ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER DIVISION - WATER QUALITY PROGRAM
ADMINISTRATIVE CODE

CHAPTER 335-6-16
ADMINISTRATIVE GUIDELINES AND PROCEDURES FOR THE ALABAMA UNDERGROUND AND ABOVEGROUND STORAGE TANK (TANK TRUST FUND) TRUST FUND

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335-6-16-.01 Purpose.

This chapter is promulgated to establish administrative guidelines and procedures to determine the manner in which disbursements are made from the Alabama Underground and Aboveground Storage Tank (Tank Trust Fund) and to implement the purposes and objectives of the Alabama Underground Storage Tank Trust Fund Act of 1988 and

the Alabama Underground and Aboveground Storage Tank Trust Fund Acts of 1993. (Act No. 93-628 1993 Regular Session and Act No. 93-891 1993 Special Session).
Author: Sonja Massey, Gregory Stephens, James Stevens
Statutory Authority: Code of Ala. 1975, §§22-35-1 et seq.
History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994.

335-6-16-.02 Definitions.

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

(a) "Aboveground storage tank" or "AST" means any one or combination of stationary tanks affixed permanently to the ground or other support structure (including pipes connected thereto) used to contain an accumulation of motor fuels, the volume of which (including pipes connected thereto) is greater than 90 percent above the surface of the ground. The terms underground and aboveground storage tank do not include any of the following:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing "motor fuel" for noncommercial purposes;

2. Tank used for storing heating oil for consumptive use on the premises where stored;

3. Septic tank;

4. Pipeline facility (including gathering lines) regulated under:

(i) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.), or

(ii) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or

(iii) State laws comparable to the provisions of law in subparagraph (i) or (ii) above:

5. Surface impoundment, pit, pond, or lagoon;

6. Storm-water or wastewater collection system;

7. Flow-through process tank.

8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tanks situated in an underground area (such as a basement cellar, mine working, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

10. Other underground storage tanks exempted by the administrator of the federal Environmental Protection Agency; and

11. Piping connected to any of the above exemptions.

12. Pipeline terminals, refinery terminals, rail and barge terminals and tanks associated with each.

(b) "AST system" or "Tank system" means an aboveground storage tank, connected piping, ancillary equipment, and containment system, if any.

(c) "ADEM" means the Alabama Department of Environmental Management.

(d) "Bulk facility" means a facility, including pipeline terminals, refinery terminals, motor fuel distribution terminals, rail and barge terminals, and associated tanks, connected or separate, from which motor fuels are withdrawn from bulk and delivered into a cargo tank used to transport these materials.

(e) "Cargo tank" means an assembly that is used for transporting, hauling, or delivering liquids and that consists of a tank having one or more compartments mounted on a wagon, truck, trailer.

(f) "Commission" means The Alabama Environmental Management Commission.

(g) "Connected piping" means all underground an aboveground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which "motor fuels" flow. For the purpose of determining how much piping is connected to any individual underground storage tank UST system, the piping that joins two UST systems should be allocated equally between them.

(h) "Consumptive use" with respect to heating oil means consumed on the premises.

(i) “Cost projection” means the total estimated cleanup costs for an eligible release incident which is determined by the

Department. The determination is based on an evaluation of typical costs expected for the particular response actions required with respect to the response action's scope and complexity to achieve a cleanup acceptable to the Department utilizing a risk-based corrective action process.

(j) "Department" means the Alabama Department of Environmental Management.

(k) "Director" means the Director of the Alabama Department of Environmental Management.

(l) "Eligible owner" means an owner or operator that is in "Substantial Compliance" as that term is defined in paragraph (rr) of this Rule.

(m) "Farm tank" is a tank located on a tract of land, which may or may not include associated residences and improvements, devoted to the production of crops or raising animals, including fish. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

(n) "Final judgment" means any judgment, obtained by a third party in a third-party claim, that is enforceable in this State.

(o) "Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(p) "Free product" refers to a motor fuel that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

(q) "Fuel Oil" means #1 or #2 diesel.

(r) "Fund" means the Alabama Underground and Aboveground Storage Tank Trust Fund.

(s) "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

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

(u) "Heating oil" means petroleum that is No. 1, No. 2, No. 4--light, No. 4--heavy, No. 5--light, No. 5--heavy, and No. 6

technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. "Heating oil" is typically used in the operation of heating equipment, boilers, or furnaces.

(v) "Hydraulic lift tanks" means a tank holding hydraulic fluid for a closed-1oop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(w) "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

(x) "Motor fuels" means all grades of gasoline including gasohol or any gasoline blend, any components used in any gasoline blend, ethanol, number 1 diesel, number 2 diesel, or any diesel blend, biodiesel, kerosene and all aviation fuels.

(y) "Noncommercial purposes" with respect to motor fuel means not for resale.

(z) “Occurrence” means a release from an aboveground or underground storage tank system for which the Department has assigned a unique release identification number.

(aa) "On the premises where stored" with respect to heating oil means UST or AST systems located on the same property where the stored heating oil is used.

(bb) "Operator" means any person in control of, or having responsibility for, the daily operation of the UST or Aboveground Storage Tank (AST) system.

(cc) "Owner" means, in the case of an UST system in use on November 8, 1984, or brought into use after that date, or in the case of an AST in use on August 1, 1993, or brought into use after August 1, 1993, any person who owns an UST or AST system used for storage, use, or dispensing of motor fuels; and in the case of any UST system in use before November 8, 1984, but not longer in use on that date, or an AST in use before August 1, 1993, but no longer in use on that date, the present owner of the underground storage tank or aboveground storage tank system and any person who owned such underground storage tank or aboveground storage tank system immediately before the discontinuation of its use. For the purposes of this chapter, the person who registers the underground storage

tank or aboveground storage tank is, and shall be considered the owner.

(dd) "Person" means any natural person, any firm, association, partnership, corporation, trust, the state of Alabama, and any agency of the state of Alabama, governmental entity, a consortium, a joint venture, a commercial entity and any other legal entity.

(ee) "Pipe" or "Piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

(ff) "Pipeline facilities (including gathering lines)" are new and existing pipe right-of-way and any associated equipment, facilities, or buildings.

(gg) "Reasonable cost" means that monetary amount or range, as determined by the Department, which is commensurate with a response action, where the Department's determination is based on an evaluation of typical costs expected for the particular response action under review, with respect to the activities' scope and complexity.

(hh) "Registration" means notification to the Department of the existence of a tank system which satisfies the requirements of ADEM Admin. Code rule 335-6-15-.05.

(ii) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST or AST into groundwater, surface water or subsurface soils.

