ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION ADMINISTRATIVE CODE

CHAPTER 335-16-6
TECHNICAL INFORMATION

TABLE OF CONTENTS

335-16-6-.01 Property Assessment
335-16-6-.02 Property Remediation
335-16-6-.03 Certification Of Compliance

335-16-6-.01 Property Assessment.

(1) Content of the Property Assessment Plan. A property assessment plan submitted by any eligible entity shall describe in sufficient detail those actions planned for the development of information necessary to perform a risk assessment or for the identification of applicable remediation requirements for the site by utilizing criteria found in appropriate risk-based corrective action guidance. If necessary, the assessment plan shall provide for the implementation of applicable response actions and/or land use controls. The plan should describe the methods to be used to determine the type and the amount of contamination and include the delineation of soil and groundwater contamination discovered or known to exist on-site.

(2) Approval and Implementation of the Property Assessment Plan. Upon the Department's approval of the property assessment plan, the eligible entity shall implement the plan in accordance with the approved schedule.

(3) Modification of the Property Assessment. If at any time the eligible entity or the Department determines that any element of an approved assessment plan must be modified in order to develop the information necessary to perform a risk assessment or identify applicable remediation requirements for the qualifying property, the eligible entity shall modify the approved plan and obtain approval of the proposed modification.

(4) Termination of Activities. If at any time the eligible entity determines that any element of an approved property assessment plan must be modified in order to terminate activities at the property for any reason, the eligible entity shall notify the Department and obtain approval of the proposed modification.

(5) Assessment Report. Within 30 days of completion of those activities specified in the approved assessment plan, an eligible entity shall submit to the Department a report of the findings

from the assessment, which may include a recommendation for applying remediation requirements to the property. If applicable, concurrence by the Department with the report will move site to remediation phase.
Author: Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §22-30D-4.
History: New Rule: Filed June 20, 2003; effective July 25, 2003.

335-16-6-.02 Property Remediation.

(1) Remediation Plan Submission. A remediation plan submitted by an eligible entity shall describe in sufficient detail those actions, including remedial activities and land use controls, if appropriate, which are planned to satisfy the remediation requirements for the qualifying property.

(2) Content of Remediation Plan. The plan must identify steps necessary to perform remediation activities for the site. The remediation plan at a minimum must include the following:

(a) A description of remediation to be performed at each area of known contamination at the site will be remediated;

(b) An estimate of the maximum inventory of remediation wastes/contaminated media that will be present on-site during remediation operations;

(c) A detailed description of the methods to be used during the remediation, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all remediation waste, identification of and the type(s) of off-site solid and/or hazardous waste management unit(s) to be used, if applicable;

(d) A detailed description of the process to remove or decontaminate all hazardous residues and contaminated containment system components, equipment, structures, and soils during remediation including, but not limited to:

1. Procedures for cleaning equipment and removing contaminated soils;

2. Methods for sampling and analyzing surrounding soils; and

3. Criteria for determining the extent of remediation necessary to satisfy the remediation requirements;

(e) A detailed description of other activities necessary during the cleanup period to ensure that the remedial activities satisfy remediation performance standards. This

description may include, but is not limited to, groundwater monitoring, leachate collection, and run-on and run-off control;

(f) A schedule for remediation of known areas of contamination and if necessary, for remediation of the entire facility. The schedule must include, at a minimum, the total time required to remediate each known area of contamination and the time required for intervening remediation activities which will allow tracking of the progress of the remediation; and

(g) An estimate of the expected year that the remediation process will be complete for eligible sites.

(3) Remediation levels. Target remediation levels may be based on specific requirements of relevant environmental laws or regulations and/or based upon the results of a site-specific risk assessment. Remediation levels based upon a risk assessment must consider the site and all surrounding areas that may be impacted. The risk assessment must reflect current and derived in a manner consistent with Department or Environmental Protection Agency guidelines for assessing human and environmental health risks from hazardous constituents.

(4) Remedial Action Measures. Remediation levels shall be set in accordance with 335-16-6-.02(3) for all media, for all hazardous constituents, a subset of hazardous wastes, or for those hazardous constituents that the eligible entity or the Department has reason to believe may have been released at the facility. Should the concentration of a hazardous constituent(s) in an aquifer, surface water, soils, sediments or air exceed its remediation level for any environmental medium, the Department may require the remediation plan to include measures as necessary to protect human health and the environment.

(5) Property Use Considerations.

