

FREQUENTLY ASKED QUESTIONS

ALABAMA ENVIRONMENTAL COVENANTS PROGRAM

- Where are the laws and regulations regarding the Alabama Uniform Environmental Covenants Program found?

The Alabama Uniform Environmental Covenants Act is codified at Code of Alabama 1975 Title 39, Chapter 19. Regulations are found in ADEM Administrative Code Division 5, available on the ADEM website at: www.adem.state.al.us/alEnviroRegLaws/.

- Is an Environmental Covenant required at existing industrial sites with contamination (operating under RCRA, CERCLA or any Corrective Action Permit or Program)?

An Environmental Covenant is required when an approved Remediation Plan, Cleanup Plan or Corrective Measures Implementation Plan will not remediate the property or portions of the property to unrestricted use. The owner, operator or permittee must prepare a draft Environmental Covenant that includes all use restrictions or engineering controls required in the approved remediation plan. The remediation plan with the use restrictions or engineering controls may go on public notice in accordance with specific program rules, after which the remediation plan is approved, assuming that no modifications are necessary per public comments.

- Who prepares the draft Environmental Covenant and when is this to be done?

The draft Environmental Covenant is prepared by the owner, operator or the permittee at a site or property and is submitted to ADEM for review when submitting the Remediation Plan, Cleanup Plan or Corrective Measures Implementation Plan that proposes to leave waste in place at a site.

After ADEM has reviewed and approved the draft covenant language, the owner, operator or permittee will submit to ADEM one original Environmental Covenant that has been executed by the authorized representative. ADEM will execute the Environmental Covenant and return the original document to the owner, operator or permittee to be filed in the land records of the county where the property is located. The executed covenant must be recorded within 30 days of receipt from ADEM and a copy of the recorded covenant must be returned to ADEM.

- Who is the Grantor of the Environmental Covenant?

The owner of the property must be the Grantor of the Environmental Covenant, unless another person petitions ADEM for the privilege of being the Grantor and ADEM agrees to this in writing. For example, if a facility is located on leased property and the owner or operator of the facility has caused an environmental condition requiring an environmental

covenant, the Grantor of the Environmental Covenant must be the owner of the property on which the facility is located.

- Is an Environmental Covenant required at closed sites that have received a No Further Remedial Action Planned (NFRAP) notice or other documents stating that no additional actions are required after all remediation activities have been completed?

An environmental covenant is not required at a contaminated property or site that has been remediated to a level that supports unrestricted use of the property. At times, after remedial actions have been completed in accordance with approved remediation plans, a site may receive a NFRAP or notice that no further remedial action is required. If the approved remedial action did not return the property to unrestricted use, even though it received a NFRAP or notice of not further remedial action required, an environmental covenant is required. If a site was certified closed by ADEM prior to the effective date of UECA regulations in ADEM Admin. Code 335-5, an environmental covenant is not required. If a site or portion of a site was covered by an environmental covenant executed prior to the effective date of 335-5, that covenant is still valid and can only be enforced by provisions listed within that covenant.

- At existing solid waste landfills operating under a valid permit from ADEM, are closed landfill cells subject to the ADEM environmental covenant regulations?

Environmental covenants are not required at any permitted solid waste landfill until the entire landfill is closed in accordance with an approved closure plan. If ADEM promulgates regulations establishing post-closure permits at solid waste landfills, environmental covenants for closed landfills will not be required if that closed landfill has an ADEM post-closure permit. As long as a landfill cell, whether active or closed, is included within the landfill boundary described in the solid waste landfill permit, there is no requirement for an environmental covenant.

- How long does an Environmental Covenant last?

Generally, the duration of an executed Environmental Covenant is perpetual unless it is limited to a specific duration, or terminated by the occurrence of a specific cited event, or modified or terminated through the prescribed ADEM administrative process

- Who is responsible for ensuring that the requirements of an Environmental Covenant are followed?

ADEM will have primary enforcement responsibility to enforce environmental covenants. However, the property owner or any holder may enter a civil action for injunctive or other equitable relief for violation of an environmental covenant: Other parties may also seek injunctive relief; see 335-5-5-.01 for a complete listing.

- How can an Environmental Covenant be extinguished or terminated?

An Environmental Covenant can be extinguished or terminated if the environmental condition that caused the property to not meet an unrestricted use classification has been corrected such that unrestricted use of the property is allowed. For example, if the approved remediation plan allowed waste that had been buried on the property to be left in place with an engineered cap, the environmental covenant could be extinguished if the buried waste was excavated and sampling found that concentrations of the chemicals of concern were below concentrations that allowed unrestricted use. The owner of the property could petition ADEM to extinguish the covenant.

- I have implemented an interim remedy (e.g., land use controls, groundwater use restrictions) which will prevent exposure during the period of investigation and remediation of contaminants at my facility. Do I need an Environmental Covenant for these use restrictions?

No, an interim remedy (e.g., RCRA Interim Measures (IM) or CERCLA Interim Record of Decision (IROD) or Interim Remedial Action (IRA) is not required to have an Environmental Covenant, though it may be necessary or appropriate to record a notice in the deed or other property documents/records (e.g., DOD base master plan/site access control plan). Land use controls and groundwater use restrictions must be recorded in an environmental covenant at the time they are imposed as final remedies (e.g., RCRA CMI, CERCLA RA, etc) on the site. If the facility chooses to place the Environmental Covenant on the property at the time an interim remedy is established and subsequent investigations and remedial actions document that the restrictions are no longer needed, or that changes are warranted, an amended covenant can be entered at that time upon approval of the Department.

- What is the Registry of Environmental Covenants and who maintains it?

The Registry of Environmental Covenants is established by ADEM to list all executed environmental covenants recorded in the county land records. It is available to the public upon request from interested persons. To obtain a copy, the ADEM Land Division should be contacted at 334-271-7730 or via e-mail to landmail@adem.state.al.us.