ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION-BROWNFIELD REDEVELOPMENT AND VOLUNTARY CLEANUP PROGRAM
ADMINISTRATIVE CODE

CHAPTER 335-15-8
BROWNFIELD REMEDIATION RESERVE FUND

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335-15-8-.01 Purpose.

This chapter is promulgated to establish administrative guidelines and procedures to determine the manner in which reimbursements are made from the Brownfield Remediation Reserve Fund as defined in Code of Alabama 1975, §22-30E-5 and to implement the purposes and objectives of the Brownfield Remediation Reserve Fund Act of 2023 (Act Number 2023-356 2023 Regular Session.
Author: Crystal L. Collins; Pamela W. Luckie
Statutory Authority: Code of Ala. 1975, §22-30E-5.
History: New Rule: Published February 29, 2024; effective April 14, 2024.

335-15-8-.02 Applicability.

(1) The Department will deposit all Brownfield Remediation Reserve Fund contributions into the Brownfield Remediation Reserve Fund.

(2) The Department shall collect from each responsible person applicant a Brownfield Remediation Reserve Fund Contribution in the amount of five hundred dollars ($500) per acre for each qualifying property in addition to the Voluntary Cleanup Program application and oversight fees as described in 335-15-4.

[Note: Application and associated oversight fees are not deposited into the Brownfield Remediation Reserve Fund]

(3) The Contribution to the Brownfield Remediation Reserve Fund will function solely for the administration and purpose of this chapter.

(4) These regulations apply for the Department to use the amounts in the Brownfield Remediation Reserve Fund for post-remediation costs at a qualifying property, provided the amount does not exceed four million dollars ($4,000,000) per property.

(5) The obligations of the Department for the application of amounts in the Brownfield Remediation Reserve Fund, as provided in this chapter, shall not constitute a work of internal improvement, a loan of money, or an extension of credit by the state to any private or corporate enterprise or any individual, association, or corporation. To the extent there are insufficient funds in the fund to be used to pay for remediation costs or post-remediation costs, the Department shall have no obligations or responsibility to pay for or conduct cleanup activities.
Author: Crystal L. Collins; Lynn T. Roper; Sonja B. Favors; Pamela W. Luckie
Statutory Authority: Code of Ala. 1975, §22-30E-5.
History: New Rule: Published February 29, 2024; effective April 14, 2024.

335-15-8-.03 Criteria For Eligibility And Reimbursement.

(1) Properties are eligible for the Brownfield Remediation Reserve Fund reimbursement provided the following criteria are met:

(a) Initial Voluntary Cleanup Program Cleanup at the qualifying property was conducted by a responsible person applicant pursuant to 335-15-4 after December 31, 2023;

(b) Contamination was cleaned up, remediated, and documented as outlined in 335-15-8-.03(1)(a) in a Voluntary Assessment Report or Voluntary Cleanup Plan/Report that was approved by the Department pursuant to 335-15-4;

(c) Expenditures incurred must qualify as post-remediation costs as defined in 335-15-1-.02;

(2) Applicants, as defined in 335-15-1-.02, requesting an eligibility determination for reimbursement from the Brownfield Remediation Reserve Fund shall submit a formal request to the Department which shall include the following:

(a) A full explanation of the changes proposed to address the required post-remediation modification. The explanation must include a detailed description of the actions to be performed and how it will address the risk reduction.

(b) A copy of the Letter of Concurrence with Conditions for the qualifying property which includes the assigned Voluntary Cleanup Program project number;

(c) The nature and extent of the contamination identified that requires additional cleanup;

(d) Detailed explanation of the work to be performed; and,

(e) A cost estimate that includes itemization of all potential post-remediation costs including but not limited to labor hours and rates, analytical charges, equipment charges, and other categories which shall be identified by the Department, or which the applicant may wish to provide.

(3) Requests for reimbursement shall be submitted within 180 days of the Department's approval for work to commence.

(4) Any deviations from the Department approved land-use controls do not qualify for reimbursement under this fund.

