

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control 335 Department or Agency Environmental Management
Rule No. 335-13-14
Rule Title: Composting Facilities

New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? YES

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NO

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed rule have an economic impact? NO

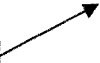
If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer *Nancy Elliott*

Date October 20, 2011

Date Filed 

APA-2
11/96

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME: DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

RULE NO. & TITLE: 335-13-14 Composting Facilities (New)

INTENDED ACTION: Revise Division 13 of the ADEM Administrative Code.


SUBSTANCE OF PROPOSED ACTION: Revise Division 13, Solid Waste Program Regulations pursuant to the 2008 amendments to the Solid Wastes & Recyclable Materials Management Act.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Comments may be submitted in writing or orally at a public hearing to be held Wednesday, December 7, 2011 at 1:00 p.m. in the Main Hearing Room at the ADEM Central Office located at 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Wednesday, December 7, 2011, at 5:00 p.m.

CONTACT PERSON AT AGENCY: Phillip D. Davis, Chief of the Solid Waste Branch, ADEM Land Division (334/271-7988)



Lance R. LeFleur
Director

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION – SOLID WASTE PROGRAM**

**CHAPTER 335-13-14
COMPOSTING FACILITIES**

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335-13-14-.01 Purpose. This regulation is to establish procedures to encourage and regulate the production and use of compost made from solid waste within the State of Alabama.

Author: Phillip D. Davis.

Statutory Authority: Code of Alabama 1975, §§22-27-9 and 22-27-12.

History: ~~XXXXXXX~~, 2012.

335-13-14-.02 Definitions. When used in this chapter, the following terms have the meaning given below:

(1) “Compost” means the humus-like end product produced by the composting of putrescible solid wastes.

(2) “Composting facility” means the physical site or operation location where the composting of putrescible solid waste from residential, commercial, or industrial property for revenue or non-revenue generating use occurs.

(3) “Composting pad” means the surface, whether soil or manufactured, where the process of composting takes place, and where raw and finished materials are stored.

(4) “Feedstock” means biologically decomposable organic material used for the production of compost.

(5) “Humus” means a dark or black carbon-rich relatively stable residue resulting from the decomposition of organic matter that retains nutrients and slowly releases nutrients to plants and increases the ability of the soil to retain water.

(6) "On-site composting" means the composting of materials including solid waste generated at a residential, commercial, or industrial property by the owner or tenant.

Author: Phillip D. Davis.

Statutory Authority: Code of Alabama 1975, §§22-27-9 and 22-27-12.

History: ~~XXXXXXX~~, 2012.

335-13-14-.03 Applicability.

(1) The following requirements shall be for operating and maintaining an acceptable "Composting facility" as defined by Rule 335-13-14-.02.

(2) No person may operate a composting facility without a permit from the Department, except as defined by Rule 335-13-14-.03(3).

(3) Exceptions

(a) Composting of agricultural waste as defined by Rule 335-6-7-.02 are regulated by the requirements of that chapter.

(b) On-site composting as defined by Rule 335-13-14-.02. However, if any on-site compost is used for revenue generation, then the generator is not exempt and shall comply with the requirements of this chapter.

(c) Facilities that receive solid waste and generate compost for use solely at their site.

(d) Facilities in operation on or before the effective date of this rule, shall be exempt from the requirements of Rules 335-13-14-.04(3)(a) and 335-13-14-.05, except for any major modifications that may occur after said date.

Author: Phillip D. Davis.

Statutory Authority: Code of Alabama 1975, §§22-27-9 and 22-27-12.

History: ~~XXXXXXX~~, 2012.

335-13-14-.04 Application Requirements.

(1) No person may receive, store or process solid waste for composting without being properly permitted by the Department, except as described by Rule 335-13-14-.03(3). Any person who operates a composting facility, without having applied for a permit with the Department shall be considered to be operating an unpermitted solid waste facility and shall be subject to enforcement action in accordance with this division.

(2) The owner or operator of each composting facility in existence on the effective date of this rule shall file an application for a permit with ADEM not later than January 1, 2012. The owner or operator of each new composting facility desiring to begin operation after the effective date of this chapter shall obtain a permit prior to commencing composting activities.

(3) Each owner or operator of a composting facility shall file an application prepared by a professional engineer for a permit with ADEM utilizing a form designated by the Department. In addition to the designated form, the following information shall be submitted:

(a) Host government approval and Statement of Consistency, as provided in the Code of Alabama 1975, § 22-27-48.

(b) List of feed stocks to be accepted at the composting facility and the operational capacity.

