ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION ADMINISTRATIVE CODE

CHAPTER 335-16-1 GENERAL

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335-16-1-.01 Purpose.

These regulations have been promulgated pursuant to the Alabama Drycleaning Environmental Response Trust Fund Act, Code of Ala. 1975, §22-30D-1 et seq, henceforth referred to as "the Act". The purpose of the Alabama Drycleaning Environmental Response Trust Fund Program is to establish the ADEM Administrative Code Regulations necessary for the administration and enforcement of the Act by:

(a) The establishment of performance standards for new drycleaning facilities and new wholesale distribution facilities first brought into use on or after May 24, 2003;

(b) The establishment of a schedule for the retrofit of drycleaning facilities and wholesale distribution facilities that were in existence prior to May 24, 2000;

(c) The establishment of criteria for the reporting of suspected contamination or the discovery of contamination by site(s) as defined in 335-16-1-.02;

(d) The establishment of requirements for the initial investigation, assessment and remediation of contamination resulting from various types of drycleaner facilities, abandoned drycleaner facilities, wholesale distribution facilities, impacted third parties or adjacent landowners as defined in 335-16-1-.02.

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Statutory Authority: Code of Ala. 1975, §§22-30D-1, 22-30D-4.
History: New Rule: Filed June 20, 2003; effective July 25, 2003.

335-16-1-.02 Definitions.

Unless otherwise defined in ADEM Admin. Code r. 335-16-1 through 335-16-6, the following words and terms shall have the meanings given below:

(a) "Abandoned drycleaning facility" is any real property premises or individual leasehold space owned by an eligible entity in which a drycleaning facility or wholesale distribution facility formerly operated.

(b) "ADEM" means the Alabama Department of Environmental Management as established by Code of Ala. 1975, §22-22A-4.

(c) "ADERTFA" or "the Act" means the Alabama Drycleaning Environmental Response Trust Fund Act, Code of Ala. 1975, §22-30D-1 et seq.

(d) "Adjacent land owner" is any owner, lessor, or mortgagee of any real property onto which contamination from an eligible site has migrated or is threatening to migrate; or any of the successors or assigns, predecessors-in-title, and successors-in-title of the foregoing.

(e) "AHWMMA" means the Alabama Hazardous Waste Management and Minimization Act of 1978, as amended, Code of Ala. 1975, §§22-30-1 et seq.

(f) "Aquifer" means a geologic formation, group of formations or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(g) "Board" means the Alabama Drycleaning Environmental Response Trust Advisory Board created by Code of Ala. 1975, §22-30D-8.

(h) "Certification" means a statement of professional opinion based upon knowledge and belief.

(i) "Cleanup Properties Inventory" means the list compiled and updated as necessary by the Department pursuant to 335-16-7-.02 for all qualifying properties for which contamination has been discovered.

(j) "Commercial hazardous waste disposal facility" is one receiving hazardous waste not generated on-site for disposal and to which a fee is paid or other compensation is given for disposal.

(k) "Contamination" means the presence of drycleaning agent in soil, groundwater, surface water, or any other medium at or on a drycleaning facility, abandoned drycleaning facility, wholesale distribution facility, or any real property of any impacted third party.

(l) "Contractor" means a person or business that contracts to perform work.

(m) "Department" means the Alabama Department of Environmental Management or its successor department or agency of the state.

(n) "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(o) "Director" means the Director of the Alabama Department of Environmental Management or his designee.

(p) "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, or dumping of hazardous waste into or on any land or water.

(q) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste or any hazardous constituent thereof which may enter the environment or be emitted into the air or discharged into any waters including groundwater.

(r) "Drycleaning agent" means any non-hydrocarbon chlorine or hydrocarbon-based formulations or products used or to be used as a primary cleaning agent in the cleaning of garments, apparel, or household fabrics at a drycleaning facility and includes, but is not limited to, perchloroethylene, also known as tetrachloroethylene, other chemicals using CAS No. 127-18-4, solvent-charged detergent, spotting agents, glutone and any other chlorine or petroleum-based formulations or products and the substances into which any such formulations or products degrade.

(s) "Drycleaning facility" means a place of business, located at or on any real property premises or individual leasehold space located in this state which operates, or has operated in the past, in whole or in part, a commercial facility for the purpose of laundering or cleaning garments, apparel, or household fabrics for the general public using any process that involves the use of drycleaning agents. The term "drycleaning facility" specifically includes: All contiguous land, structures, and other appurtenances and improvements on the land used in connection with a drycleaning facility; tuxedo rental facilities renting to the public which conduct drycleaning operations on the premises; and "route sales,"

"dry store," or "pick-up store". The following facilities are excepted from the definition of "drycleaning facility":

1. A "stand-alone" coin operated laundry or a coin operated drycleaning facility;

2. A facility located on a United States military base or owned by the United States, or any department or agency thereof;

3. A facility owned or leased by the state, any county, town, or public or quasi-public organization of the state, any public subdivision thereof, or any agency or department thereof, or any body corporate or system of the state under the management or administration of a board of control or governing board established by the state;

4. A facility primarily engaged in uniform service or linen supply;

5. Prison, hotel, motel, or industrial drycleaners not providing services to the general public, hospitals, or nursing homes; or

6. Any facility owned or leased by any owner or operator who shall elect not to be covered by the Act.

(t) "Engineer" means a person registered as a professional engineer with the State of Alabama Board of Registration for Professional Engineers and Land Surveyors.

