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# RECENT UPDATES TO THE ALABAMA LAND RECYCLING AND ECONOMIC REDEVELOPMENT ACT

# Recent Updates to The Alabama Land Recycling and Economic Redevelopment Act

HB378 ENROLLED



ACT #2023 - 356

- 1 CVB4JW-3
- 2 By Representative Brown
- 3 RFD: Economic Development and Tourism
- 4 First Read: 25-Apr-23
- 5 2023 Regular Session



The Legislature passed the Alabama Land Recycling and Economic Redevelopment Act in 2001, which gave rise to ADEM's Voluntary Cleanup Program ("VCP").



The Act was updated in 2023, and the amendments were signed into law by Gov. Ivey on June 1, 2023.

# Recent Updates to The Alabama Land Recycling and Economic Redevelopment Act

- Over the last 20-plus years, the VCP has been successful, with roughly 300 sites addressed.
- The benefits, however, were primarily conferred on Non-Responsible Parties.





# VCP Potentially Responsible Party (RP) Applicants

## Core Elements

- Allows Owners/RPs to more fully participate in the VCP similar to Non-RPs.
- Liability protections (including 3<sup>rd</sup> Parties for investigation/cleanup; *does not* protect against property damage or personal injury claims) are co-extensive with scope of assessment and remedial measures.
- No off-site sampling requirements, and no liability protections for off-site matters unless addressed.
- Existing fees for Potentially RP Applicants + RP Percentage Acreage Fees for Site.
- RP Acreage Fees will be directed to ADEM Brownfield Oversight Fund (to be established).
- ADEM retains “re-opener” authority if contamination not identified in the assessment is later discovered to be migrating from site and presents a substantial off-site risk to the public’s health.

## Changes to Existing VCP

- Owners/RPs not currently eligible to obtain liability protection from 3<sup>rd</sup> Parties.
- This change allows for 3<sup>rd</sup> Party liability protections for investigation and cleanup; *does not* protect against property damage or personal injury claims.
- VCP Requires RPs to conduct off-site assessment and remedial measures; this change would allow RPs to stop at its property line in exchange for lesser liability protections.
- Incentivizes Owners/RPs to participate in VCP by providing liability protections at a higher fee structure.
- If an RP, no off-site sampling requirements, and no liability protections for off-site matters unless addressed.



## Brownfield Redevelopment Designation Area

# Brownfield Redevelopment Designation Area

## Core Elements

- Empower local government authorities to designate Brownfield Redevelopment Zones (“BRDZ”)---not just individual site.
- Resolution from local host government (Brownfield Redevelopment Authority or “BRDA” supporting the BRDZ and related cleanup and redevelopment activities.
- BRDZs are often coterminous with Economic Enhancement Districts.
- Full extent of Non-RP liability protections (except for 3<sup>rd</sup> Party property and personal injury claims).
- ADEM retains “re-openers” if contamination not identified in the assessment is later discovered to be migrating from the site and presents a substantial off-site risk to the public’s health.
- Reciprocal immunity to/from any owner, operators, or others associated with sites within the BRDZ.
- Access to economic incentives not otherwise available to private parties.
- Properties located in BRDZ are eligible for donation to BRDA.

## Changes to Existing VCP

- BRDZs do not exist under Alabama VCP (Florida Model).
- Full liability protection afforded to eligible applicants, including 3<sup>rd</sup> Parties (except for property/personal injury claims).
- Provides opportunity for host government to identify and define sites important to it for redevelopment.
- Properties located in BRDZ are eligible for donation to BRDA.
- Site Revitalization Agreements would be used to memorialize liability protections.
- Allows host governments to further access economic incentives/funds for assessment and remediation not otherwise available.

# Clarify ADEM Discharge Reporting Requirements

## Current Requirements:

- ADEM Groundwater- Underground Injection Control (“UIC”) Program is currently used to address potential release reporting requirements.
- UIC Program (Ala. Admin. Code 335-6-8-.06) prohibits:
  - The discharge of fluids and/or pollutants to groundwater which is not authorized by a permit.
- In the event of discharge, the UIC Program requires the person responsible for the discharge to:
  - Report the discharge to ADEM
  - Assess scope and extent of unpermitted discharge;
  - Prepare and implement corrective action to address the unpermitted discharge, if required.

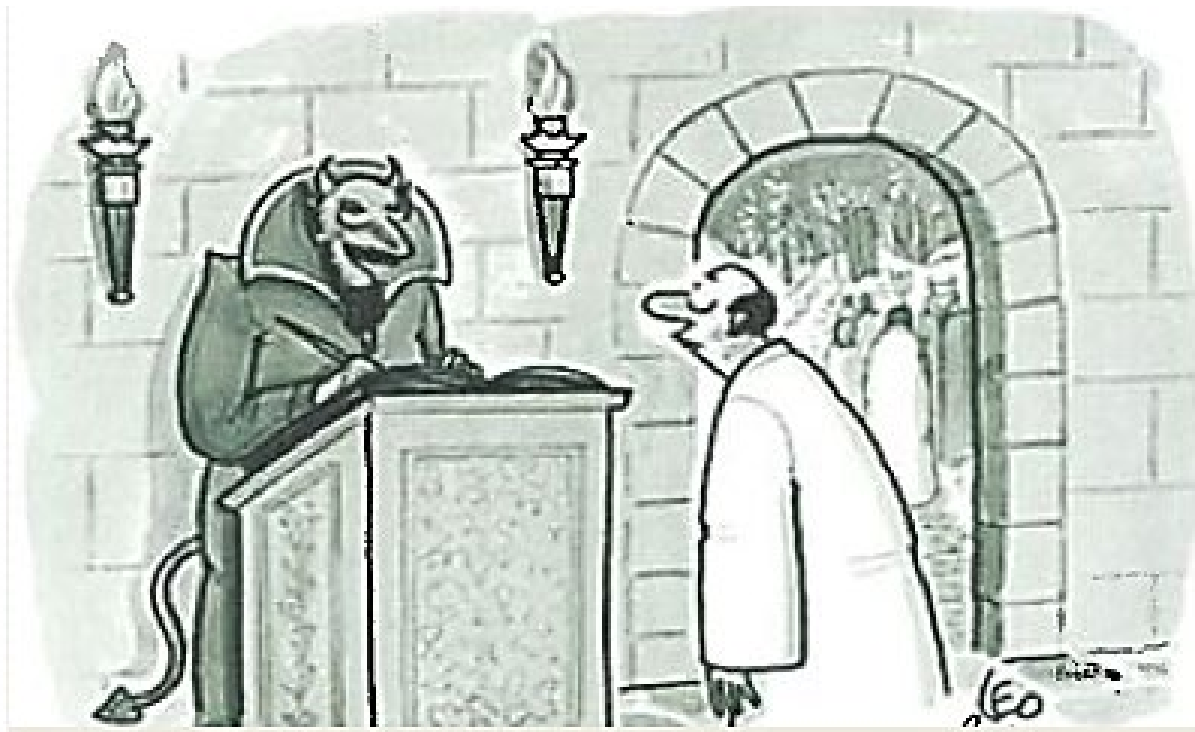


# Clarify ADEM Discharge Reporting Requirements

## Changes to Existing VCP:

- Release-reporting obligations of preexisting contamination or a preexisting release detected during the course of due diligence or site assessment shall be co-extensive with federal release reporting obligations.





*"And, if you don't have an attorney, we have millions of them."*

Questions?

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