(a) A site shall be deemed to have met the requirements for unrestricted use if the remedial levels are derived in a manner consistent with Department guidelines for assessing human and environmental health risks from hazardous constituents.

(b) For sites that do not achieve the unrestricted use classification, appropriate restrictions on future site use shall be applied in accordance with the requirements of the Uniform Environmental Covenants Program contained in ADEM Admin. Code Division 335-5. Restrictions shall include, but are not limited to, institutional and engineering controls. The restrictions imposed upon a site will be media-specific, i.e. soil and groundwater, and may vary according to site-specific conditions. All restrictions on use necessary to

attain this standard shall be described in the certification of compliance or remediation as provided in 335-16-6-.03.

(6) Remediation Plan Amendment. The eligible entity may amend the remediation plan at any time prior to the notification of remediation of the site. An eligible entity with an approved remediation plan must submit a written request to the Department to modify the approved plan. The written request must include a copy of the amended plan.

(a) The eligible entity must amend the remediation plan whenever:

1. Changes in operating plans or facility design affect the remediation plan;

2. There is a change in the expected year of remediation, if applicable;

3. In conducting remediation activities, unexpected events require a modification of the remediation plan; and/or

4. The eligible entity determines that it is necessary or advisable to make changes and/or deviations in remediation requirements that affect either remediation activities or the degree of remediation initially proposed.

(b) An eligible entity with an approved remediation plan shall submit the modified plan to the Department at least 60 days prior to the proposed change in facility design or operation, or no more than 30 days after an unexpected event has occurred which has affected the remediation plan. If an unexpected event has occurred during the remediation period, the eligible entity shall submit the modified plan no later than 30 days after the unexpected event.

(c) If at any time an eligible entity determines that any element of an approved remediation plan must be modified in order to terminate activities at the property for any reason, the eligible entity shall notify the Department and obtain approval of the proposed modification.

(d) The Department may request modifications to the plan under the conditions described in 335-16-6-.02(8)(b) or 335-16-6-.02(8)(c). An eligible entity with an approved remediation plan shall submit the modified plan within 60 days of the request from the Department or within 30 days if an unexpected event occurs during remediation.

(7) Processing of Remediation Plan.

(a) The Department shall determine the completeness of every remediation plan submitted for approval using the requirements of 335-16-6-.02(2). Upon completion of the review, the Department shall notify the eligible entity in writing after determining that the plan is complete. If the plan is incomplete, the Department:

1. Shall list the information necessary to make the plan complete;

2. Shall specify a date for submitting the necessary information; and

3. May request any information necessary to clarify, modify, or supplement previously submitted material.

(b) Once a remediation plan is determined to be complete, the Department will provide the opportunity for public input as set forth by 335-16-7-.02(2).

(8) Implementation of Remediation Plan.

(a) Upon the Department's approval of the remediation plan, the eligible entity shall then implement the plan.

(b) Should the Department determine activities at the property are not consistent with the remediation plan, the Department may, after reasonable opportunity to rectify the deficiency, revoke liability protection by providing the eligible entity with written notification specifying the basis for making such determination and requesting modification and resubmission of a modified plan or an opportunity to address any deficiencies in implementing the remediation plan within a reasonable specified time.

(c) Should the eligible entity or the Department determine that any element of an approved remediation plan must be modified in order to develop the information necessary to perform a risk assessment or identify applicable remediation requirements for the qualifying property, the eligible entity shall modify the approved plan and obtain approval of the proposed modification.

(d) An eligible entity shall keep records of any test results, waste analyses, determinations made in accordance with the property assessment plan and/or the property remediation plan, and of off-site disposal locations, waste types and quantities for a period of three years.

(9) Removal of Wastes and Decontamination or Dismantling of Equipment. Nothing in 335-16-4 shall preclude the eligible entity from removing hazardous wastes and decontaminating or dismantling

equipment in accordance with the approved remediation plan at any time before or after notification of remediation.

(10) Certification of Compliance. Within 60 days of completion of remediation, the eligible entity shall submit to the Department, by registered mail, a certification that the area of contamination, unit, or the entire facility, as applicable, has been remediated in accordance with the specifications in the approved remediation plan. Certain information required by 335-16 involves the practice of engineering and/or land surveying, as those terms are defined in Code of Ala. 1975, as amended, §§34-11-1 to 34-11-37; and/or the practice of geology, as that term is defined in Code of Ala. 1975, as amended, §§34-41-1 to 34-41-24. It is the responsibility of any person preparing or submitting such information to ensure compliance with these laws and any regulations promulgated thereunder, as may be required by the State Board of Registration for Professional Geologists. All submissions, or parts thereof, which are required by State law to be prepared by a licensed engineer, land surveyor, or geologist, must include the engineer's, land surveyor's, and/or geologist's signature and/or seal, as required by the applicable licensure laws.