(jj) “Release Incident Number” means a unique number assigned by the Department using a numbering sequence which identifies a release of motor fuel from a UST or AST system which through the determination of the Department poses a threat to the environment or the public health, safety or welfare.

(kk) "Residential tank" is a tank located on property used primarily for dwelling purposes.

(ll) "Response Action" means any activity, including evaluation, planning, design, engineering, construction, and ancillary service, which is carried out in response to any discharge, release, or threatened release of "motor fuels".

(mm) "Response Action Contractor" means a person who has been approved by the Department to carry out any response action, including a person retained or hired by such person to provide services relating to a response action.

(nn) “Responsible party” means the owner or operator of the UST system at the time the release is discovered and reported to the Department and a release incident is assigned.

(oo) "Risk-based corrective action" means the utilization of corrective action limits for a release applicable to the cleanup of soil and groundwater contamination which are protective of human health and the environment. The corrective action limits are established through the process described in ADEM Admin. Code R. 335-6-15-.30.

(pp) "Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tanks are pumped out periodically and hauled to a treatment facility.

(qq) "Storm-water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

(rr) "Substantial Compliance" shall mean that an owner or operator of an underground or aboveground storage tank has registered that tank with the Department, has timely paid the annual fee, if any, has made a good faith effort to comply with the state and federal laws applicable to underground or aboveground storage tanks, and the rules and regulations adopted pursuant thereto, shall have met the financial responsibility requirements imposed by Code of Ala. 1975, Section 22-35-7 (2006 Replacement Vol. and 2012 Cum. Supp.) and shall have promptly notified the Department of any third party claim or suit made against the owner or operator. The determination of substantial compliance shall be made by the Department.

(ss) "Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

(tt) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

(uu) "Tank" is a stationary device designed to contain an accumulation of "motor fuels" and constructed of non-earthen

materials (e.g., concrete, steel, plastic) that provide structural support.

(vv) “Tank Trust Fund” means the Alabama Underground and Aboveground Storage Tank Trust Fund.

(ww) “Tank Trust Fund Management Board” means the Alabama Underground and Aboveground Storage Tank Trust Fund Management Board.

(xx) “Third party” means a person other than the owner or operator, the landlord of the owner or operator, or employees or agents of an owner or operator. Such term shall not include any person who prevents, impedes, delays, obstructs, or hinders environmental response actions on any land, including private property, impacted by a release from an underground storage tank; it being the intent of this limitation to disallow recovery to any person who interferes with prompt remediation of impacted soils and groundwater. Such term shall not include any person to whom property is sold, given, or abandoned after discovery of a release or in anticipation of damage due to a release.

(yy) "Third Party Claim" means any civil action brought or asserted by any person against any owner or operator of any underground or aboveground storage tank who is in substantial compliance, as that term is defined above, for bodily injury or property damage which damages are the direct result of an accidental release arising from the operation of motor fuel underground or aboveground storage tanks covered under this Chapter.

(zz) "Trust Fund Fee" means an annual fee to be charged for each underground storage tank containing a motor fuel.

(aaa) "Trust Fund Charge" means a charge imposed on each gallon of motor fuel upon first withdrawal from bulk.

(bbb) "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tanks situated on or above the surface of the floor.

(ccc) "Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of motor fuels, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.

(ddd) "UST system" or "Tank system" means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.

(eee) "Withdrawal from bulk" means the removal of a motor fuel or a combination of motor fuels from bulk facility storage tanks directly into a cargo tank to be transported to a location in this state. The underground and aboveground storage tank trust fund charge shall not be assessed on motor fuel "withdrawn from bulk: the ultimate destination of which is outside the state of Alabama. Withdrawal of different grades of motor fuel into separate compartments of a cargo tank does not constitute separate withdrawals from bulk. The underground and aboveground storage tank trust fund charge shall not be assessed on fuel oil "withdrawn from bulk" used in the generation of electricity.

(fff) "Wastewater treatment tank" means a tank that is designated to receive and treat an influent wastewater through physical, chemical, or biological methods.

(ggg) "Waters" means all waters of any river, stream, water course, pond, lake, coastal, ground, or surface waters wholly or partially within the state's natural or artificial.

Author: Sonja Massey, James Stevens, Gregory Stephens, Dorothy Malaier, James Thrash
Statutory Authority: Code of Ala. 1975, §22-35-3.
History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994. **Amended:** Filed August 26, 2004; effective September 30, 2004. **Amended:** Published December 31, 2020; effective February 14, 2021.

335-6-16-.03 Applicability.

(1) The requirements of this chapter apply to all owners and operators of an UST or AST system as defined in 335-6-16-.02 except as otherwise provided for in paragraph 335-6-16-.03(3) of this Rule.

(2) References in this Chapter to response action and closure requirements of ADEM Admin. Code R. 335-6-15-.20 through 335-6-15-.37 shall also be applicable to response actions taken for releases from aboveground storage tanks. Where, due to differences between aboveground and underground storage tank systems, an owner and/or operator cannot comply with the provisions of Chapter 15, Rule 335-6-15-.20 through .37, the Department may waive those provisions of this Chapter which are not applicable to aboveground storage tank systems.

(3) The following UST or AST systems are excluded from the requirements of this Chapter:

(a) State and federal government entities whose debts and liabilities are debts and liabilities of a state or the United States are exempt from the requirements of this chapter.

(b) Any UST or AST system holding hazardous waste listed or identified under Division 14 of the ADEM Administrative Code, or a mixture of such hazardous wastes and motor fuels.

(c) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Chapter 335-6-5 or 335-6-6 of the ADEM Administrative Code.

(d) Equipment or machinery that contains motor fuels for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(e) Any UST system whose capacity is 110 gallons or less.

(f) Any emergency spill or overflow containment UST or AST system that is expeditiously emptied after use.

(4) Eligible owners or operators are entitled to reimbursement of reasonable costs and coverage for third party claims from the Tank Trust Fund resulting from the release of motor fuels from an UST only for releases that were discovered and subsequently reported after September 30, 1988. Eligible owners or operators are entitled to reimbursement of reasonable costs and coverage for third party claims from the Tank Trust Fund resulting from the release of motor fuels from an AST only for releases that were discovered and subsequently reported on or after August 1, 1993.
Author: Sonja Massey, Gregory Stephens, James Stevens
Statutory Authority: Code of Ala. 1975, §§22-35-1 et seq.
History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994. **Amended:** Filed August 28, 2003; effective October 2, 2003.

335-6-16-.04 Tank Trust Fund Eligibility Requirements For Underground Storage Tanks.

Every owner or operator of an UST is required to establish and maintain Trust Fund eligibility in accordance with the following requirements:

(a) Registration of tank(s) with the Department.