(c) Legal property description and plat prepared by a land surveyor with the seal or signature and registration number of the land surveyor affixed.

(d) Composting facility design plans and operational plan in accordance with this chapter. Design plans and operational plans shall be prepared by a professional engineer. The seal or signature and registration number of the design engineer shall be affixed to the plans.

(e) A process flow diagram of the entire facility.

(f) Fire prevention plan.

(g) A Closure plan, approved by the Department, that at a minimum includes:

1. Information detailing the removal of all remaining solid waste material from the site as required by Rule 335-13-14-.09;

2. A detailed written estimate, in current dollars, of the cost required to complete closure of the composting facility in accordance with Rule 335-13-14-.09; and

3. A demonstration by the applicant of its ability to provide adequate financial coverage equal to the amount required in Rule 335-13-14-.04(3)(g)2. for the closure of the composting facility.

(h) The names and addresses of all property owners whose properties are adjacent to the proposed site.

Author: Phillip D. Davis.

Statutory Authority: Code of Alabama 1975, §§22-27-9 and 22-27-12.

History: ~~XXXXXXX~~, 2012.

335-13-14-.05 Design Criteria.

(1) Specifications for site preparation measures including, but not limited to clearing and grubbing, stormwater control structures, leachate collection systems, access roads, screening, fencing, buildings, and compost pads, must be included in the engineering design report developed for the site.

(2) A composting facility shall not be located in the 100 year floodplain.

(3) A composting facility shall not cause a discharge of pollutants into waters of the State, including wetlands, that is in violation of the requirements of the National Pollutant Discharge Elimination System (NPDES), Alabama Water Pollution Control Act, Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and/or section 404 of the Clean Water Act, as amended.

(4) A composting facility shall not cause non-point source pollution of waters of the State, including wetlands, that violates any requirements of an area wide and State wide water quality management plan that has been approved under the Alabama Water Pollution Control Act.

(5) A composting facility shall not be permissible in wetlands, beaches or dunes.

(6) A composting facility shall be located outside the boundaries of the coastal area, unless no other reasonable alternative is available. If a site within the coastal area is proposed for development as a composting facility, it shall be demonstrated to the satisfaction of the Department that siting, design, construction, and operation will ensure that present levels of coastal plants and animals will be maintained.

(7) The applicant shall design the facility so that the bottom elevation of the composting facility shall be a minimum of five (5) feet above the highest measured groundwater level, as determined by a minimum of two measurements taken during each of the three consecutive months of February, March and April with no two measurements taken within any twelve day period. If the measurements are taken outside of February, March and April, the minimum bottom elevation of the composting facility shall be ten (10) feet above the highest measured groundwater level. The applicant shall submit to the Department all data known to exist concerning groundwater elevations at the proposed site and shall submit to the Department a location map showing all monitoring wells or piezometers and drilling logs for all monitoring wells or piezometers used to obtain any groundwater elevation data that is submitted. Nothing herein shall prevent the Department from requiring additional groundwater measurements or from requiring an additional buffer as it may deem appropriate with respect to a particular site.

(8) A composting pad, as defined by Rule 335-13-14-.02, shall be provided for the receiving and storage areas, and the processing and curing areas. The surface shall be constructed of asphalt, concrete or compacted soil. If a compacted soil surface is utilized, the minimum requirement will be 24 inches of soil with a permeability of 1×10^{-7} cm/sec. A pad is not required for the storage of finished compost product.

(9) The raw material receiving and storage areas shall be covered in a manner to minimize exposure of the material to the elements.

(10) A stormwater control system shall be constructed to control at least the water volume from a 24-hour, 25-year storm. Stormwater or other water that comes in contact with the solid waste received, being stored, processed or composted, or which mixes with leachate shall be considered leachate.

(11) The composting facility shall have a leachate collection and removal system designed to collect and remove leachate from the waste receiving and storage areas and the processing area.

(12) Buffer zones around the perimeter of the composting facility shall be a minimum of 100 feet measured in the horizontal plane. No composting, storage practices, stormwater controls or leachate collection shall take place in the buffer zone.

Author: Phillip D. Davis.

Statutory Authority: Code of Alabama 1975, §§22-27-9 and 22-27-12.

History: ~~XXXXXXX~~, 2012.

335-13-14-.06 Operating Criteria.

(1) Compost offered for use must be produced by a process that encompasses turning on a regular basis to aerate the waste, maintain temperatures, and/or reduce pathogens. Compost may be produced by other composting techniques as approved by the Department.

(2) Used oil, hazardous waste, treated or untreated medical waste, treated wood, and asbestos containing waste shall not be accepted at a composting facility.

