

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No. 335 Department or Agency Environmental Management
Rule No. 335-14-6-.07
Rule Title: Closure and Post-Closure

 New X 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 Marilyn Elliott

Date October 20, 2016

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME: Department of Environmental Management

RULE NO. & TITLE: 335-14-6-.01 General
335-14-6-.02 General Facility Standards
335-14-6-.04 Contingency Plan and Emergency Procedures
335-14-6-.05 Manifest System, Recordkeeping and Reporting
335-14-6-.07 Closure and Post-Closure
335-14-6-.08 Financial Requirements
335-14-6-.09 Use and Management of Containers
335-14-6-.10 Tank Systems
335-14-6-.14 Landfills
335-14-6-.23 Drip Pads
335-14-6-.27 Subpart AA - Air Emission Standards For Process Vents
335-14-6-.28 Subpart BB - Air Emission Standards For Equipment
Leaks
335-14-6-.29 Subpart CC - Air Emission Standards For Tanks, Surface
Impoundments, And Containers
335-14-6-.30 Containment Buildings

INTENDED ACTION: Amend chapter 335-14-6 of the ADEM Administrative Code

SUBSTANCE OF PROPOSED ACTION

The Department of Environmental Management proposes to amend portions of the Division 14 Hazardous Waste Program Regulations to make typographical and grammatical corrections, to make clarifications necessary to maintain consistency with analogous federal rules, and to adopt new amendments required by the USEPA which are necessary to maintain the programs fully authorized status.

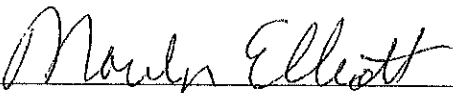
TIME, PLACE, MANNER OF PRESENTING VIEWS

Comments may be submitted in writing or orally at a public hearing to be held Wednesday, December 7, 2016 at 2:00 p.m. in the Main Hearing Room at the ADEM Central Office located at 1400 Coliseum Blvd, Montgomery, Alabama 36110.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE

Wednesday, December 7, 2016 at 5:00 p.m.

CONTACT PERSON AT AGENCY: Chip Crockett, Chief of the Industrial Hazardous Waste Branch, ADEM Land Division, (334) 270-5627.



Lance R. LeFleur
Director

335-14-6-.07 Closure and Post-Closure.

(1) Applicability.

Except as 335-14-6-.01(1) provides otherwise:

(a) 335-14-6-.07(2) through 335-14-6-.07(6) [which concern closure] apply to the owners and operators of all hazardous waste management facilities; and

(b) 335-14-6-.07(7) through 335-14-6-.07(11) [which concern post-closure care] apply to the owners and operators of:

1. All hazardous waste disposal facilities;
2. Waste piles, surface impoundments, and drip pads for which the owner or operator intends to remove the wastes at closure to the extent that these paragraphs are made applicable to such facilities in 335-14-6-.11(9), 335-14-6-.12(9), or 335-14-5-.23(6);
3. Tank systems that are required under 335-14-6-.10(8) to meet requirements for landfills; and
4. Containment buildings that are required in 335-14-6-.30(3) to meet the requirements for landfills; and
5. [Reserved]
6. Other hazardous waste management units which are unable to demonstrate closure by removal.

(c) 335-14-6-.07(12) applies to owners and operators of units that are subject to the requirements of 335-14-8-.01(1)(c)7. and are regulated under an enforceable document [as defined in 335-14-8-.01(1)(c)7.].

(d) The Department may replace all or part of the requirements of 335-14-6-.07 [and the unit-specific standards in 335-14-6-.07(2)(c)] applying to a regulated unit [as defined in 335-14-5-.06(1)], with alternative requirements for closure set out in an approved closure or post-closure plan, or in an enforceable document [as defined in 335-14-8-.01(1)(c)7.], where the Department determines that:

1. A regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release, and

2. It is not necessary to apply the closure requirements of 335-14-6-.07 (and/or those referenced herein) because the alternative requirements will protect human health and the environment, and will satisfy the closure performance standard of 335-14-6-.07(2)(a) and (b).

(2) Closure performance standard.