(b) Annual payment of Tank Trust Fund and Underground Storage Tank Regulatory Fees for each UST until such time as permanent closure requirements of Chapter 335-6-15 of the ADEM Administrative Code are satisfied, if any.

(c) The owner or operator remains in substantial compliance for each UST.

(d) Every owner or operator of an UST is required to maintain financial responsibility in the amount of $5000 per occurrence

($25,000 aggregate) or another amount if required by the Commission, by any one or combination of the following: insurance, guarantee, surety bond, letter of credit or qualification as a self-insurer by demonstration of a tangible net worth in the amount of $25,000.

(e) The owner or operator shall maintain the following records and submit or make them available to the Department upon request.

1. Evidence of current financial responsibility for $5,000 per occurrence ($25,000 aggregate) or other amount as may be required by the Commission; or

2. Evidence of current ability to self-insure by demonstrating net worth of $25,000; and

3. Any other records as may be required by the Department.

(f) All records identified in subparagraph (e) above shall be retained until one of the following is accomplished:

1. Closure requirements of Chapter 335-6-15 of the ADEM Administrative Code are satisfied;

2. Ownership of an UST, is transferred to a new owner; or

3. Owner or operator is instructed otherwise by the Department.

Author: Sonja Massey, Gregory Stephens, James Stevens
Statutory Authority: Code of Ala. 1975, §§22-35-5, 22-35-7.
History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994.

335-6-16-.05 Tank Trust Fund Eligibility Requirements For Aboveground Storage Tanks.

Every owner or operator of an AST is required to establish and maintain Trust Fund eligibility in accordance with the following requirements:

(a) Registration of the tanks with the Department.

(b) The owner or operator remains in substantial compliance for each AST.

(c) The owner or operator must comply with ADEM Admin. Code R. 335-6-6-.03 and 335-6-6-.12(r) and Code of Federal Regulations (CFR) Title 40 Part 112 (40 CFR 112).

(d) Every owner or operator of an AST is required to maintain financial responsibility in the amount of $10,000 per occurrence or another amount if required by the Commission, by any one or combination of the following: insurance, guarantee, surety bond, letter of credit or qualification as a self-insurer by demonstration of a tangible net worth in the amount of $25,000.

(e) The owner or operator shall maintain the following records and submit or make them available to the Department upon request.

1. Evidence of current financial responsibility for $10,000 per occurrence or other amount as may be required by the Commission; or

2. Evidence of current ability to self-insure by demonstrating net worth of $25,000; and

3. Any other records as may be required by the Department.

(f) All records identified in subparagraph (e) above shall be retained until one of the following is accomplished:

1. Closure requirements of Chapter 335-6-15 of the ADEM Administrative Code are satisfied;

2. Ownership of an AST, is transferred to a new owner; or

3. Owner or operator is instructed otherwise by the Department.

Author: James Stevens
Statutory Authority: Code of Ala. 1975, §§22A-35A-5, 22A-35A-7.
History: Amended: Filed March 18, 1994; effective April 22, 1994.

335-6-16-.06 Loss And Restoration Of Tank Trust Fund Eligibility.

(1) If at the time of discovery of a release, the Department determines that an owner or operator has failed to establish Tank Trust Fund eligibility in accordance with Rule 335-6-16-.04 or .05, response action costs and third party claims associated with that release are not eligible for coverage by the Tank Trust Fund.

(2) If at any time after the determination of eligibility for Tank Trust Fund coverage, the Department determines that an owner or operator has failed to maintain Tank Trust Fund eligibility, the Department will provide notice to the owner or operator of such failure to maintain eligibility. The owner or operator shall have

thirty (30) days from receipt of such notice, or such other time period as the Department may allow, to provide evidence of compliance with all Tank Trust Fund eligibility requirements. If, after completion of this time period, the owner or operator fails to resolve the non-compliance, the Department shall issue a notice of Tank Trust Fund ineligibility and enforcement actions including penalty assessment may be initiated.
Author: Sonja Massey, James Stevens, Gregory Stephens, James Thrash
Statutory Authority: Code of Ala. 1975, §22-35-5.
History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994. **Amended:** Published December 31, 2020; effective February 14, 2021.

335-6-16-.07 Trust Fund Fee And Charge.

(1) In order to participate in the liability limitations and reimbursement benefits of the Tank Trust Fund, an UST and/or AST owner or operator shall pay an annual Tank Trust Fund Fee, if any. The Commission may set annual fees the total of which shall not exceed $150 per regulated tank.

(2) Each year UST and/or AST owners or operators will be notified by the Department of the amount of the required Tank Trust Fund Fee, if any, which will be due within thirty (30) days of the invoice date. For underground storage tanks and/or aboveground storage tanks brought into service on or after October 1 of each year the Tank Trust Fund fee is due with the registration of the tank(s) with the Department.

(3) To protect the financial integrity of the fund, the Commission may make special assessments of Tank Trust Fund Fees. However, the total fee, if any, shall not exceed $150 per regulated tank per year. Special assessment fees will be due within thirty (30) days of the invoice date.

(4) The failure to pay Tank Trust Fund Fees, if any, within the time prescribed by the Department shall make the owner or operator of an UST and/or AST liable for a late charge penalty in an amount not to exceed $100 per tank for each day such payment is delinquent and will result in the loss of Trust Fund eligibility. The Department, for good cause shown, may abate all or part of said late charge penalty.

(5) The Trust Fund Fee is set at $0.00 per tank.

(6) The Trust Fund Charge if set at $0.01 per gallon.
Author: Sonja Massey, James Stevens, Gregory Stephens, James Thrash, Vernon H. Crockett.
Statutory Authority: Code of Ala. 1975, §22-35-5.

History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994. **Amended:** Filed August 26, 2004; effective September 30, 2004. **Amended:** Filed October 20, 2009; effective November 24, 2009; operative January 1, 2010. **Amended:** Filed December 12, 2011; effective January 16, 2012. **Amended:** Published December 31, 2020; effective February 14, 2021. **Amended:** Published December 29, 2023; effective February 12, 2024.

335-6-16-.08 Authorized ADEM Disbursements Of Tank Trust Funds.

(1) Whenever in the Department's determination a release of motor fuels may pose a threat to the environment or the public health, safety or welfare, and the owner or operator of the underground or aboveground storage tank has been found to be eligible for Tank Trust Fund coverage, the Department shall, subject to the provisions of this chapter, assign a release incident number to the release and disburse monies available in the fund to provide for:

(a) Investigation, assessment and remediation of sites contaminated by a release of motor fuels in accordance with the requirements of Chapter 335-6-15 of the ADEM Administrative Code which may consist of clean-up of affected soil and waters, using cost effective alternatives that are technologically feasible and reliable, and that provide adequate protection of the public health, safety and welfare and minimize environmental damage, in accordance with corrective action requirements of Chapter 335-6-15 of the ADEM Administrative Code.