(3) Household hazardous waste shall not be accepted at a composting facility.

(4) Solid waste received at the composting facility shall be confined to a designated delivery or storage area until processed. Any solid waste not introduced into the processing operation within 72 hours shall be removed and disposed of at a municipal solid waste landfill.

(5) The site shall be graded to prevent ponding of water in the active composting area.

(6) Surface water drainage shall be diverted around and away from the composting area to prevent any washing or escape of waste from the property.

(7) Leachate shall be collected and disposed of in a manner approved by the Department.

(8) The composting facility shall be operated in a manner that controls vectors.

(9) The composting facility shall be operated in a manner that controls and minimizes odors. Should obnoxious odors arising from the composting facility operations be verified by the Department, measures to abate the odor shall be taken upon a determination by the Department that such measures are technically feasible.

(10) The composting facility shall be operated in a manner that prevents fires in accordance with the fire prevention plan.

(11) Open burning at any composting facility is prohibited except for burning resulting from land clearing activities at the site, if prior written approval is received from the Department.

(12) Access to the facility shall be controlled so as to minimize the potential for scavenging of materials and unauthorized disposal of wastes.

(13) A sign shall be posted which identifies the composting facility owner or operator, hours of operation, waste that may be accepted, and the permit number.

Author: Phillip D. Davis.

Statutory Authority: Code of Alabama 1975, §§22-27-9 and 22-27-12.

History: ~~XXXXXXX~~, 2012.

335-13-14-.07 Permitting Requirements.

(1) Permit Duration. Composting facility permits obtained under compliance with this Division shall be valid for the design life of the facility or as otherwise determined by the Department, but no longer than a period of five years. Permits, however, are subject to suspension or revocation under Rule 335-13-14-.07(5) of this Chapter.

(2) Filing Deadline. Request for extension, renewal, or a new permit for a composting facility shall be filed with the Department by the operating agency at least 180 days prior to expiration date for existing permits or proposed construction date for new facilities.

(3) Modifications. Prior to any change in the permitted design plans, operational plans and closure plans, the request for modification must be filed with the Department at least 90 days prior to the anticipated change and shall receive approval from the Department prior to the implementation of the proposed change. Any modification subject to local host government review and approval shall constitute a major modification and shall be subject to the requirements of Rule 335-13-14-.10

(4) Permit Application Denial.

(a) As determined by the Director, substantial non-compliance with Department regulations or permits at any facility in the State of Alabama owned or operated by the applicant, including any facility for which the pending permit application is requested, will be grounds for denial of the application, or alternatively, for suspension of further consideration of the application until such noncompliance is corrected.

(b) In addition to the foregoing, the Director may deny a permit application if:

1. The Director determines that a permit could not be issued that would result in compliance with applicable solid waste standards;
2. The applicant could not comply with the permit as issued; or
3. The applicant is found to have submitted false or inaccurate information.

(c) Upon denial of an application for permit renewal, the applicant shall meet the closure requirements of Rule 335-13-14-.09.

(5) Permit Suspension or Revocation.

(a) The Department may suspend or revoke any permit issued under this Chapter if any of the following conditions are true:

1. The permittee is determined by the Department to be in violation of any permit condition,
2. The permittee fails to perform the permitted activities in accordance with the approved permit application, operational plan/narrative, or engineering drawings,
3. The permittee fails to apply for a permit modification, as required by the Rules,
4. The permittee stops accepting and processing raw material for more than 180 days, or
5. The permittee's operations are determined to create a nuisance or are inconsistent with the requirements of the Act or this Division.

(b) In the event of suspension or revocation of a permit, the Department shall serve notice of such action on the permittee and shall set forth in such notice the reason or reasons for such action.

(c) Upon revocation or suspension of the permit, the permittee shall meet the closure requirements of Rule 335-13-14-.09.

Author: Phillip D. Davis.

Statutory Authority: Code of Alabama 1975, §§22-27-9 and 22-27-12.

History: ~~XXXXXXX~~, 2012.

335-13-14-.08 Recordkeeping and Reporting.

(1) An operating record for the composting facility shall be maintained at the facility or in a location approved by ADEM.

(a) The following information shall be maintained in the operating record as it becomes available.

1. Copy of the permit.
2. Permit application.
3. Fire prevention plan.
4. Stormwater and leachate discharge records.
5. Closure plan.

6. Certifications required for the normal operations of the facility.

7. Any other report or document generated in the normal operation of the facility that is submitted to ADEM.

(b) Information contained in the operating record shall be retained for at least three (3) years. Records relating to a violation or enforcement action shall not be removed from the operating record until these matters are resolved.