The owner or operator must close the facility in a manner that:

(a) Minimizes the need for further maintenance; and

(b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

(c) Complies with the closure requirements of 335-14-6-.07 including, but not limited to, the requirements of 335-14-6-.10(8), 335-14-6-.11(9), 335-14-6-.12(9), 335-14-6-.13(11), 335-14-6-.14(11), 335-14-6-.15(12), 335-14-6-.16(12), 335-14-6-.17(5), 335-14-6-.23(6), 335-14-6-.30(3), and 335-14-7-.08(4) [§ 266.103(l) of 40 CFR].

(3) Closure plan; amendment of plan.

(a) Written plan. By May 19, 1981, or by six months after the effective date of the rule that first subjects a facility to provisions of 335-14-6-.07(3), the owner or operator of a hazardous waste management facility must have a written closure plan. Until final closure is completed and certified in accordance with 335-14-6-.07(6), a copy of the most current plan must be furnished to the Department upon request, including request by mail. In addition, for facilities without approved plans, it must also be provided during site inspections, on the day of inspection to any officer, employee, or representative of the Department, who is duly designated by the Department.

(b) Content of plan. The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan must include at least:

1. A description of how each hazardous waste management unit at the facility will be closed in accordance with 335-14-6-.07(2); and

2. A description of how final closure of the facility will be conducted in accordance with 335-14-6-.07(2). The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility; and

3. An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous waste, identification of and the type(s) of off-site hazardous waste management unit(s) to be used, if applicable; and

4. A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard; and

5. A detailed description of other activities necessary during the partial and final closure periods to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control; and

6. A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover must be included); and

7. An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under 335-14-6-.08(4) or 335-14-6-.08(6) and whose remaining operating life is less than 20 years, and for facilities without approved closure plans.

8. For facilities where the Department has applied alternative requirements at a regulated unit under 335-14-6-.06(1)(f), and/or 335-14-6-.07(1)(d), either the alternative requirements applying to the regulated unit, or a reference to the enforceable document containing those alternative requirements.

(c) Amendment of plan. The owner or operator may amend the closure plan at any time prior to the notification of partial or final closure of the facility. An owner or operator with an approved closure plan must submit a written request to the Department to authorize a change to the approved closure plan. The written request must include a copy of the amended closure plan for approval by the Department.

1. The owner or operator must amend the closure plan whenever:
 - (i) Changes in operating plans or facility design affect the closure plan,or
 - (ii) There is a change in the expected year of closure, if applicable, or
 - (iii) In conducting partial or final closure activities, unexpected events require a modification of the closure plan.

(iv) The owner or operator requests the Department to apply alternative requirements to a regulated unit under 335-14-6-.06(1)(f), and/or 335-14-6-.07(1)(d).

2. The owner or operator must amend the closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must amend the closure plan no later than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments, waste piles, and drip pads who intended to remove all hazardous wastes at closure, but are required to close as landfills in accordance with 335-14-6-.14(11).

3. An owner or operator with an approved closure plan must submit the modified plan to the Department at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event has occurred during the partial or final closure period, the owner or operator must submit the modified plan no more than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments, waste piles, and drip pads who intended to remove all hazardous wastes at closure but are required to close as landfills in accordance with 335-14-6-.14(11). If the amendment to the plan is a major modification according to the criteria in 335-14-8-.04(2) and 335-14-8-.04(3), the modification to the plan will be approved according to the procedures in 335-14-6-.07(3)(d)4.

4. The Department may request modifications to the plan under the conditions described in 335-14-6-.07(3)(c)1. An owner or operator with an approved closure plan must submit the modified plan within 60 days of the request from the Department or within 30 days if the unexpected event occurs during partial or final closure. If the amendment is considered a major modification according to the criteria in 335-14-8-.04(2) and 335-14-8-.04(3), the modification to the plan will be approved in accordance with the procedures in 335-14-6-.07(3)(d)4.

(d) Notification of partial closure and final closure.

1. The owner or operator must submit the closure plan to the Department at least 180 days prior to the date on which he expects to begin closure of the first surface impoundment, waste pile, land treatment, landfill, or drip pad unit, or final closure if it involves such a unit, whichever is earlier. The owner or operator must submit the closure plan to the Department at least 45 days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace. The owner or operator must submit the closure plan to the Department at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

Owners or operators with approved closure plans must notify the Department in writing at least 60 days prior to the date on which he expects to

begin closure of a surface impoundment, waste pile, landfill, land treatment, or drip pad unit, or final closure of a facility involving such a unit.