(b) The interim replacement and permanent restoration of potable water supplies.

(2) Monies held in the Fund shall be disbursed for making payments to third parties who bring suit relative to an UST or AST release against the Director, in his official capacity as representative of the Fund, and the owner or operator of an UST or AST who is in substantial compliance as stated in this chapter, when such third party obtains a final judgment in that action which is enforceable in this State or a settlement agreement approved by the Attorney General and the eligible owner or operator submits proof of payment of the first $5,000 in the case of a UST or in the case of a AST the eligible owner or operator submits proof of payment of the first $10,000.

(3) When, in an effort to determine the source of a release, an owner or operator is required by the Department or other emergency management agency to perform testing of tanks and associated piping or investigative actions, and the Department determines the source of the subject release to be other than the tanks or piping

for which the testing or investigative actions were required, the Department shall, where the owner or operator has been found to be eligible for Tank Trust Fund coverage, and subject to the provisions of this chapter, disburse monies available in the Tank Trust Fund to provide for the cost of testing of tanks, piping and investigative actions, to the extent required by the Department.

(4) When, the responsible party is required by the Department to perform investigative or corrective actions, and that responsible party is no longer able, due to death or other circumstance, to administer the signature and/or administrative role of the responsible party, the responsible party or the Personal Representative of their Estate may designate in writing in a form approved by the Department, another person to have the authority, other than an Approved Response Action Contractor, to enter into a contract with an Approved Response Action Contractor and continue the required investigative and corrective actions in accordance with the rules of this chapter.

(5) When the responsible party is required by the Department to perform investigative or corrective actions, and that responsible party is no longer able, due to death or other circumstance, to administer the signature and/or administrative role of the responsible party, and the responsible party or the Personal Representative of their Estate fails to designate another person within a reasonable amount of time (not to exceed 120 days) to oversee the corrective action activities, or a responsible party fails or refuses to perform the requested investigative or corrective action for any other reason, then the Department may select a Response Action Contractor to perform the investigative or corrective action at the site, in accordance with the following:

(a) All Response Action Contractors must be approved in accordance with ADEM Admin. Code r. 335-6-16-.16.

(b) The Department will utilize a procurement procedure in accordance with state law to obtain investigative and corrective action services and will award contracts with selected Response Action Contractors. The selection process will be based on the submittal of technical proposals which will contain information regarding the firm's personnel, experience and knowledge of investigation and corrective action activities.

(c) All Response Action Contractors shall be compensated according to the Trust Fund Reasonable Rates based on Cost Proposals approved by the Department.

Author: Sonja Massey, James Stevens, Gregory Stephens, Dorothy Malaier, James Thrash

Statutory Authority: Code of Ala. 1975, §§22-35-4, 22-35-5, 22-35-9, 22-35-8.

History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994. **Amended:** Published December 31, 2020; effective February 14, 2021.

335-6-16-.09 Scope Of Tank Trust Fund Coverage.

(1) The Tank Trust Fund will provide to eligible UST or AST owners or operators coverage for the reasonable cost of response actions and for compensation of third parties for bodily injury and property damage resulting from accidental releases arising from the operation of an UST or AST which stores motor fuels.

(2) The financial responsibility requirements for eligible UST owners or operators will be $5,000 for UST owners or operators per occurrence and $10,000 per occurrence for AST owners or operators for taking response actions and compensation of third parties, unless another amount is established by the Commission.

(3) The monies expended from the Tank Trust Fund to eligible UST owners or operators for response actions may be disbursed only up to such sum as will cause the Resource Conservation and Recovery Act, Subtitle I, the Superfund Amendments and Reauthorization Act of 1986, and other federal laws governing disbursements of federal funds for clean-up and/or third party claims to come into effect.

(4) "Per Occurrence Indemnification Limit." The total amount of reimbursement available from the fund as a result of a release from underground or aboveground storage tanks shall not exceed under any circumstance the per occurrence indemnification limit established under this rule, which shall be determined by the commission upon recommendation of the Trust Fund Management Board, on an annual basis. In no event shall combined claims against the fund for payment of response actions and third-party claims exceed the per occurrence indemnification limit.

(a) If the per occurrence indemnification limit is increased, such increased limit shall be available for response actions costs and/or third party claims as to those existing sites that are eligible for trust fund benefits, but such increased limits shall not be available to existing sites where the Department, as of the effective date of such increase, has issued a No Further Action Letter.

(b) The per occurrence indemnification limit is set at two million dollars ($2,000,000), less the applicable deductible.

(5) The indemnification limit of the Tank Trust Fund with respect to satisfaction of third-party claims shall be in the following amounts:

(a) For owners and operators of motor fuels underground and aboveground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of motor fuels per month based on annual throughput for the previous calendar year; $1 million per occurrence;

(b) For all other owners and operators of motor fuels underground and aboveground storage tanks; $500,000 per occurrence;

(c) For owners and operators of 1 to 100 motor fuels underground and aboveground storage tanks, $1 million annual aggregate; and

(d) For owners and operators of more than 101 motor fuels underground and aboveground storage tanks, $2 million annual aggregate.

(6) The Tank Trust Fund will provide to eligible UST or AST owners or operators coverage for the reasonable cost of response actions required by the Department, where that owner or operator's UST or AST system was found not to be the source of the release which prompted the Department's requirement for the response action.

(7) The financial responsibility requirements for eligible UST or AST owners as described in paragraph (2) above of this Rule, shall upon approval by the Commission, be waived.

Author: Sonja Massey, James Stevens, Gregory Stephens; Vernon H. Crockett

Statutory Authority: Code of Ala. 1975, §§22-35-4, 22-35-5, 22-35-7.

History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994. **Amended:** Filed October 20, 2009; effective November 24, 2009; operative January 1, 2010. **Amended:** Filed October 22, 2013; effective November 26, 2013. **Amended:** August 25, 2015; effective September 29, 2015. **Amended:** Filed October 23, 2018; effective December 7, 2018. **Amended:** Published December 31, 2020; effective February 14, 2021. **Amended:** Published December 29, 2023; effective February 12, 2024.

335-6-16-.10 Requirements For Tank Trust Fund Coverage Of Response Action Costs For UST And AST Systems.

