay the debt, even if the Fund loan is terminated pursuant to Rule 335-15-7-.34;

(n) A completed voluntary property assessment or voluntary cleanup plan approved by the Department under 335-15-4-.03 and .04;

(o) Information regarding the loan applicant’s environmental compliance history;

(p) A viable redevelopment plan for the project site; and,

(q) Such other information as the Department may require.

(3) Loan applicants shall obtain all necessary Federal, State and local permits and approvals prior to the award of a loan. Excluded from prior acquisition are permits and approvals that are impractical to obtain prior to the loan award (e.g., road opening permit, blasting permit, etc.).

(4) Submissions not substantially complying with this Chapter shall not be processed, and shall be returned.
Author: Aubrey H. White, Lawrence A. Norris, Vernon H. Crockett, Sonja B. Favors, Anna M. Ennis
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
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335-15-7-.09 Information Disclosure.

All loan applications and other submissions, when received by the Department, constitute public records. The Department shall make them available to persons who request their release to the extent required by Alabama and/or Federal law.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.10 Application Evaluation.

(1) The Department shall notify the loan applicant that it has received the application and is evaluating it pursuant to this section. Each application shall be subject to:

(a) Preliminary administrative review to determine the completeness of the application. The loan applicant will be notified of the completeness or deficiency of the application;

(b) Programmatic, technical, and scientific evaluations to determine the relevance of the project to the objectives of the Act;

(c) Budget evaluation to determine if proposed project costs are reasonable, applicable, and allowable; and

(d) Financial Capability.

(2) Upon completion of an evaluation of an application, the Department shall either approve the application or make the determination that the Fund loan award shall be deferred.

(3) The Department shall promptly notify loan applicants in writing of any deferral action, indicating the reasons for the deferral and a timeframe for the resolution of any outstanding issues. A deferral action shall result in one of the following:

(a) An approval of the application if the outstanding issues are addressed to the satisfaction of the Department within the specified time frame; or

(b) A disapproval of the application if the outstanding issues are not addressed to the satisfaction of the Department within the specified timeframe.

(c) Insufficient funds to meet the applicant's needs.

(4) The Department shall promptly notify loan applicants in writing of any disapproval. A disapproval shall not preclude reconsideration if resubmitted. Reconsideration of a revised Fund loan application and/or processing of a Fund loan agreement within the current fiscal year may be bypassed, precluding funding of the project until a future fiscal year. Affected loan applicants shall be notified in writing of such action.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.11 Supplemental Information.

At any stage during the evaluation process, the Department may require supplemental documents or information necessary to complete the review. The Department may suspend its evaluation until such additional information or documents have been received.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.12 Fund Loan Agreement.

The Authority shall prepare and transmit the Fund loan agreement to the loan applicant.

(a) The loan applicant shall execute the Fund loan agreement and return it within 30 calendar days of receipt. The

Authority may, at its discretion, extend the time for execution. The Fund loan agreement shall be signed by a person authorized by resolution to obligate the loan applicant to the terms and conditions of the Fund loan agreement being executed. The authorizing resolution shall accompany the executed Fund loan agreement.

(b) The Fund loan agreement shall set forth the terms and conditions of the Fund loan, approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project and major phases thereof.

(c) The Fund loan agreement shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process.

(d) The Fund loan agreement shall not be executed by the Authority if the loan applicant is in current default on any State or Federal loan.

(e) Upon completion of the internal processing of the Fund loan agreement, a copy of the executed Fund loan agreement shall be transmitted to the recipient.

(f) The Authority shall establish remedies for default in the loan agreement.

Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.13 Effect Of Loan Award.

(1) At the time of execution of the Fund loan agreement by the Authority and the recipient, the loan shall become effective and shall constitute an obligation of the Fund in the amount and for the purposes stated in the Fund loan agreement.

(2) The award of the Fund loan shall not commit or obligate the Authority to award any continuation Fund loan to cover cost overruns of the project. Cost overruns for any project or portion thereof shall be the sole responsibility of the recipient.

(3) The award of a Fund loan by the Authority shall not be used as a defense by the loan applicant to any action by any agency for the loan applicant's failure to obtain all required permits, licenses and operating certificates for its respective project.

Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.14 Loan Conditions.

(1) The following requirements, in addition to such statutes, rules, terms and conditions which may be applicable to particular loans, are applicable to disbursement under a Fund loan agreement:

(a) The recipient shall certify that it is maintaining its financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions;

(b) The recipient shall comply with all requirements of applicable permits issued by the Department;

(c) The recipient shall comply with all applicable requirements of Federal, State and local laws;

(d) The recipient shall pay any unallowable project costs;

(e) The Fund loan agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project objectives or Department requirements;

(f) Implementation of the project, including letting of contracts in connection therewith, shall conform to applicable requirements of Federal, State, and local laws, ordinances, rules and regulations and contract specifications and requirements;

(g) No Fund loan monies shall be disbursed to a public body currently in default on any Fund loan. Nothing in this paragraph shall in any way limit any right or duty of the Authority to demand and collect at any time the total due under any such defaulted loan;

(h) The Authority may assess penalties to late loan repayments as appropriate and as specified in the Fund loan agreements;

(i) The recipient shall certify that the project, or phase of the project, will be initiated and completed in accordance with the time schedule specified in the Fund loan agreement;

(j) The recipient must submit proof that it, and its contractors and subcontractors, will comply with all insurance requirements of the Fund loan agreement and that it shall be able to certify that the insurance is in full force and effect and that the premiums have been paid.

(k) The Department may impose such other conditions as may be necessary and appropriate to effectuate the purpose and intent

of the Act and to implement the CERCLA and other applicable laws of the State.

(2) The recipient shall certify that it is in compliance with all other requirements and conditions of the Fund loan agreement.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: **New Rule:** Filed October 21, 2004; effective November 25, 2004.

335-15-7-.15 Administration And Performance Of Loan.

The recipient bears primary responsibility for the administration and success of the project, including any sub-agreements made by the recipient for accomplishing the Fund loan objectives. Fund loan monies must be used in conformance with these rules and the Fund loan agreement shall achieve the Fund loan objectives and ensure that the purposes set forth in the Act and the CERCLA are fully executed.
Author: Aubrey H. White, Lawrence A. Norris, Vernon H. Crockett, Sonja B. Favors, Anna M. Ennis
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
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335-15-7-.16 Project Changes And Loan Modifications.

(1) A loan modification encompasses any written alteration of the Fund loan terms or conditions, budget or project method or other administrative, technical or financial agreements.

(2) There shall be no Fund loan modification increasing the funding amount beyond adjustments to cover the low bid cleanup costs. Adjustments due to the low bid cleanup costs will be made only after a subsequent passage of a legislative appropriations act or if funds exist which are unobligated or not already targeted for other projects on the priority list.

(3) The recipient shall promptly notify the Department in writing (certified mail, return receipt requested) of events or proposed changes which may require a loan modification, including but not limited to:

(a) Rebudgeting;

(b) Changes in approved plans for the project;

(c) Changes which may affect the approved scope or objectives of the project;

(d) Significant, changed conditions at the project site;

(e) Acceleration or deceleration in the time for performance of the project or any major phase thereof; and

(f) Changes which may increase or substantially decrease the total cost of a project.

(4) If the Authority decides a formal Fund loan amendment is necessary, the recipient shall be notified and a formal Fund loan amendment shall be processed in accordance with Rule 335-15-7-.17. If the Authority decides a formal Fund loan amendment is not necessary, the Department shall follow the procedures of Rule 335-15-7-.18 or .19, as applicable.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.17 Formal Loan Amendments.

(1) The Authority may require a formal Fund loan amendment to change principal provisions of a Fund loan where project changes substantially alter the cost or time of performance of the project or any major phase thereof, or substantially alter the objective or scope of the project.

(2) The Authority and recipient may affect a formal Fund loan amendment only by a written amendment to the Fund loan agreement executed by the Authority and the recipient.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.18 Administrative Loan Changes.

Administrative changes by the Department, such as a change in the office to which a report is to be transmitted by the recipient, or a change in the disbursement schedule for Fund loans, constitute changes to the Fund loan agreement (but not necessarily to the project work) and do not affect the substantive rights of the Department or the recipient. The Department may issue such changes unilaterally. Such changes shall be in writing and generally be affected by a letter (certified mail, return receipt requested) to the recipient.

Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.19 Other Changes.

All other project changes, which do not require a formal Fund loan amendment as stated in Rule 335-15-7-.20, shall be undertaken only upon written approval of the Director.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.20 Access.

(1) The recipient, its contractor and subcontractors shall provide Department personnel, authorized representative(s) of the Department, or representative(s) of the Environmental Protection Agency, access to the facilities, premises and records related to the project.

(2) The recipient shall submit to the Department such documents and information as requested by the Department;

(3) The recipient, and all contractors and subcontractors which contract directly with the recipient or receive a portion of State monies, are subject to a financial audit.

(4) Records shall be retained and available to the Department until the final Fund loan repayment has been made.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.21 Authority Disbursement.

Disbursement of Fund loan monies shall be made at intervals as work progresses and expenses are incurred, but at no greater frequency than monthly. In no event shall disbursement exceed the allowable costs that have been incurred at that time. No disbursement shall be made until the Department receives satisfactory cost documentation which shall include all forms and information required by the Department and completed in a manner satisfactory to the Department. Should the recipient be receiving

Fund loan monies for expenditures incurred prior to the award of the Fund loan, the disbursement schedule shall be as indicated in the Fund loan agreement.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: **New Rule:** Filed October 21, 2004; effective November 25, 2004.

335-15-7-.22 Assignment.

The right of a recipient to receive disbursements from the Authority under a Fund loan may not be assigned, nor may repayments due under a Fund loan be similarly encumbered.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: November 25, 2004.

335-15-7-.23 Unused Funds.

Where the total amount of the cleanup costs after bids are taken is less than the initial loan award, the Fund loan agreement shall be adjusted and the difference retained by the Fund to be reallocated to other projects.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: **New Rule:** Filed October 21, 2004; effective November 25, 2004.

335-15-7-.24 Project Initiation.

(1) The recipient shall expeditiously initiate and complete the project in accordance with the project schedule contained in the Fund loan agreement. Failure to promptly initiate and complete a project may result in the imposition of sanctions included in this Chapter.

(2) The recipient shall not advertise any contract until written notice of concurrence with the proposed agreement has been issued by the Department.

(3) Once bids for the project are received, the recipient shall not award the contract(s) until authorization to award has been given by the Department.

(4) The recipient and the contractor shall attend a pre-remediation conference with Department personnel prior to the issuance of a notice to proceed by the recipient.

(5) The recipient shall award the contract(s) and issue notice(s) to proceed, where required, for completing all "significant" elements of the project no later than 12 months after execution of the loan agreement, unless a specific extension has been approved by the Department.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: **New Rule:** Filed October 21, 2004; effective November 25, 2004.

335-15-7-.25 Ineligible Fund Uses.

(1) Loan funds shall not be used for the following activities:

(a) Cleanup of public or private drinking water supplies that have deteriorated through ordinary use.

(b) Monitoring and data collection necessary to apply for, or comply with, environmental permits under State or federal laws, unless such a permit is required as a component of the cleanup action;

(c) Development activities that are not removal actions, such as construction of a new facility or marketing of property; or,

(d) Job training activities.

(2) Loan funds shall not be used at any of the following sites:

(a) Listed, or proposed for listing, on the National Priorities List;

(b) Where a federal or State agency is planning or conducting a response or enforcement action; or

(c) At which a removal action must be taken within six months;
Author: Aubrey H. White, Lawrence A. Norris, Vernon H. Crockett, Sonja B. Favors, Anna M. Ennis
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: **New Rule:** Filed October 21, 2004; effective November 25, 2004. **Amended:** Published February 28, 2020; effective April 13, 2020.

335-15-7-.26 Allowable Project Costs.