Note: Any modification to the Department approved Assessment or Cleanup Plan will follow the requirements of Division 15 and may be subject to the Public Participation requirements.
Author: Crystal L. Collins; Sonja B. Favors; Lynn T. Roper; Pamela W. Luckie
Statutory Authority: Code of Ala. 1975, §22-30E-5.
History: New Rule: Published February 29, 2024; effective April 14, 2024.

335-15-8-.04 Use Of Brownfield Remediation Reserve Funds.

(1) Remediation Reserve Funds may be used for any qualifying property in the state for which remediation reserve fund contributions have been made after December 31, 2023, for which there is not a responsible person.

(2) Use of funds:

(a) To pay the post-remediation costs as defined in 335-15-1-.02 for any qualifying property as described in 335-15-8-.03(1) in the state which was cleaned up or remediated in accordance with the Department approved Voluntary Cleanup Plan, and

(b) Where the established risk reduction standards upon which a cleanup or remediation was previously conducted have changed.

(3) The Brownfield Remediation Reserve Fund may not be used to pay or reimburse any costs incurred for:

(a) Long-term groundwater monitoring;

(b) Utilization of a soil management plan; or

(c) As a result of non-compliance with the applicable response action or land use controls within an environmental covenant.

(4) All reimbursements shall be subject to approval by the Department. Should a site inspection, a review of documentation or other information available to the Department reveal a discrepancy between the work necessary to comply with the post-remediation costs and the expenditures incurred, the Department may deny the application for reimbursement.
Author: Crystal L. Collins; Sonja B. Favors; Lynn T. Roper; Pamela W. Luckie
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335-15-8-.05 Applications For Reimbursement.

(1) Applications for reimbursement for post remediation costs shall be submitted on a form established by the Department which shall include an itemization of all charges according to labor hours and rates, analytical charges, equipment charges, and other categories which may be identified by the Department, or any other information the Department requests. Documentation of charges to include actual invoices must be submitted as part of the application, as required by the Department.

(2) The application shall contain the following statement which shall be signed by the owner, operator, or the project manager of the contracting firm responsible for performance of post-remediation work where applicable:

I certify to the best of my knowledge and belief: that the costs presented herein represent actual costs incurred in the work performed related to this site during the period of time indicated on this application; and that no charges are presented as part of this application that did not result from the post-remediation costs which were necessary due to the standards outlined in 335-15-8-.04 at this site. I have personally examined and am familiar with the information submitted in this reimbursement request and all attachments and, based on my inquiry of those persons immediately responsible for obtaining the information contained in this reimbursement request, I certify that the information is true, accurate, and complete, and that this reimbursement request does not duplicate any request for reimbursement for any charge previously submitted to the Department.

(3) Applications for reimbursements shall be submitted following acceptance by the Department of completed post-remediation costs. Such post-remediation costs may include but are not limited to the following:

(a) Completion, submittal and/or implementation of a Department approved Voluntary Property Assessment Plan/Report or Voluntary Cleanup Plan;

(b) Completion and submittal of a Risk Assessment; or

(c) Completion and submittal of an Environmental Covenant.

(4) Applications for reimbursement for the implementation of post-remediation activities shall be submitted ninety (90) days following initiation of work to be performed and at ninety (90) day intervals thereafter.
Author: Crystal L. Collins; Sonja B. Favors; Lynn T. Roper; Pamela W. Luckie
Statutory Authority: Code of Ala. 1975, §22-30E-5.
History: New Rule: Published February 29, 2024; effective April 14, 2024.

335-15-8-.06 Fund Reimbursement Procedures.

(1) Reimbursement from the Brownfield Remediation Reserve Fund will be made directly to the eligible owner or operator in cases where the owner or operator submits documentation verifying the owner or operator has paid for the post-remediation costs.

(2) Where the owner or operator has submitted a complete application for reimbursement for the post-remediation costs conducted in accordance with 335-15-8, but has not paid for these activities or claims, reimbursement will be made to the contractor who provided the investigative response action service.
Author: Crystal L. Collins; Sonja B. Favors; Lynn T. Roper; Pamela W. Luckie
Statutory Authority: Code of Ala. 1975, §22-30E-5.
History: New Rule: Published February 29, 2024; effective April 14, 2024.