

Alabama Department of Environmental Management
Administrative Code - Division 6, Volume II (Land Division)

**Summary of Reasons in Support
of
Proposed Amendments**

Chapter 335-6-16
Administrative Guidelines and Procedures for the
Alabama Underground and Aboveground Storage Tank Trust Fund

August 9, 2009

Revisions to ADEM Admin. Code Chapter 335-6-16 are being proposed to implement adjustments to the Trust Fund charge and scope of coverage as recommended by the Alabama Underground and Aboveground Storage Tank Trust Fund Management Board pursuant to the 2009 amendments to the Alabama Underground and Aboveground Storage Tank Trust Fund Act. §§ 22-36-1 through 22-36-13, Code of Alabama 1975, as amended (2009 Regular Session).

The Alabama Underground and Aboveground Storage Tank Trust Fund Management Board has recommended changes to the Trust Fund charge and scope of coverage to ensure that necessary resources are available to perform required actions at sites impacted by releases of motor fuels. Adoption of the proposed changes will enable the Trust Fund to continue to fulfill its legislative mandate that adequate financial resources be readily available to provide for the expeditious supply of safe and potable water to affected persons and to provide a means for investigation and clean-up at contamination sites without delay. Without adequate resources, delays in response actions can result in the continuation and intensification of the threat to the public health, safety, and welfare, in greater damages to the environment, and in significantly higher costs to contain and remove the contamination.

The proposed changes are as follows:

Rule 335-6-16-.07 "Trust Fund Fee and Charge" is being amended to change the Trust Fund Charge from \$0.01 per gallon to \$0.0125 per gallon of motor fuel (assessed at first withdrawal from bulk storage).

Rule 335-6-16-.09 "Scope of Tank Trust Fund Coverage" is being amended to provide a "per occurrence indemnification limit" and to change the indemnification limit for a release from \$1 million to \$1.1 million per occurrence, less the applicable deductible.

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 Director, 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 is set at \$0.01~~25~~ per gallon.

Author: Sonja Massey, James Stevens and Gregory Stephens.

Statutory Authority: Code of Alabama 1975, §§ 22-35-5.

History: June 1, 1989.

Amended: June 1, 1994; October 1, 2004; (Proposed effective date: [January 1, 2010](#)).

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 \$5000 for UST owners or operators per occurrence and \$10,000.00 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. ~~Monies expended from the Tank Trust Fund to eligible AST owners or operators as a result of a release from an aboveground tanks shall not exceed one million dollars (1,000,000.00) less the applicable deductible.~~

(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) Beginning January 1, 2010, the per occurrence indemnification limit is set at one million, one hundred thousand dollars (\$1,100,000), less the applicable deductible.

(45) 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.

(56) 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.

(67) 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 and Gregory Stephens.

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

Effective: June 1, 1989.

Amended: June 1, 1994; (Proposed effective date: [January 1, 2010](#)).