Owners or operators with approved closure plans must notify the Department in writing at least 45 days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace.

Owners or operators with approved closure plans must notify the Department in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

2. The date when he "expects to begin closure" must be either:

(i) Within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the Department that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the Director may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of 335-14-6-.07(4)(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator can demonstrate to the Department that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Director may approve an extension to this one-year limit.

3. The owner or operator must submit his closure plan to the Department no later than 15 days after:

(i) Termination of interim status except when a permit is issued simultaneously with termination of interim status; or

(ii) Issuance of a judicial decree or final order under AHWMMMA or Section 3008 of RCRA to cease receiving hazardous wastes or close.

4. Processing of closure plan.

(i) The Department shall not approve a closure plan until it is determined to be complete. A plan is complete when the Department receives all required information identified in 335-14-6-.07.

(ii) The Department shall review for completeness every closure plan submitted for approval as required by 335-14-6-.07(3). Upon completing the review, the Department shall notify the owner or operator in writing whether the plan is complete. If the plan is incomplete, the Department:

(I) Shall list the information necessary to make the plan complete;

(II) Shall specify in the notice of deficiency a date for submitting the necessary information; and

(III) May request any information necessary to clarify, modify, or supplement previously submitted material; however, requests for items not required by rules 335-14-6-.07(2) through 335-14-6-.07(7) will not render a plan incomplete.

(iii) Once a closure plan is determined to be complete, the Department will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. It will also, in response to a request or at its own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The Department will give public notice of the hearing at least 30 days before it occurs. [Public notice of the hearing may be (but is not required to be) given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.] The public comment period will automatically extend to the close of any public hearing under 335-14-6-.07(3)(d). The hearing officer may also extend the comment period by so stating at the hearing.

(iv) After considering any comments submitted during the public comment period and public hearing (if held), the Director will approve or disapprove the plan within 30 days of the close of the comment period. If the Director does not approve the plan, he shall provide the owner or operator with a detailed statement of reasons for the refusal, and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Director will approve or modify this plan in writing within 60 days of receipt. If the Director modifies the plan, this modified plan becomes the approved closure plan. The Department must assure that the approved closure plan is consistent with rules 335-14-6-.07(2) through 335-14-6-.07(7) and the applicable requirements of rules 335-14-6-.06, 335-14-6-.09(9), 335-14-6-.10(8), 335-14-6-.11(9), 335-14-6-.12(9), 335-14-6-.13(11), 335-14-6-.14(11), 335-14-6-.15(12), 335-14-6-.16(12), 335-14-6-.17(5), 335-14-6-.23(6), 335-14-6-.30(3), and 335-14-7-.08(4) [§ 266.103(l) of 40 CFR]. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(v) If an owner or operator fails or refuses to correct deficiencies in the closure plan, the plan may be modified by the Director and appropriate enforcement action may be taken by the Department.

(e) Removal of wastes and decontamination or dismantling of equipment.

1. Nothing in 335-14-6-.07(3) shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

(4) Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in 335-14-6-.07(4)(d) and (e), at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Director may approve a longer period if the owner or operator demonstrates that:

1. (i) The activities required to comply with 335-14-6-.07(4) will, of necessity, take longer than 90 days to complete; or

(ii) (I) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the facility owner or operator complies with 335-14-6-.07(4)(d) and (e); and

(II) There is a reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(III) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

2. He has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements.

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in 335-14-6-.07(4)(d) and (e), at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The Director may approve an extension to the closure period if the owner or operator demonstrates that:

1. (i) The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

(ii) (I) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in 335-14-6-.07(4)(d) and (e); and

(II) There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(III) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

2. He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable interim status requirements.

(c) The demonstrations referred to in 335-14-6-.07(4)(a)1. and (b)1. must be made as follows:

1. The demonstrations in 335-14-6-.07(4)(a)1. must be made at least 30 days prior to the expiration of the 90-day period in 335-14-6-.07(4)(a)1.; and

2. The demonstration in 335-14-6-.07(4)(b)1. must be made at least 30 days prior to the expiration of the 180-day period in 335-14-6-.07(4)(b), unless the owner or operator is otherwise subject to the deadlines in 335-14-6-.07(4)(d).