(1) An eligible owner or operator conducting response actions is entitled to coverage of reasonable costs from the Tank Trust Fund, subject to the following provisions:

(a) Upon confirmation and reporting of a release in accordance with the requirements of Rules 335-6-15-.20 through 335-6-15-.23 of the ADEM Administrative Code the owner or operator shall

select a contractor from the Department's list of approved contractors, or upon approval by the Department under the conditions identified in Rule 335-6-16-.16(5) and (6), may use the owner or operator's personnel and/or equipment to accomplish all or part of an investigation and necessary corrective action. If a contractor is to be retained the Department must be notified in writing of such a selection within twenty (20) days of reporting of a release. A contractual agreement must be established between the owner or operator and the contractor, and the Department must be provided a copy of the contractual agreement. The owner or operator of an UST is responsible for the first $5000 or the owner or operator of an AST is responsible for the first $10,000 of eligible response action costs, or other such amount as may be set by the Commission, as the owner's limit of individual responsibility.

In the event the owner or operator retains a different Approved Response Action Contractor, a contractual agreement must be established between the owner or operator and the Approved Response Action Contractor, and the Department must be provided a copy of the contractual agreement within twenty (20) days of execution of the contract.

(b) If initial release responses, abatement measures and initial free product removal, conducted in accordance with Rules 335-6-15-.22 through 335-6-15-.25 and 335-6-15-.27 of the ADEM Administrative Code, are required to properly stabilize a site and prevent significant continuing damage to the environment or risk to human health, and the cost of such required measures is expected to exceed the individual limit of financial responsibility established by the Commission, the owner, or the Approved Response Action Contractor may contact the Department to obtain verbal or written approval to allow additional expenditures prior to the submittal of a cost proposal. Additional expenditures may be authorized by the Department up to a total of $150,000 which may be reimbursable from the Tank Trust Fund to achieve site stabilization and immediate protection of human health or the environment. Such approval may be given following the actual expenditures if immediate actions were necessary to protect human health or the environment and Departmental personnel were unavailable. In such a case, the Department must be notified of the actions taken within twenty-four hours.

(c) Following completion of necessary site stabilization actions as described in Subparagraph (b) of this Rule, subsequent investigative and corrective actions must be performed by approved contractors, or by owners or operators approved by the Department to perform such actions, and in accordance with the requirements of Rules 335-6-15-.25 through 335-6-15-.31 of the ADEM Administrative Code. The contractor selection, Departmental notification and contractual

requirements as described in subparagraph (a) of this Rule, relative to Approved Response Action Contractors, will be applicable.

(d) Prior to initiating any of the response actions identified in 1. through 6. below, unless otherwise directed by the Department, a cost proposal shall be submitted to the Department for conducting the proposed response action. Cost proposals shall be submitted in accordance with a format which shall be established by the Department and which utilizes the current Tank Trust Fund Reasonable Rates, where applicable.

1. Preliminary Investigation (in accordance with Rules 335-6-15-.25 and 335-6-15-.26).

2. Risk Assessment in accordance with Rule 335-6-15-.30.

3. Free Product Removal (in accordance with Rule 335-6-15-.27).

4. Secondary Investigation and Development of Corrective Action Plan (in accordance with Rules 335-6-15-.28 through 335-6-15-.32).

5. Implementation of Corrective Action Plan. This shall include the costs of: finalizing equipment design; purchase of equipment and materials to be dedicated to the site for corrective action; installation and bringing to operational status the corrective action system; and the operation and maintenance costs of the corrective action system for the total projected time period in which the corrective action system will be needed to comply with corrective action limits of Chapter 335-6-15 of the ADEM Administrative Code.

6. Provision of alternate water supply.

(e) Upon review of a cost proposal for any of the activities identified in (d)1. through 6. above, the Department may:

1. Approve the cost proposal and authorize work to be initiated; or

2. Require a modification to or clarification of the cost proposal if projected costs are not determined to be reasonable.

(f) In addition to the above requirements of (c), (d) and (e) of this Rule, the owner or operator shall upon submittal of a cost proposal for a site investigation, also submit an estimate of the total cost of remediation for the site which shall be used solely for the purpose of the Commission, the Department, and the Tank Trust Fund Management Board in

projecting future funding requirements for the Tank Trust Fund. The total estimated cost of remediation for a site shall be updated by the owner or operator as necessary and as more complete information regarding a site becomes available. The Department will utilize the submitted data and other data available to the Department to determine cost projections for the total estimated cleanup costs for an occurrence.

(g) Upon approval of a cost proposal by the Department, sufficient funds will be obligated from the Tank Trust Fund for completion of the particular phase of work for which the cost proposal was submitted and authorization will be provided for the initiation of the proposed action. Obligation of funds shall be subject to the availability of funds at the time of acceptance of the cost proposal.

(h) The Department shall approve or disapprove that portion(s) of cost proposals dealing with the scope of remedial action or clean-up work within 120 days of receipt of the proposal. Response Action Contractors may act on proposals as if approved by the Department, if the Department does not notify the Response Action Contractor that the scope of work recommended in the proposal is disapproved within 120 days of receipt of the proposal. The Department shall pay for response action services conducted by a Response Action Contractor consistent with any proposal that was not disapproved within 120 days of receipt by the Department.

(i) Response actions performed prior to approval of an associated cost proposal may not be eligible for reimbursement.

(j) If the costs of completing any of the response actions of subparagraph (d)1. through 6. is expected to exceed the amount of an approved cost proposal, an amended cost proposal must be submitted and approved to allow additional funds to be obligated.

(k) Any response action which is carried out in response to any discharge, release or threatened release of motor fuels from an UST or AST must be conducted in accordance with the requirements of Rules 335-6-15-.21 through 335-6-15-.31 and subparagraphs (a) through (d) of this Rule.

(l) The owner or operator shall keep and preserve detailed records demonstrating compliance with approved investigative and corrective action plans and all invoices and financial records associated with costs for which reimbursement will be requested. These records shall be kept for at least three years, or as otherwise instructed by the Department, after corrective action has been completed for a site.

(m) The selected investigative and/or corrective action alternative must be implemented in a manner acceptable to the Department in order for the owner or operator to be eligible for the reimbursement of costs associated with those activities.

(n) An eligible owner or operator conducting AST response actions from August 1, 1993 until June 1, 1994 relative to any discharge, release or threatened release of motor fuels from an AST, is entitled to reimbursement of reasonable costs from the Tank Trust Fund if the release was discovered and subsequently reported August 1, 1993 or after, and is exempted from the requirements of subparagraphs (a) through (i) above, provided that response actions were carried out in a manner acceptable to the Department.

(o) If response actions which were initiated during the time period referenced in subparagraph (n) above are still continuing upon the effective date of these regulations, the Department will require submittal of cost proposals for any remaining phases of work and for the total projected cost of the remediation.

(p) If the contractor performing response actions as described in subparagraph (o) above is not an Approved Response Action Contractor, the Department may authorize the continued use of that contractor.

