

## Administrative Procedures Act Rules

### Title 11: Mississippi Department of Environmental Quality

#### Part 4: Nonhazardous Solid Waste Management Regulations

#### Part 4, Chapter 6: Mississippi Commission on Environmental Quality Nonhazardous Solid Waste Corrective Action Trust Fund Regulations

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#### *Rule 6.1 Definitions.*

- A. Closure - activities conducted by the owner to properly secure a solid waste disposal facility in such a manner as to prevent or reduce the potential for contaminants to be released to an off-site location or to prevent or minimize the possibility of persons being exposed to the solid wastes disposed at the facility.
- B. Corrective Action - actions considered necessary to assess and remediate contaminants at a nonhazardous solid waste management facility. In the case of an emergency, corrective action is the necessary action to eliminate the immediate or future threat to human health and the environment or to reduce said threat to a level acceptable by the Mississippi Department of Environmental Quality.
- C. Commission - Mississippi Commission on Environmental Quality.
- D. Department - Mississippi Department of Environmental Quality.
- E. Household Waste - any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

- F. Mississippi Nonhazardous Solid Waste Corrective Action Trust Fund (Trust Fund) -a fund established for the purpose of providing reimbursements for the costs of emergency, preventive or corrective actions which may be required or determined necessary by the Department of Environmental Quality of any private and publicly owned nonhazardous solid waste disposal facility which received in whole or in part household waste and which closed prior to the effective date of Title 40 of the Code of Federal Regulations, Section 258.
- G. Owner - the person to whom the Department issued a permit to operate a nonhazardous solid waste disposal facility and who was the permittee at the time the facility closed. In cases where the current owner of the facility property is different from the permittee, the Commission may declare the current property owner to be the owner or co-owner of the facility.
- H. Post-Closure Care - those actions that are conducted after the closure of a nonhazardous solid waste disposal facility in order to maintain the integrity and effectiveness of any closure action and that are required by the Department to monitor the site and to continue the removal of any potential contaminants which may migrate from the site. Post-closure care may also include prevention of ponded water and migration of leachate and methane gas.
- I. Solid waste disposal facility - any facility used for the purpose of disposing of nonhazardous solid waste, and receiving in whole or in part household waste at some time during its operation.

Source: Miss Code Ann. §§ 17-17-1, et seq., 17-17-63, 17-17-201, et seq., 49-2-9(1)(b), 49-17-17(i), 49-2-1, et seq. and 49-17-1, et seq.

*Rule 6.2 Eligibility For Reimbursement.*

- A. Only those nonhazardous solid waste disposal facilities which received in whole or in part household waste and which closed prior to the effective date of Title 40 of the Code of Federal Regulations, Section 258, are eligible for receiving funds from the Trust Fund.
- B. The Commission may utilize funds in the Trust Fund for the following purposes:
  - (1) to take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or substantial threat of a release of contaminants from any source within the permitted area of an eligible facility;
  - (2) to take preventive or corrective actions where the release of contaminants from any source within the permitted area of an eligible facility presents an actual or potential threat to human health or the environment including, but not limited to, closure and post-closure care of an eligible facility; and

- (3) to take such actions as may be necessary to monitor and provide post-closure care of any eligible facility, including preventive and corrective actions, without regard to identity or solvency of the owner thereof
- C. The Trust Fund may not be used to pay for the normal costs of closure and post-closure care of an eligible facility or where no release or substantial threat of a release of contaminants has been found by the Commission.
- D. Expenditures may be made from the Trust Fund upon requisition by the Executive Director of the Department for payment directly to an owner or to a contractor of the Department.

Source: Miss Code Ann. §§ 17-17-1, et seq., 17-17-63, 17-17-201, et seq., 49-2-9(1)(b), 49-17-17(i), 49-2-1, et seq. and 49-17-1, et seq.

*Rule 6.3 Administrative Procedures For Reimbursement.*

- A. If an owner of a nonhazardous solid waste disposal facility has sufficient evidence that a release or substantial threat of a release of contaminants from a facility exists, he shall notify the Department and submit all such evidence to the Department.
- B. If the Commission determines that a release or substantial threat of a release exists at an eligible facility, either from evidence submitted by an owner or another person, or from evidence compiled by the Department itself the Commission shall determine what actions, if any, are necessary.
- C. The owner of the facility shall be responsible for obtaining the services of qualified personnel or contractors to conduct remedial investigations, monitoring activities, develop remedial design plans, or to otherwise conduct activities eligible for reimbursement from the Trust Fund.
- D. Site assessments, installation of monitoring wells and other activities associated with remedial investigations shall be conducted by a person who complies with the following criteria:
  - (1) The person must have a minimum of three years experience as an environmental consultant;
  - (2) the person must have conducted remedial investigations or corrective actions at a minimum of two other sites; and
  - (3) the person must possess a certificate of professional liability insurance in an amount not less than one million dollars (\$1,000,000.00).

The Department may require that documentation be submitted demonstrating that the person conducting the work described in this paragraph complies with the above criteria.