(d) The Director may allow an owner or operator to receive only non-hazardous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

1. The owner or operator submits an amended Part B Application, or a Part B Application, if not previously required and demonstrates that:

(i) The unit has the existing design capacity as indicated on the Part A Application to receive non-hazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The non-hazardous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under 335-14-6; and

(iv) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(v) The owner or operator is operating and will continue to operate in compliance with all applicable interim status requirements; and

2. The Part B Application includes an amended waste analysis plan, groundwater monitoring and response program, human exposure assessment required under RCRA Section 3019, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary and appropriate, to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable under 335-14-6-.07(3)(b)7., as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

3. The Part B Application is amended, as necessary and appropriate, to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes; and

4. The Part B Application and the demonstrations referred to in 335-14-6-.07(4)(d)1. and (d)2. are submitted to the Director no later than 180 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes or no later than 90 days after the effective date of 335-14-6-.07 in the State in which the unit is located, whichever is later.

(e) In addition to the requirements in 335-14-6-.07(4)(d), an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in 42 U.S.C. 3004(o)(1) and 3005(j)(1) or 42 U.S.C. 3004(o)(2) or (3) or 3005(j)(2), (3), (4), or (13) must:

1. Submit with the Part B Application:

(i) A contingent corrective measures plan; and

(ii) A plan for removing hazardous wastes in compliance with 335-14-6-.07(4)(e)2.; and

2. Remove all hazardous wastes from the unit by removing all hazardous liquids, and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

3. Removal of hazardous wastes must be completed no later than 90 days after the final receipt of hazardous wastes. The Director may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health and the environment.

4. If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels is detected in

accordance with the requirements in rule 335-14-6-.06, the owner or operator of the unit:

(i) Must implement corrective measures in accordance with the approved contingent corrective measures plan required by 335-14-6-.07(4)(e)1. no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later;

(ii) May receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

(iii) May be required by the Director to implement corrective measures in less than one year or to cease the receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

5. During the period of corrective action, the owner or operator shall provide annual reports to the Director describing the progress of the corrective action program, compile all groundwater monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

6. The Director may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year as required in 335-14-6-.07(4)(e)4., or fails to make substantial progress in implementing corrective action and achieving the facility's background levels.

7. If the owner or operator fails to implement corrective measures a required in 335-14-6-.07(4)(e)4., or if the Director determines that substantial progress has not been made pursuant to 335-14-6-.07(4)(e)6., he shall:

(i) Notify the owner or operator in writing that the owner or operator must begin closure in accordance with the deadlines in 335-14-6-.07(4)(a) and (b) and provide a detailed statement of reasons for this determination, and

(ii) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(iii) If the Director receives no written comments, the decision will become final five days after the close of the comment period. The Director will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within 15 days of the final notice and that closure must begin in accordance with the deadlines in 335-14-6-.07(4)(a) and (b).

(iv) If the Director receives written comments on the decision, he shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Director determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in 335-14-6-.07(4)(a) and (b).

(v) The final determinations made by the Director under 335-14-6-.07(4)(e)7.(iii) and (iv) are not subject to administrative appeal.

(5) Disposal or decontamination of equipment, structures, and soils.

During the partial and final closure periods, all contaminated equipment, structures, and soil must be properly disposed of, or decontaminated unless specified otherwise in 335-14-6-.09(9), 335-14-6-.10(8), 335-14-6-.11(9), 335-14-6-.12(9), 335-14-6-.13(11), 335-14-6-.14(11), 335-14-6-.17(5), 335-14-6-.23(6), or 335-14-6-.30(3). By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that hazardous waste in accordance with all applicable requirements of 335-14-3.

(6) Certification of closure.

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of completion of final closure, the owner or operator must submit to the Department, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent registered --qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Department upon request until it releases the owner or operator from the financial assurance requirements for closure under rule 335-14-6-.08(4)(h).

(7) Survey plat.

(a) No later than the submission of the certification of closure of each hazardous waste disposal unit, an owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Department, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable requirements of 335-14-6-.07; and

(b) Where closure does not achieve the standard of unrestricted use, the owner or operator or other responsible person must provide documentation of compliance with the requirements of the Uniform Environmental Covenants Program in ADEM Admin. Code Div. 335-5.

(8) Post-closure care and use of property.

