

**CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR**

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on Friday, October 11, 2024, and filed with the agency secretary on Friday, October 11, 2024.

AGENCY NAME: Alabama Department of Environmental Management Water Division - Water Quality Program

INTENDED ACTION: Amend

RULE NO.: 335-6-16-.10
(If amended rule, give specific paragraph, subparagraphs, etc., being amended)

RULE TITLE: Requirements For Tank Trust Fund Coverage Of Response Action Costs For UST And AST Systems

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

Adopted without changes

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XLII, ISSUE NO. 9, AAM, DATED FRIDAY, JUNE 28, 2024.

STATUTORY RULEMAKING AUTHORITY:

Ala. Code §§ 22- 22A- 5, 22- 22-A 6, 22- 22A-8, 22 -28 -14, (as amended) and Ala. Code §§ 41-22-4 and 41-22-5 (as amended)

REC'D & FILED
(Date Filed)
(For LRS Use Only)
OCT 11 2024
LEGISLATIVE SVC AGENCY

Jeffery W. Kitchens

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Certifying Officer or his or her Deputy

APA-3

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.)

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.

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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.