(u) "Eligible entity" means any person owning a drycleaning facility, abandoned drycleaning facility, or a wholesale distribution facility, or an impacted third party, or adjacent landowner(s) who elected to be covered by the Act.

(v) "Eligible site" means any drycleaning facility, abandoned drycleaning facility, wholesale distribution facility, or adjacent land that is covered by the Act as a result of election for coverage by the owner, operator or impacted third party.

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

(x) "Existing drycleaning facility" means any drycleaning facility which is currently in operation and that was in operation prior to May 24, 2000 and has elected to be covered under the Act.

(y) "Facility" is a term synonymous with "site".

(z) "Fund" means the Alabama Drycleaning Environmental Response Trust Fund created by Code of Ala. 1975, §22-30D-5.

(aa) "Generator" means any person, by individual generation site, whose act or process produces hazardous waste identified or listed in Chapter 335-14-2 or whose act first causes a hazardous waste to become subject to regulation.

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

(cc) "Groundwater" means water below the land surface in a zone of saturation.

(dd) "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 335-16 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 335-16 and subsequent revisions thereof.

(ee) "Hazardous waste" means a hazardous waste as defined in 335-14-2-.01(3).

(ff) "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 ADEM Admin. Code 335-14-8.

(gg) "Impacted third party" is any person who is or has been an owner, lessor, or mortgagee of real property on which an eligible site is or has been located.

(hh) "Land Use Controls" means any restriction or control, which serves to protect human health and/or the environment, that limits use of and/or exposure to, any portion of a property, including water resources. These controls may include:

1. Engineering controls which are remedial actions directed toward containing or controlling the migration of contaminants through the environment. These include, but are not limited to, stormwater 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.

(ii) "Manifest" means the form adopted by the Department used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(jj) "New Drycleaning Facility" means any drycleaning facility that began operation after May 23, 2003.

(kk) "Other waste" is wastes as defined in ADEM Admin. Code r. 335-14-1-.02.

(ll) "Owner or Operator" means any person who owns or leases an active or abandoned drycleaning facility or distribution facility, who is or has been responsible for operations at such facility and who elected to be covered by the Act.

(mm) "Person" means an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, or limited liability company. Person does not include any governmental organization.

(nn) "Preexisting release" means a release which occurred prior to election for coverage under Alabama Drycleaning Environmental Response Trust Fund Act by an eligible entity.

(oo) "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.

3. A parcel of land defined by the boundaries in the deed.

(pp) "Registration fee" means the fees required to be paid pursuant to Section 6 of the Act by each owner or operator of any drycleaning facility operating in this state who shall elect to be covered by the Act and by each wholesale distributor selling to drycleaning facilities in this state who shall elect to be covered by the Act.

(qq) "Release" means any actual spilling, pouring, overfilling, leaking, leaching, emitting, discharging, or escaping of drycleaning agents at or from a drycleaning facility or wholesale distribution facility into the soils or waters of the state.

(rr) "Remediation level" means the concentration of a contaminant, and applicable control, that is protective of human health and the environment.

(ss) "Reportable quantity" is a known release of a drycleaning agent in excess of the federal reporting standards.

(tt) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic and are managed for cleanup.

(uu) "Responsible person" means any person who has contributed or is contributing to a release of any hazardous waste, hazardous constituent, or hazardous substance at a property.

(vv) "Risk assessment" means the process used to determine the risk posed by contaminants that have been released into the environment at the site. The process includes a written site specific evaluation which includes elements that encompass, but are 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 at the site, the characterization of risks to humans, and the characterization of the impacts or risks to the environment.

(ww) "Site" means any land on which a drycleaning facility, abandoned drycleaning facility, or wholesale distribution facility is or has been physically located.

(xx) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water treatment plant, or air pollution control device, exclusive of the treated effluent from a wastewater treatment plant.

(yy) "State" means the State of Alabama.

(zz) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such wastes.

(aaa) "Subsidiary" is a corporation or company in which another corporation owns or controls all or at least a majority of the shares.

(bbb) "Wholesale distribution facility" means a place of business or any real property premises or individual leasehold space, occupied by a wholesale distributor.

(ccc) "Wholesale distributor" is any person whose primary business is selling drycleaning agents and supplies to drycleaning facilities and elects to be covered by the Act.

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Statutory Authority: Code of Ala. 1975, §22-30D-3, 22-30D-4.
History: New Rule: Filed June 20, 2003; effective July 25, 2003.
Amended: Published February 28, 2022; effective April 14, 2022.