(a) 1. Post-closure care for each hazardous waste management unit subject to the requirements of 335-14-6-.07(8) through 335-14-6-.07(11) must begin after completion of closure of the unit and continue for 30 years after that date, or the date of issuance of a post-closure permit or enforceable document [as defined in 335-14-8-.01(1)(c)7.], whichever date is later. It must consist of at least the following:

(i) Monitoring and reporting in accordance with the requirements of rules 335-14-6-.06, 335-14-6-.11, 335-14-6-.12, 335-14-6-.13, 335-14-6-.14, and 335-14-6-.23; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of rules 335-14-6-.06, 335-14-6-.11, 335-14-6-.12, 335-14-6-.13, 335-14-6-.14, and 335-14-6-.23.

2. Any time preceding closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular hazardous waste disposal unit, the Department may:

(i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if it finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the hazardous waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility, if it finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(b) The Department may require, at partial and final closure, continuation of any of the security requirements of 335-14-6-.02(5) during part or all of the post-closure period when:

1. Hazardous wastes may remain exposed after completion of partial or final closure; or

2. Access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the Director finds that the disturbance:

1. Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or
2. Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in 335-14-6-.07(9).

(9) Post-closure plan; amendment of plan.

(a) Written plan. By May 19, 1981, the owner or operator of a hazardous waste disposal unit must have a written post-closure plan. An owner or operator of a surface impoundment, waste pile, drip pad, or other hazardous waste management unit that intends to remove all hazardous wastes at closure must prepare a post-closure plan and submit it to the Department within 90 days of the date that the owner or operator or Department determines that the hazardous waste management unit or facility must be closed as a landfill, subject to the requirements of 335-14-6-.07(8) through 335-14-6-.07(11).

(b) Until final closure of the facility, a copy of the most current post-closure plan must be furnished to the Department upon request, including request by mail. In addition, for facilities without approved post-closure plans, it must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Department who is duly designated by the Department. After final closure has been certified, the person or office specified in 335-14-6-.07(9)(c)3. must keep the approved post-closure plan during the post-closure period.

(c) For each hazardous waste management unit subject to the requirements of 335-14-6-.07(9), the post-closure plan must identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

1. A description of the planned monitoring activities and frequencies at which they will be performed to comply with rules 335-14-6-.06, 335-14-6-.09, 335-14-6-.10, 335-14-6-.11, 335-14-6-.12, 335-14-6-.13, 335-14-6-.14, 335-14-6-.17, 335-14-6-.23, and 335-14-6-.30 during the post-closure care period; and

2. A description of the planned maintenance activities, and frequencies at which they will be performed to ensure:

- (i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of rules 335-14-6-.06,

335-14-6-.09, 335-14-6-.10, 335-14-6-.11, 335-14-6-.12, 335-14-6-.13, 335-14-6-.14, 335-14-6-.17, 335-14-6-.23, and 335-14-6-.30;

(ii) The function of the monitoring equipment in accordance with the requirements of rules 335-14-6-.06, 335-14-6-.09, 335-14-6-.10, 335-14-6-.11, 335-14-6-.12, 335-14-6-.13, 335-14-6-.14, 335-14-6-.17, 335-14-6-.23, and 335-14-6-.30; and

3. The name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period.

4. For facilities subject to 335-14-6-.07(12), provisions that satisfy the requirements of 335-14-6-.07(12)(a)1. and 3.

5. For facilities where the Director has applied alternative requirements at a regulated unit under 335-14-6-.06(1)(f), and/or 335-14-6-.07(1)(d), either the alternative requirements that apply to the regulated unit, or a reference to the enforceable document containing those requirements.

(d) Amendment of plan. The owner or operator may amend the post-closure plan any time during the active life of the facility or during the post-closure care period. An owner or operator with an approved post-closure plan must submit a written request to the Department to authorize a change to the approved plan. The written request must include a copy of the amended post-closure plan for approval by the Department.

1. The owner or operator must amend the post-closure plan whenever:

(i) Changes in operating plans or facility design affect the post-closure plan, or

(ii) Events which occur during the active life of the facility, including partial and final closures, affect the post-closure plan.

(iii) The owner or operator requests the Director to apply alternative requirements to a regulated unit under 335-14-6-.06(1)(f), and/or 335-14-6-.07(1)(d).