(11) Remediation Status Report. In addition to the requirements of 335-16-6-.02(10), an eligible entity shall, upon completion of those activities specified in the remediation plan, submit to the Department a compliance status report certifying the compliance of the qualifying property with the remediation requirements. The qualifying property shall be deemed in compliance with the remediation requirements upon the eligible entity's receipt of the Department's written "Letter of Concurrence" with the property remediation report. If the remediation was conducted prior to submission of the application, all pertinent information from the original assessment and remediation plans shall be incorporated in the property remediation status report.

(12) Restricted Use Property. For those properties that are cleaned to standards less stringent than those required for unrestricted residential use, the property owner shall comply with the requirements of 335-16-7-.03(3) within 60 days of the submission of the certification of compliance.

(13) Relief from Liability. Upon the Department's concurrence with the certification of compliance, the eligible entity shall be relieved of further liability to the State for the restoration of the property under Title 22, Chapters 22, 27, 30, 30A, and 35 of the Code of Ala. 1975, and for any contamination identified and addressed in reports, assessments, or plans submitted to and approved by the Department to demonstrate compliance with the approved remediation levels.

Author: Lawrence A. Norris; Pamela R. Wilson, Clethes Stallworth, Ashley S. Powell

Statutory Authority: Code of Ala. 1975, §22-30D-9.

History: New Rule: Filed June 20, 2003; effective July 25, 2003.
Amended: Published February 28, 2022; effective April 14, 2022.

335-16-6-.03 Certification Of Compliance.

(1) Acceptance of the Certification of Compliance. The Department shall review all reports and the required certification of compliance submitted under 335-16-6-.02(10) to demonstrate that no further action is required by the eligible entity to protect human health and the environment. Upon concurrence, the Department shall issue to the eligible entity a "Letter of Concurrence". If the eligible entity is satisfactorily maintaining engineering controls, remediation systems, or post-closure care, or if non-permanent institutional controls are utilized, the Department shall issue the eligible entity a conditional "Letter of Concurrence". The Department may authorize an eligible entity to conduct a phased response only when, in the Department's evaluation, the schedule is reasonable.

(2) Deed Records. The eligible entity shall file a copy of the certification of compliance and the conditional "Letter of Concurrence" in the site's deed record on the Department's behalf. The eligible entity must file the copy of the certification of compliance and the conditional "Letter of Concurrence" prior to the sale or transfer of the property or no later than 60 days after the date of issuance of the letter. The eligible entity shall file a statement in the deed records stating that the certification of compliance and the "Letter of Concurrence" supersede prior deed certification requirements.

(3) Revocation of "Letter of Concurrence". The "Letter of Concurrence" may be revoked by the Department at any time in the event that contamination posing an unacceptable risk to human health and the environment is rediscovered on site, or discovery that the submitted certification of compliance was based on information that was materially false, inaccurate or misleading. The eligible entity shall be notified in writing by certified mail of the proposed revocation. The eligible entity shall respond within 30 days upon receipt of the letter.

(4) Sovereign Immunity. By issuance of the "Letter of Concurrence", the Department does not waive sovereign immunity.

(5) Release from Liability. Upon the Department's approval of the certification of compliance, an eligible entity who is not a responsible person, at the qualifying property, shall not be liable to the state or any third party for costs incurred in the investigation or remediation of, equitable relief relating to, or damages resultant from, in whole or in part, a preexisting release at the qualifying property, including, but not limited to, any liability to the state for the remediation of the property under

Title 22, Chapters 22, 27, 30, 30A, and 35 of the Code of Ala. 1975, or a new release of a substance, constituent, or material which had been part of a preexisting release at the property, unless such new release results from noncompliance with an approved property assessment plan, or remediation plan or from the negligent, wanton, willful, or intentional conduct of the eligible entity.

Author: Lawrence A. Norris, Pamela R. Wilson
Statutory Authority: Code of Ala. 1975, §22-30D-5, 22-30D-9.
History: New Rule: Filed June 20, 2003; effective July 25, 2003.