E. All engineering and remediation plans must be designed and certified by a professional engineer or engineering company that complies with the following criteria:

- (1) The professional engineer must be licensed to practice in the State of Mississippi, or, in the case of an engineering company, the company must employ in a full-time capacity (40 hours per week) at least one professional engineer licensed to practice in the State of Mississippi;
- (2) the professional engineer or engineering company must have previously conducted remedial investigations and/or corrective actions at a minimum of two other sites; and
- (3) the professional engineer or engineering company must possess a current certificate of professional liability insurance in an amount not less than one million dollars (\$1,000,000)

The Department may require that documentation be submitted demonstrating that the engineer or engineering company conducting work described in this paragraph complies with the above criteria.

F. All remedial activities conducted by a general contractor must be done by a contractor that complies with the following criteria:

- (1) The contractor must hold a current certificate of responsibility issued by the State of Mississippi Board of Contractors;
- (2) the contractor must possess a current certificate of contractors general liability insurance in an amount not less than one million dollars (\$1,000,000); and
- (3) if water wells are to be drilled for monitoring purposes, the contractor must be licensed with the Mississippi Department of Environmental Quality, Office of Land & Water Resources.

The Department may require that documentation be submitted demonstrating that the contractor conducting work described in this paragraph complies with the above criteria.

G. The Department may require competitive bidding of general contractors in order to ensure reasonable and fair costs.

H. If the owner of the facility cannot be identified or located, or if the owner does not take prompt corrective action as directed by the Commission or Department, the Department may execute a contract with a third party to conduct whatever action is determined necessary by the Commission.

- I. Unless the Department executes a contract directly with a third party pursuant to Rule 6.3(H) of this regulation, the Department shall make payments from the Trust Fund only to the owner of the facility.
- J. Payments from the Trust Fund shall be 100% of the reasonable costs, as determined by the Department, and shall be made after submittal of an invoice and any other documents determined necessary by the Department.
- K. No payments shall be made for any activity unless the activity and its costs have been approved by the Department prior to initiating the activity.
- L. The Department may deny any reimbursement request incurred if it finds such request to be unreasonable, unnecessary, or that the costs were not incurred in accordance with these regulations or the procedures developed for managing the Trust Fund. Any owner who is denied reimbursement in whole or in part shall have the right to a hearing before the Commission.

Source: Miss Code Ann. §§ 17-17-1, *et seq.*, 17-17-63, 17-17-201, *et seq.*, 49-2-9(1)(b), 49-17-17(i), 49-2-1, *et seq.* and 49-17-1, *et seq.*

*Rule 6.4 Reimbursable Costs.*

The Trust Fund may be used to reimburse owners of a facility for costs incurred as a result of emergency actions, assessment or remediation of contaminants, long term monitoring where necessary, and to provide for post-closure care not considered to be normal costs.

It is the intent of these regulations to cover costs stated above. While determination of eligible costs must be made on a case-by-case basis, the following activities are considered eligible when performed in a diligent and fair manner and when prior approval of the Department has been obtained:

- A. Development of remedial plans.
- B. Drilling of soil borings.
- C. Installation of groundwater monitoring wells.
- D. Sampling and analysis of soil and groundwater.
- E. Installation of groundwater recovery wells.
- F. Removal of contaminants by approved methods.
- G. Disposal or treatment of contaminated media.

- H. Replacement of contaminated water supply wells.
- I. Legal fees and costs, where such costs are necessary to ensure the proper conduct of any site assessment, preventive or corrective action, monitoring activity, or closure or post-closure activity. Examples of such costs include any legal documents necessary to obtain access to the adjoining property or legal costs associated with executing a contract. Legal costs associated with litigation regarding the site or facility are not eligible for reimbursement.
- J. Other costs determined appropriate by the Commission for remediation of the site.

Source: Miss Code Ann. §§ 17-17-1, *et seq.*, 17-17-63, 17-17-201, *et seq.*, 49-2-9(1)(b), 49-17-17(i), 49-2-1, *et seq.* and 49-17-1, *et seq.*

*Rule 6.5 Prioritization of Funds.*

- A. Whenever there are insufficient unencumbered funds to pay for the costs of all activities or facilities which have been identified as needing corrective action, the following factors shall be used by the Department in establishing priorities:
  - (1) Sites where methane gas in explosive concentrations has migrated from the property boundary and is threatening an adjacent inhabited building shall receive the highest priority.
  - (2) Sites or facilities which present a threat or potential threat to contaminate a drinking water supply that is currently being used by the public shall be given priority over those which present a threat or potential threat only to potential drinking water supplies.
  - (3) Where a threatened or potentially threatened drinking water supply is actually being used by the public, the number of persons currently using the water supply shall be considered.
  - (4) Where a threatened or potentially threatened drinking water supply is not being used by the public, the number of persons residing within one mile of the site or facility shall be considered.
  - (5) The degree of contamination found, including the areal extent of contamination, the depth of contamination, the concentration of contaminants, and the toxicity level of the specific contaminants, shall also be considered

Source: Miss Code Ann. §§ 17-17-1, *et seq.*, 17-17-63, 17-17-201, *et seq.*, 49-2-9(1)(b), 49-17-17(i), 49-2-1, *et seq.* and 49-17-1, *et seq.*