(1) The Department shall not provide Fund loan monies for costs of work that it determines do not comply with the Act or CERCLA. In

general, allowable costs may include, but may not be limited to, the following:

(a) Costs for construction or remediation contracts;

(b) Professional and consultant services;

(c) Project feasibility and engineering reports;

(d) Costs of complying with the National Environmental Policy Act, including costs of public notices and hearings;

(e) Fences, warning signs, or other security or site control precautions;

(f) Drainage controls necessary to reduce migration of hazardous substances or pollutants or contaminants off-site or to prevent entry of precipitation or runoff from other sources into the release area(s);

(g) Stabilization of berms, dikes, or impoundments for drainage, or draining or closing of lagoons where needed to maintain the integrity of the structures;

(h) Capping of contaminated soils or sludges where needed to reduce migration of hazardous substances, pollutants, or contaminants into soil, ground or surface water, or air;

(i) Using chemicals and other materials to retard the spread of the release or to mitigate its effects;

(j) Excavation, consolidation, or removal of highly contaminated soils from drainage or other areas, where such actions will reduce the spread of, or direct contact with, the contamination;

(k) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants, or contaminants, where removal will reduce the likelihood of spillage, leakage, exposure to humans, animals or food chain exposure;

(l) Project identification signs;

(m) Costs of complying with procurement requirements; and,

(n) Reasonable costs of public participation incurred by the loan applicant which are identified in a public participation work plan, or which are otherwise approved by the Department, shall be allowable.

(2) Reimbursement for administrative costs shall not exceed 10 percent of the loan amount, unless specifically approved by the Department.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: **New Rule:** Filed October 21, 2004; effective November 25, 2004.

335-15-7-.27 Pre-award Costs.

(1) The Department shall not award loan assistance for costs incurred prior to the award of the Fund loan for the project.

(2) If the Department approves preliminary cleanup activities prior to loan closing, such approval is not an actual or implied commitment of Fund loan monies and the public body proceeds at its own financial risk. The public body shall receive cost reimbursement of approved activities only upon execution of a binding loan agreement.
Author: Aubrey H. White, Lawrence A. Norris, Vernon H. Crockett, Sonja B. Favors, Anna M. Ennis
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: **New Rule:** Filed October 21, 2004; effective November 25, 2004. **Amended:** Published February 28, 2020; effective April 13, 2020.

335-15-7-.28 Project Closeout.

As directed by the Department, the Fund loan recipient shall supply a complete project closeout report. Projects must be complete within the timeframe specified in the approved cleanup plan, unless an extension is granted by the Department.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: **New Rule:** Filed October 21, 2004; effective November 25, 2004.

335-15-7-.29 Fraud And Other Unlawful Or Corrupt Practices.

(1) The recipient shall administer Fund loans, acquire property pursuant to the award documents, and award contracts and subcontracts pursuant to those loans free from bribery, graft, and other corrupt practices. The recipient bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The State shall also have the right to pursue administrative or other legally available remedies.

(2) The recipient shall pursue available judicial and administrative remedies and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The recipient shall immediately notify the Director when such allegation or evidence comes to its attention, and shall periodically advise the Director of the status and ultimate disposition of any related matter.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.30 Debarment.

(1) No recipient shall enter into an agreement with any contractor that is debarred, suspended or disqualified.

(2) The recipient, prior to acceptance of Fund loan monies, shall certify that no contractor or subcontractor is included on the list of debarred, suspended and disqualified bidders as a result of action by a Federal agency. If Fund loan monies are used for disbursement to a debarred firm, the Authority reserves the right to immediately terminate the Fund loan and/or take such other action as is appropriate.

(3) Whenever a bidder is debarred, suspended, or disqualified, the recipient may take into account the loss of Fund loan monies under these regulations which result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsive and responsible bidder pursuant to laws, and the recipient may advise prospective bidders that these procedures shall be followed.

(4) Any person included on the Federal list as a result of action by a Federal agency, who is or may become a bidder on any contract which is or shall be funded by a Fund loan under this section, may present information to the Department why this section shall not apply to such person. If the Department determines that it is essential to the public interest, the Department may grant an exception from the application of this section with respect to a particular contract.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.31 Noncompliance.

In addition to any other remedies as may be provided by law or in the Fund loan agreement, in the event of noncompliance with any loan condition, requirement of this Chapter, or contract requirement or modification, the Authority may take any of the following actions or combinations thereof:

(a) Issue a notice of noncompliance pursuant to Rule 335-15-7-.32;

(b) Withhold Fund loan monies pursuant to Rule 335-15-7-.33;

(c) Terminate the Fund loan pursuant to Rule 335-15-7-.34.

Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.32 Notice Of Noncompliance.

Where the Department determines that the recipient is in noncompliance with any condition or requirement of these rules or requirements, it shall notify the recipient of the noncompliance. The Department may require the recipient to take and complete corrective action within 10 working days of receipt of notice. If the recipient fails to take corrective action or if the action taken is inadequate, then the Department may withhold disbursement. The Department may, however, withhold disbursement pursuant to Rule 335-15-7.33 without issuing a notice pursuant to this section.

Author: Aubrey H. White, Lawrence A. Norris, Vernon H. Crockett, Sonja B. Favors, Anna M. Ennis
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: New Rule: Filed October 21, 2004; effective November 25, 2004. **Amended:** Published February 28, 2020; effective April 13, 2020.

335-15-7-.33 Withholding Of Funds.

The Department may withhold, upon written notice to the recipient, a Fund loan disbursement or any portion thereof when it determines that a recipient has failed to comply with any loan condition, provision of this Chapter, or contract specification or requirement.

Author: Aubrey H. White, Lawrence A. Norris

Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: New Rule: Filed October 21, 2004; effective November 25, 2004.

335-15-7-.34 Termination Of Loans.

(1) Termination of loans by the Authority shall be accomplished as follows:

(a) The Authority may terminate a Fund loan in whole or in part for good cause. The term "good cause" shall include but not be limited to:

1. Substantial failure to comply with the terms and conditions of the Fund loan agreement:

2. Default by the recipient;

3. A determination that the Fund loan was obtained by fraud;

4. Without good cause therefore, substantial performance of the project work has not occurred;

5. Gross abuse or corrupt practices in the administration of the project; or

6. Fund monies have been used for non-allowable costs.

(b) The Authority shall give written notice to the recipient (certified mail, return receipt requested) of its intent to terminate a Fund loan, in whole or in part, at least 30 days prior to the intended date of termination.

(c) The Authority shall afford the recipient an opportunity for consultation prior to any termination. After such opportunity for consultation, the Authority may, in writing (certified mail, return receipt requested), terminate the Fund loan in whole or in part.

(2) Project termination by the recipient shall be subject to the following:

(a) A recipient shall not unilaterally terminate the project work for which a Fund loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the Department of any complete or partial termination of the project work.

(b) If the Department determines that there is good cause for the termination of all or any portion of a project for which the Fund loan has been awarded, the Authority may enter into a termination agreement or unilaterally terminate the Fund loan effective with the date of cessation of the project work by the recipient. The determination to terminate the Fund loan shall be solely within the discretion of the Authority. If the Authority determines not to terminate, the recipient shall remain bound by the terms and conditions of the Fund loan agreement.

(c) If the Authority determines that a recipient has ceased work on a project without good cause, the Authority may unilaterally terminate the Fund loan pursuant to this section.

(3) The Authority and recipient may enter into a mutual agreement to terminate at any time pursuant to terms which are consistent with this Chapter. The agreement shall establish the effective date of termination of the project and the schedule for repayment of the Fund loan.

(4) Upon termination, the recipient may be required to immediately refund or repay to the Authority the entire amount of the Fund loan money received. The Authority may, at its discretion, authorize the immediate repayment of a specific portion of the Fund loan and allow the remaining balances to be repaid in accordance with a revised Fund loan repayment schedule.

(5) The recipient shall reduce the amount of outstanding commitment insofar as possible and report to the Department the uncommitted balance of Fund monies awarded under the Fund loan. The recipient shall make no new commitments without the Department's specific approval thereof. The Department shall make the final determination of the eligibility of termination costs.

(6) In addition to any termination action, the Authority retains the right to pursue other legal remedies as may be available under Federal, State and local law as warranted.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.
History: November 25, 2004.

335-15-7-.35 Severability.

If any section, subsection, provision, clause or portion of this Chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter shall not be affected thereby.
Author: Aubrey H. White, Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§22-30F-2, 22-30F-4.

History: New Rule: Filed October 21, 2004; effective November 25, 2004.