2. The owner or operator must amend the post-closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan.

3. An owner or operator with an approved post-closure plan must submit the modified plan to the Department at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred which has affected the post-closure plan. If an owner or operator of a surface impoundment, a waste pile, or a drip pad who intended to remove all hazardous wastes at closure in accordance with 335-14-6-

.11(9)(a), 335-14-6-.12(9)(a), or 335-14-6-.23(6)(a) is required to close as a landfill in accordance with 335-14-6-.14(11), the owner or operator must submit a post-closure plan within 90 days of the determination by the owner or operator or Department that the unit must be closed as a landfill. If the amendment to the post-closure plan is a major modification according to the criteria of 335-14-8-.04(2) and 335-14-8-.04(3), the modification to the plan will be approved according to the procedures in 335-14-6-.07(9)(f).

4. The Department may request modifications to the plan under the conditions described in 335-14-6-.07(9)(d)1. An owner or operator with an approved post-closure plan must submit the modified plan no later than 60 days of the request from the Department. If the amendment to the plan is considered a major modification according to the criteria in 335-14-8-.04(2) and (3), the modifications to the post-closure care plan will be approved in accordance with the procedures in 335-14-6-.07(9)(f). If the Department determines that an owner or operator of a surface impoundment, waste pile, or drip pad who intended to remove all hazardous wastes at closure must close the facility as a landfill, the owner or operator must submit a post-closure plan for approval to the Department within 90 days of the determination.

(e) The owner or operator of a facility with hazardous waste management units subject to these requirements must submit his post-closure plan to the Department at least 180 days before the date he expects to begin partial or final closure of the first hazardous waste disposal unit. The date he "expects to begin closure" of the first hazardous waste disposal unit must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste, or if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator must submit the post-closure plan to the Department no later than 15 days after:

1. Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or
2. Issuance of a judicial decree or final orders under the AHWMMMA to cease receiving wastes or close.

(f) Processing of post-closure plan.

1. The Department shall not approve a post-closure plan until it is determined to be complete. A plan is complete when the Department receives all required information identified in 335-14-6-.07.

2. The Department shall review for completeness every post-closure plan submitted for approval as required by 335-14-6-.07(9). Upon completing the review, the Department shall notify the owner or operator in writing whether the plan is complete. If the plan is incomplete, the Department:

- (i) Shall list the information necessary to make the plan complete;

(ii) Shall specify in the notice of deficiency a date for submitting the necessary information; and

(iii) May request any information necessary to clarify, modify, or supplement previously submitted material; however, requests for items not required by rules 335-14-6-.07(8) through 335-14-6-.07(11) will not render a plan incomplete.

3. Once a post-closure plan is determined to be complete, the Department will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice.

(i) It will also, in response to a request or at its own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a post-closure plan. The Department will give public notice of the hearing at least 30 days before it occurs. [Public notice of the hearing may be (but is not required to be) given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.] The public comment period will automatically extend to the close of any public hearing under 335-14-6-.07(9)(f). The hearing officer may also extend the comment period by so stating at the hearing.

4. After considering any comments submitted during the public comment period and public hearing (if held), the Director will approve or disapprove the plan within 30 days of the close of the comment period. If the Director does not approve the plan, he shall provide the owner or operator with a detailed statement of reasons for the refusal, and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Director will approve or modify this plan in writing within 60 days of receipt. If the Director modifies the plan, this modified plan becomes the approved post-closure plan. The Department must assure that the approved post-closure plan is consistent with rules 335-14-6-.07(8) through 335-14-6-.07(11) and the applicable requirements of rules 335-14-6-.06, 335-14-6-.09(9), 335-14-6-.10(8), 335-14-6-.11(9), 335-14-6-.12(9), 335-14-6-.13(11), 335-14-6-.14(11), and 335-14-6-.23(6). A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

5. If an owner or operator fails or refuses to correct deficiencies in the post-closure plan, the plan may be modified by the Director and appropriate enforcement action may be taken by the Department.

6. The post-closure plan may be processed for approval concurrently with the closure plan required by rule 335-14-6-.07(3) at the request of the Department or the owner or operator, provided that the processing of the post-closure plan does not delay the processing, approval, or implementation of the closure plan.

(g) The post-closure plan and length of the post-closure care period may be modified any time prior to the end of the post-closure care period in either of the following two ways:

1. The owner or operator or any member of the public may petition the Department to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the post-closure care period based on cause.