(2) A composting facility shall submit a semi-annual report to ADEM utilizing an ADEM approved form for each reporting period of the calendar year (October through March and April through September). The report shall be submitted to ADEM by the 28th day following the end of the reporting period. The report shall contain the average daily volume of waste accepted at the facility and total volume of cured compost produced.

Author: Phillip D. Davis.

Statutory Authority: Code of Alabama 1975, §§22-27-9 and 22-27-12.

History: ~~XXXXXXX~~, 2012.

335-13-14-.09 Closure.

(1) Prior to closure of the composting facility, the owner or operator must submit to the Department and place in the operating record, a notice of intent to close.

(2) The owner or operator must begin closure of the composting facility no later than 30 days after the date of which composting activities cease.

(3) The owner or operator must complete closure activities in accordance with the closure plan within 180 days after the date of which composting activities cease.

(4) All remaining solid waste shall be removed from the site and disposed of at a municipal solid waste landfill permitted by the Department, and, if necessary, the site shall be stabilized to prevent the migration of sediment off-site due to stormwater runoff.

Author: Phillip D. Davis.

Statutory Authority: Code of Alabama 1975, §§22-27-9 and 22-27-12.

History: ~~XXXXXXX~~, 2012.

335-13-14-.10 Public Notice.

(1) Notice Requirements.

(a) The Department shall provide notice and an opportunity for a public hearing on any composting facility permit initial issuance, renewal, modification subject to local host government review and approval, or if otherwise determined by ADEM to be necessary to meet the requirements of this Division.

(b) The following procedures shall be observed.

1. The Department shall notify interested and potentially interested persons of the proposed composting facility by publishing a notice in a newspaper of general circulation in the area.

(i) The notice shall be given not less than 35 days prior to the proposed issuance of a permit.

(ii) The notice shall contain the specific type and nature of the composting facility, the type of waste to be accepted, the person or agency requesting the permit, and the descriptive location of the processing area, address and telephone number of the Department, and that interested persons may request a public hearing on the proposed composting facility.

2. Landowners adjacent to a proposed composting facility shall receive a copy of public notice.

(2) Departmental Action. The Department shall take one of the following actions after the completion of the notice period:

(a) Deny the permit, stating in writing the reasons for denial and inform the person requesting the permit of appeal procedures in Rule 335-13-1-.07;

(b) Issue the permit if the application complies with this Division; or

(c) Require additional information, elements of design for the facility, and specify procedures for inclusion into the permit prior to issuance of the permit.

Author: Phillip D. Davis.

Statutory Authority: Code of Alabama 1975, §§22-27-9 and 22-27-12.

History: ~~XXXXXXX~~, 2012.

335-13-14-.11 Public Hearing.

(1) Authorization. The Department shall authorize a public hearing at its discretion, or upon receipt of significant number of technical requests as provided in Rule 335-13-14-.11(2).

(2) Procedures.

(a) Requests for public hearings shall be submitted in writing to the Department by interested persons.

1. Frivolous or nontechnical requests shall be denied by the Department.

2. Requests for public hearings must be submitted within 35 days after the publication of the public notice and must contain the following:

(i) The name, address and telephone number of the person requesting the hearing.

(ii) A brief statement of the person's interest and a summary of the information the person wishes to submit at the hearing.

(iii) The person's signature, if an individual, or the signature of a responsible officer of an organization or legal entity.

(b) When a hearing has been authorized, the Department shall appoint a hearing officer to conduct the hearing and shall establish a time, date, and location for the hearing.

(c) The Department shall give notice of the public hearing in the manner set forth in Rule 335-13-14-.10, and as applicable, to the persons requesting the hearing in Rule 335-13-14-.11(2). The notice given not less than 35 days prior to the time of the public hearing shall include:

1. A summary of the proposed permit.
2. The place, time, and date of the hearing.
3. The name, address and telephone number of an office at which interested persons may receive further information regarding the proposed permit.

(3) Departmental Action. The Department shall take one of the following actions after the hearing and completion of the notice period:

(a) Deny the permit, stating in writing the reasons for denial and informing the applicant requesting the permit of the appeal procedures in Rule 335-13-1-.07;

(b) Issue the permit if the application complies with this Division; or

(c) Require additional information, elements of design for the facility, and specify procedures for inclusion into the permit prior to issuance of the permit.

Author: Phillip D. Davis.

Statutory Authority: Code of Alabama 1975, §§22-27-9 and 22-27-12.

History: ~~XXXXXXX~~, 2012.