(2) An Approved Response Action Contractor may seek reimbursement from the Trust Tank Fund for costs incurred during the emergency response to a release, where such response was necessary to achieve immediate protection of human health or the environment, by preventing the release from entering a stormwater conveyance, waterway, sensitive ecosystem, or as otherwise directed by the Department, provided that:

(a) The emergency response costs do not exceed $150,000;

(b) The general emergency response activities were pre-approved by the Department (verbal approval is acceptable); and

(c) Reimbursements are made according to the Trust Fund Reasonable Rates, where applicable.

Author: Sonja Massey, James Stevens, Gregory Stephens, Dorothy Malaier, James Thrash, Vernon H. Crockett
Statutory Authority: Code of Ala. 1975, §§22-35-4, 22-35-5.
History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994. **Amended:** Filed August 28, 2003; effective October 2, 2003. **Amended:** Published December 31, 2020; effective February 14, 2021. **Amended:** Published October 31, 2024; effective December 15, 2024.

335-6-16-.11 Requirements For Tank Trust Fund Coverage Of Third-Party Claims.

An eligible owner or operator is entitled to Tank Trust Fund coverage for third party claims resulting from the release of motor fuels from an UST or AST, subject to the following provisions:

(a) The Department was notified by the owner or operator within thirty (30) days of receipt of notice of the third-party liability suit.

(b) The owner or operator was in substantial compliance at the time a release occurred and at the time the third-party suit is filed.

(c) The third-party liability suit must name the Fund, and the owner or operator.

(d) The third party obtains a final judgment or a settlement approved by the Attorney General in that action enforceable in this state.

(e) The eligible UST owner or operator submits proof of payment of the first $5,000 of a final judgment or settlement, or in the case of an eligible AST owner or operator the first $10,000 of a final judgment or settlement or such other amount as may be established by the Commission.

Author: Sonja Massey, James Stevens, Gregory Stephens, Dorothy Malaier, James Thrash
Statutory Authority: Code of Ala. 1975, §22-35-5.
History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994. **Amended:** Published December 31, 2020; effective February 14, 2021.

335-6-16-.12 Tank Trust Fund Obligations.

(1) Contingent upon availability of funds the Department will make obligations from the Tank Trust Fund when:

(a) A cost proposal for response actions, submitted in accordance with Rule 335-6-16-.10, is approved by the Department.

(b) A judgment for a third-party claim is submitted for payment in accordance with Rule 335-6-16-.08 and 335-6-16-.11.

(c) A payment application in accordance with Rule 335-6-16-.14, is received for:

1. Response actions work performed from August 1, 1993 until June 1, 1994 for an AST, is subject to a determination of reasonable costs by the Department.

2. Investigative or corrective actions under the terms of Rule 335-6-16-.10(b).

(2) If the unobligated balance of the Tank Trust Fund is less than the total amount associated with payment applications, cost proposals and third party judgments which have been approved by the Department, to the extent allowed by available funds, funds will be obligated in the chronological order in which the claims were submitted.
Author: Sonja Massey, Gregory Stephens, James Stevens
Statutory Authority: Code of Ala. 1975, §§22-35-4, 22-35-5.
History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994.

335-6-16-.13 Tank Trust Fund Ineligible Costs.

(1) Costs of replacement, installation, closure and/or retrofitting, or testing of affected tanks and associated piping shall not be eligible for payment or reimbursement by the Tank Trust Fund. Additionally, any equipment or labor or installation costs not integral to site rehabilitation or provision of an alternate water supply are not eligible for reimbursement from the Tank Trust Fund.

(2) The cost of equipment purchases other than routinely required supplies which are expended at a given site or equipment purchases which must be installed at a site to implement a corrective action plan, shall not be charged to the cost of rehabilitating any given site at which Tank Trust Funds are being claimed for investigative or corrective action costs. Examples of equipment which could not be charged to a specific site would include: drilling rigs, earth moving equipment, groundwater sampling pumps, and photoionization detectors. Examples of equipment which could be charged to a specific site would include: bailers, sample containers, etc. Hourly charges for equipment which are not listed in the current version of the Trust Fund Reasonable rates may be established in the cost proposal submitted for each major phase of work. These hourly rates must be competitive with similar charges by other approved contractors, or they may be rejected by the Department if they are determined to represent unreasonable costs.

(3) The costs associated with environmental audits and property transfer audits are not eligible for reimbursement from the Tank Trust Fund.

(4) The first $5,000 in the case of an UST or $10,000 in the case of an AST of approved response action costs, or such other amount as may be approved by the Commission, which are incurred by the owner or operator are not eligible for reimbursement from the Tank Trust Fund. Proof of payment of the first $5,000 for UST or $10,000 for AST or another amount as may be approved by the Commission, is required prior to reimbursement of any costs.

(5) The first $5,000 in the case of an UST or $10,000 in the case of an AST of a final judgment obtained by qualified third parties are not eligible for disbursement from the Tank Trust Fund. Proof of payment by the eligible UST owner or operator of the said first $5,000 in the case of an UST or $10,000 in the case of an AST of a final judgment is required prior to disbursement of fund monies.

(6) The costs associated with assessments and studies required by 335-6-16-.20 are not eligible for reimbursement from the Tank Trust Fund.
Author: Sonja Massey, James Stevens, Gregory Stephens, Dorothy Malaier, James Thrash
Statutory Authority: Code of Ala. 1975, §§22-35-4, 22-35-7.
History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994. **Amended:** Published December 31, 2020; effective February 14, 2021.

335-6-16-.14 Applications For Payment.

(1) Applications for reimbursement for costs of response actions 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 which the applicant may wish to provide. 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 response actions where applicable:

I certify to the best of my knowledge and belief: that the costs presented herein represent actual costs incurred in the performance of response actions 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 performance of response actions which were necessary due to the release of motor fuels at this site. I have personally examined and am familiar with the information submitted in this payment request and all attachments and that, based on my inquiry of those persons immediately responsible for obtaining the

information contained in this payment request, I certify that the information is true, accurate, and complete, and that this payment request does not duplicate any request for payment for any charge previously submitted to the Department.

(3) Reserved.

(4) Applications for payments may be submitted following acceptance by the Department of completed response actions. Such response actions may include but are not limited to the following:

(a) Completion of site stabilization activities which were authorized by the Department.

(b) Completion and submittal of a report for a Preliminary Investigation.

(c) Implementation of a Free Product Removal System.

(d) Completion and submittal of a report for a Secondary Investigation and Development of a Corrective Action Plan.

(e) Implementation of a Corrective Action Plan.

(f) Provision of an alternate water supply.

(g) Completion and submittal of Risk Assessment.

(5) Applications for payments for the implementation of corrective action may be submitted ninety (90) days following initiation of work to implement the corrective action plan and at ninety (90) day intervals thereafter until completion of the authorized activities. Upon request, the Department may approve interim payments at more frequent intervals.