(i) The petition must include evidence demonstrating that:

(I) The secure nature of the hazardous waste management unit or facility makes the post-closure care requirement(s) unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan (e.g., leachate or groundwater monitoring results, characteristics of the wastes, application of advanced technology or alternative disposal, treatment, or re-use techniques indicate that the facility is secure), or

(II) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(ii) These petitions will be considered by the Department only when they present new and relevant information not previously considered by the Department. Whenever the Department is considering a petition, it will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice. It will also, in response to a request or at its own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Department will give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined.) After considering the comments, the Director will issue a final determination, based upon the criteria set forth in 335-14-6-.07(9)(g)1.

(iii) If the Director denies the petition, he will send the petitioner a brief written response giving a reason for the denial.

2. The Director may tentatively decide to modify the post-closure plan if he deems it necessary to prevent threats to human health and the environment. He may propose to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause or alter the requirements of the post-closure care period based on cause.

(i) The Department will provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing

as in 335-14-6-.07(9)(g)1.(ii). After considering the comments, the Director will issue a final determination.

(ii) The Director will base his final determination upon the same criteria as required for petitions under 335-14-6-.07(9)(g)1.(i). A modification of the post-closure plan may include, where appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the Director would then determine whether the requirement(s) should be permanently discontinued or reinstated to prevent threats to human health and the environment.

(10) Post-closure notices.

(a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Department, a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:

1. Record, in accordance with State of Alabama law, a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

(i) The land has been used to manage hazardous wastes; and

(ii) Its use is restricted under rule 335-14-6-.07; and

(iii) The survey plat and record of the type, location, and the quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by 335-14-6-.07(7) and 335-14-6-.07(10)(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Department; and

2. Submit a certification signed by the owner or operator that he has recorded the notation specified in 335-14-6-.07(10)(b)1. and a copy of the document in which the notation has been placed, to the Department.

(c) If the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal unit was located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soils, he must request a modification to the approved post-closure plan in accordance with the requirements of 335-14-6-.07(9)(g). The

owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of 335-14-6-.07(8)(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of Division 335-14. If the owner or operator is granted approval to conduct the removal activities, the owner or operator may request that the Director approve either:

1. The removal of the notation on the deed to the facility property or other instrument normally examined during title search, or
2. The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

(11) Certification of completion of post-closure care.

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Department, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and a ~~qualified-independent registered~~ Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Department upon request until it releases the owner or operator from the financial assurance requirements for post-closure care under 335-14-6-.08(6)(h).

(12) Post-closure requirements for facilities that obtain enforceable documents in lieu of post-closure permits.

(a) Owners and operators who are subject to the requirement to obtain a post-closure permit under 335-14-8-.01(1)(c), but who obtain enforceable documents in lieu of post-closure permits, as provided under 335-14-8-.01(1)(c)7. must comply with the following requirements:

1. The requirements to submit information about the facility in 335-14-8-.02(19);
2. The requirements for facility-wide corrective action in 335-14-5-.06(12).
3. The requirements of 335-14-5-.06(2) through (11).

(b) 1. The Department, in issuing enforceable documents under 335-14-6-.07(12) in lieu of permits, will assure a meaningful opportunity for public involvement which, at a minimum, includes public notice and opportunity for public comment:

(i) When the Department becomes involved in a remediation at the facility as a regulatory or enforcement matter;

(ii) On the proposed preferred remedy and the assumptions upon which the remedy is based, in particular those related to land use and site characterization; and

(iii) At the time of a proposed decision that remedial action is complete at the facility. These requirements must be met before the Department may consider that the facility has met the requirements of 335-14-8-.01(1)(c)7., unless the facility qualifies for a modification to these public involvement procedures under 335-14-6-.07(12)(b)2. or 3.

2. If the Department determines that even a short delay in the implementation of a remedy would adversely affect human health or the environment, the Department may delay compliance with the requirements of 335-14-6-.07(12)(b)1. and implement the remedy immediately. However, the Department must assure involvement of the public at the earliest opportunity, and, in all cases, upon making the decision that additional remedial action is not needed at the facility.

3. The Department may allow a remediation initiated prior to October 22, 1998 to substitute for corrective action required under a post-closure permit even if the public involvement requirements of 335-14-6-.07(12)(b)1. have not been met so long as the Department assures that notice and comment on the decision that no further remediation is necessary to protect human health and the environment takes place at the earliest reasonable opportunity after October 22, 1998.

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