(6) All payments shall be subject to approval by the Department. Should a site inspection, review of documentation or other information available to the Department reveal a discrepancy between the work performed and the work addressed by a payment application, the Department may deny payment or may require the Tank Trust Fund to be reimbursed.

(7) An application for payment must be received within eighteen (18) months from the date of the approval of the associated cost proposal in order to be eligible for payments from the Tank Trust Fund.

(8) Except as provided for in Rule 335-6-16-.12(c)(1), payments shall not be made for response actions performed at a site until the Department has reviewed and approved a cost proposal for that work and until funds have been obligated from the Tank Trust Fund for completion of that particular stage of work.

(9) For payment of third party claims the UST or AST owner or operator must submit an application to the Department attaching the original or a certified copy of a final judgment, enforceable in this state with proof of payment of the first $5,000 for a UST or $10,000 for a AST, as the case may be no later than thirty (30) days after notification of judgment.

(10) Payments for response actions, the cost of which exceed the scope or amount of the approved cost proposal for that action, are subject to approval by the Department.
Author: Sonja Massey; James Stevens; Gregory Stephens; Dorothy Malaier; James Thrash; Vernon H. Crockett
Statutory Authority: Code of Ala. 1975, §22-35-5.
History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994. **Amended:** Published December 31, 2020; effective February 14, 2021. **Amended (No change to text):** Published December 29, 2023; effective February 12, 2024.

335-6-16-.15 Tank Trust Fund Payment Procedures.

(1) Where the owner or operator has submitted a complete application for payment for response action costs or third party claims but has not paid for these activities or claims, payments will be made by a check written to the Tank Trust Fund Response Action Contractor who provided the response action services or the third party.

(2) Payments from the Tank Trust 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 response actions.

(3) Where the owner or operator has submitted a complete application for payment for response action costs conducted in accordance with rule 335-6-16-.08(3), but has not paid for these activities or claims, payment will be made by a check written to the Tank Trust Fund Approved Response Action Contractor who provided the investigative response action service. The tank testing method used must be a method which the Department has determined as meeting the release detection requirements of rule 335-6-15-.17.

(4) Contingent upon availability of funds the Department shall process all complete applications for payment within sixty (60) days of receipt of application. If certain costs are considered as not being reasonable or eligible for reimbursement, the Department may issue a check for the amount of the application not in question and provide a fifteen (15) day period in which the owner or operator or contractor may present such information as is necessary to justify the disallowed costs. Following review of such information, the Department may agree to pay the previously

disallowed costs, or any portion thereof, or may again disallow the costs for payment.

(5) To ensure adequate funding to protect human health and the environment, funding per occurrence for response actions will be obligated before third party claims. Third party claims will be paid with any remaining balance in the Fund upon confirmation that sufficient funding is available for the payment of response action costs as determined by the Department through the development of a total cleanup cost projection.
Author: Sonja Massey, James Stevens, Gregory Stephens, Dorothy Malaier, James Thrash
Statutory Authority: Code of Ala. 1975, §§22-35-5, 22-35-8.
History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994. **Amended:** Published December 31, 2020; effective February 14, 2021.

335-6-16-.16 Approval Of Response Action Contractors.

(1) Response action contractors will be approved to perform Tank Trust Fund work upon satisfaction of the following:

(a) Response action contractors who wish to perform work under the Tank Trust Fund must demonstrate to the satisfaction of the Department through the submittal of a technical proposal that they have hydrogeological and engineering staff with significant experience in performing investigative and corrective actions for soil and groundwater contamination and knowledge of technical considerations necessary to perform petroleum contamination assessments. The response action contractor must provide services (that include, but are not limited to) tank tightness testing, analytical and emergency response capabilities. The Department shall establish guidance for the preparation of a technical proposal that identifies the information required to be submitted with the technical proposal. The Department will approve those response action contractors that demonstrate the capabilities and expertise, as stated above, to perform Tank Trust Fund response actions. Response action contractors must maintain staff, as stated above, to continue to perform Tank Trust Fund response actions.

(b) The contractor shall maintain liability insurance coverage of the types and in the amounts described in the table below and shall provide certification to the Department of such coverage upon meeting the requirements of (a) above of this Rule, and yearly thereafter.

Type of Policy	Limits of Liability	Description
Worker's Compensation	Statutory	All states
Employer's Liability	$500,000	

Type of Policy	Limits of Liability	Description
Automobile Liability	$1,000,000 combined single limit (bodily injury and property damages)	All owned, non-owned, and hired vehicles
General Liability	$1,000,000 combined single limit General Liability	Broad Form Comprehensive General Liability
Umbrella Excess Liability	$3,000,000	This policy is in excess of the underlying General Liability, Worker's Compensation, and Automobile Liability policies.

(2) The Department will provide notice that technical proposals are to be requested by publication of a legal advertisement which will provide interested firms with the information necessary to request instructions for preparation and submittal of technical proposals. Technical proposals shall be independently evaluated by members of a review committee consisting of Department staff members according to the criteria of Subparagraph (1)(a) of this Rule. Contractors satisfactorily meeting the requirements of (1) (a) and (b) above shall be placed on the Department's list of approved response action contractors. This process shall be repeated at yearly intervals to provide interested firms with the opportunity to submit technical proposals for evaluation. Contractors which have previously been approved will not be required to requalify except under the provisions of paragraph (3) below. Contractors which previously submitted technical proposals but did not meet the requirements of Subparagraph (1)(a) of this Rule may submit a subsequent proposal for review at the time of the Department's next yearly request for proposals.

(3) Response action contractors that fail to satisfactorily maintain the requirements of (a) and (b) above, will not be authorized to perform response action work for the Tank Trust Fund until such time a demonstration is made that satisfies the requirements of 1 (a and b) of this Rule. A contractor may lose authorization to perform work for the Tank Trust Fund if, due to the quality or timeliness of work performed by such contractor, progress in achieving appropriate investigative and/or corrective actions at Tank Trust Fund sites has been significantly delayed or inhibited. Information as to why such a contractor should be allowed to again perform work for the Tank Trust Fund may be submitted for evaluation after twelve (12) months. A satisfactory evaluation by the Department will enable the contractor to again perform work for the Tank Trust Fund.

(4) The approval of a response action contractor shall in no way establish liability or responsibility on the part of the Department or the State of Alabama in regards to the services provided by the contractor or circumstances which may occur as a result of such services.

(5) The Department may approve the use of an owner or operator's personnel and equipment for use in performing any or all response actions necessary for the remediation of a site upon satisfaction of the following:

(a) Within 10 days of reporting of a release, or such other time as the Department may allow, the owner or operator shall make a demonstration to the satisfaction of the Department with respect to the capability of the owner or operator's personnel to perform the work in a manner which shall comply with Rules 335-6-15-.21 through 335-6-15-.31 and 335-6-16-.10, with particular consideration being given to the background and experience of the personnel who will perform the work and their knowledge of the technical considerations necessary to perform the response actions for which approval for their use is being requested; and

(b) An owner or operator who performs any or all of the necessary response actions at a site is required to comply with the provisions of Rules 335-6-15-.21 through 335-6-15-.31, and 335-6-16-.10.

(c) An owner or operator must satisfy the liability insurance coverage requirements of Rule 335-6-16-.16(1)(b).

(6) If the Department determines that an owner or operator that is performing response actions is not performing such actions in compliance with Rules 335-6-15-.21 through 335-6-15-.31 and 335-6-16-.10, the Department may require the owner or operator to obtain the services of an approved response action contractor. Any work performed by an owner or operator that is not in compliance with the above referenced rules may not be eligible for reimbursement.

Author: Sonja Massey, James Stevens, Gregory Stephens, Dorothy Malaier, James Thrash

Statutory Authority: Code of Ala. 1975, §22-35-3.

History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994. **Amended:** Filed August 28, 2003; effective October 2, 2003. **Amended:** Published December 31, 2020; effective February 14, 2021.

335-6-16-.17 Insufficient Funds.

(1) Nothing in these regulations shall establish or create any liability or responsibility on the part of the Department or State

of Alabama to pay any clean-up costs or third party claims from any source than the Fund created by the Code of Ala. 1975, Title 22 Chapter 35, nor shall the Department or State of Alabama have any liability or responsibility to make any payments for clean-up costs or third party claims if the Fund is insufficient to do so. In the event the Fund is insufficient to make the payments at the time the claim is filed, such claims shall be paid in the order of filing at such time as moneys are paid into the Fund.

(2) In the event the Tank Trust Fund is insufficient to make full payments for eligible UST or AST owners or operators taking investigative or corrective actions or for satisfaction of third party judgments, at the time the claim is filed, such claims shall be paid in accordance with the provisions described in Rule 335-6-16-.12(2).

(3) The owner of an UST or AST retains responsibility for any liability that cannot be satisfied by the provisions of this Chapter.
Author: Sonja Massey, James Stevens, Gregory Stephens, Dorothy Malaier, James Thrash
Statutory Authority: Code of Ala. 1975, §§22-35-5, 22-35-13.
History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994. **Amended:** Published December 31, 2020; effective February 14, 2021.

335-6-16-.18 Cost Recovery Allowed.

Whenever funds from the Tank Trust Fund have been expended by the Department for taking response action with respect to the release of motor fuels from an underground storage tank or aboveground storage tank, the owner or operator of the underground storage tank or aboveground storage tank shall be liable to the Department for such costs if the owner or operator were not eligible for Tank Trust Fund coverage on the date of discovery of the release of motor fuels which necessitates the response action or such owner or operator fails to maintain substantial compliance thereafter; otherwise, liability is limited to the provisions contained in Rule 335-6-16-.09(2).
Author: Sonja Massey, Gregory Stephens, James Stevens
Statutory Authority: Code of Ala. 1975, §22-35-4.
History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994.

335-6-16-.19 Adjustment Of Limit Of Owner Or Operator's Financial Responsibility.

The Commission may increase the owners or operator's limits of financial responsibility for response actions and third-party

damages. Prior to the Commission taking any action to adjust the owner or operator's limit of financial responsibility, the Tank Trust Fund Management Board will provide a recommendation to the Commission regarding such proposed action. The Commission shall take into consideration the recommendation of the Tank Trust Fund Management Board in making the final determination.
Author: Sonja Massey, Gregory Stephens, Dorothy Malaier, James Thrash
Statutory Authority: Code of Ala. 1975, §22-35-11.
History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994. **Amended:** Published December 31, 2020; effective February 14, 2021.

335-6-16-.20 Use Of Alternate Financial Assurance Mechanisms.

(1) Tank owners or operators seeking approval to use alternate financial assurance mechanisms under 335-6-15-.43 (e.g. private insurance) and discontinue participation in the Tank Trust Fund must:

(a) Measure for the presence of a release where contamination is most likely to be present at the UST site according to procedures acceptable to the Department. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substances at the site, the type of backfill, the depth to groundwater, seasonal variations, and other factors appropriate for identifying the presence of a release. A Response Action Contractor must be utilized to perform the site investigation; and

(b) Provide a report of the assessment findings to the Department within 60 days of performing the investigation.

(2) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered through this assessment, or by any other manner, owners and operators must:

(a) Report the release and perform corrective actions in accordance with rules 335-6-15-.20 through 335-6-15-.31, and;

(b) Continue to pay the trust fund charge for all underground and aboveground storage tanks registered in Alabama and in-service until all investigations and corrective actions are complete.

(3) Tank owners, operators, or purchasers of a tank system at a site which has been approved to utilize a financial assurance mechanism other than the Tank Trust Fund and which are seeking election to utilize the Trust Fund must file a notice with the

Department requesting entry to the Trust Fund. The notice must also include the results of the following:

(a) Prior to entry or re-entry into the Tank Trust Fund after using a financial assurance mechanism other than the Tank Trust Fund, owners and operators must perform an assessment as described in 335-6-16-.20(1)(a). A Response Action Contractor must be utilized to perform the investigation.

(b) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under paragraph (3)(a) of this rule, or by any other manner, tank owners and operators must perform corrective actions in accordance with rules 335-6-15-.24 through 335-6-15-.31. Known or suspected releases occurring prior to re-entry into the Tank Trust Fund will not be provided Tank Trust Fund coverage.

(c) Tank owners or operators must perform a system tightness test at most thirty (30) days prior to returning to Trust Fund coverage. The results of the system tightness testing must be acceptable to the Department prior to re-entry into the Fund.

(d) An ADEM inspection must be performed at most thirty (30) days prior to the owner or operator returning to Tank Trust Fund coverage. The results of the inspection must be acceptable to the Department prior to re-entry into the Fund.

Author: Vernon Crockett, Dorothy Malaier, James Thrash
Statutory Authority: Code of Ala. 1975, §§22-35-11.
History: New Rule: Published December 31, 2020; effective February 14, 2021.

335-6-16-.21 Severability.

If any paragraph, subparagraph, 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: Sonja Massey, James Stevens, Gregory Stephens
Statutory Authority: Code of Ala. 1975, §22-35-11.
History: Effective June 1, 1989. **Amended:** Filed March 18, 1994; effective April 22, 1994. **Amended (Rule Number Only):** Published December 31, 2020; effective February 14, 2021.

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