

APA-1
11/96

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control 335 Department or Agency Environmental Management
Rule No. 335-14-17-.02
Rule Title: Applicability

 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 Mary Edgett

Date September 20, 2011

APA-2
11/96

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION**

NOTICE OF INTENDED ACTION

AGENCY NAME: DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

RULE NO. & TITLE:

335-14-17-.02	<u>Applicability</u> (Amend)
335-14-17-.03	<u>Standards for Used Oil Generators</u> (Amend)
335-14-17-.05	<u>Standards for Used Oil Transporter and Transfer Facilities</u> (Amend)
335-14-17-.06	<u>Standards for Used Oil Processors and Re-Refiners</u> (Amend)
335-14-17-.07	<u>Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery</u> (Amend)
335-14-17-.09	<u>Standards for Disposal of Used Oil</u> (Amend)


INTENDED ACTION: Revise Division 14 of the ADEM Administrative Code.

SUBSTANCE OR PROPOSED ACTION: Revise portions of Division 14 Regulations to incorporate changes to ensure consistency with State and Federal Statutes; to adopt certain State specific requirements; and to provide clarification of State requirements for the management of hazardous waste.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Comments may be submitted in writing or orally at a public hearing to be held Monday, December 5, 2011 at 10:00 a.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: Monday, December 5, 2011 at 5:00 p.m.

CONTACT PERSON AT AGENCY: James L. Bryant, Chief of the Environmental Services Branch, ADEM Land Division (334/271-7771)


Lance R. LeFleur
Director

335-14-17-.02 Applicability.

(1) Applicability. 335-14-17-.02(1) identifies those materials which are subject to regulation as used oil under 335-14-17. 335-14-17-.02(1) also identifies some materials that are not subject to regulation as used oil under 335-14-17, and indicates whether these materials may be subject to regulation as hazardous waste under Chapters 335-14-1 through 335-14-9.

(a) Used oil. The Department presumes that used oil is to be recycled unless a used oil handler disposes of used oil, or sends used oil for disposal. Except as provided in rule 335-14-17-.02(2), the regulations of 335-14-17 apply to used oil, and to materials identified in 335-14-17-.02(1) as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in rule 335-14-2-.03.

(b) Mixtures of used oil and hazardous waste:

1. Listed hazardous waste.

(i) Mixtures of used oil and hazardous waste that is listed in rule 335-14-2-.04 are subject to regulation as hazardous waste under Chapters 335-14-1 through 335-14-9, rather than as used oil under 335-14-17.

(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in rule 335-14-2-.04. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste [for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 335-14-2-Appendix VIII].

(I) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in rule 335-14-17-.03(6)(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oil/fluids are recycled in any other manner, or disposed.

(II) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

2. Characteristic hazardous waste. Mixtures of used oil and hazardous waste that solely exhibit one or more of the hazardous waste characteristics identified in rule 335-14-2-.03 and mixtures of used oil and hazardous waste that are listed in rule 335-14-2-.04 solely because they exhibit one or more of the characteristics of hazardous waste identified in rule 335-14-2-.03 are subject to:

(i) Except as provided in 335-14-17-.02(1)(b)2.(iii), regulation as hazardous waste under Chapters 335-14-1 through 335-14-9 rather than as used oil under 335-14-17, if the resultant mixture exhibits any characteristics of hazardous waste identified in rule 335-14-2-.03; or

(ii) Except as provided in 335-14-17-.02(1)(b)2.(iii), regulation as used oil under 335-14-17, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under rule 335-14-2-.03. Mixing a characteristic hazardous waste with used oil constitutes treatment if the characteristic waste is rendered nonhazardous, except as provided in 335-14-17-.02(1)(b)2.(iii), and requires that the owner/operator comply with the applicable standards and permit requirements set forth in Chapters 335-14-1 through 335-14-9 before any mixing occurs.

(iii) Regulation as used oil under 335-14-17, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability (e.g., ignitable-only mineral spirits), provided that the resultant mixture does not exhibit the characteristic of ignitability under rule 335-14-2-.03(2).

3. Conditionally exempt small quantity generator hazardous waste. Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under rule 335-14-2-.01(5) are subject to regulation as used oil under 335-14-17.

(c) Materials containing or otherwise contaminated with used oil.

1. Except as provided in 335-14-17-.02(1)(c)2., materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(i) Are not regulated as used oil and thus not subject to 335-14-17; and

(ii) If applicable, are subject to the hazardous waste regulations of Chapters 335-14-1 through 335-14-9.

2. Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under 335-14-17.

3. Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under 335-14-17.

Note regarding used oil filters: In order to demonstrate that free-flowing oil has been properly drained or removed from his used oil filters in accordance with rule 335-14-17-.02(1)(c)1., a generator must gravity hot-drain his used oil filters using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining;

(iv) Any other equivalent hot-draining method which removes the free-flowing used oil as approved by the Department.]

(d) Mixtures of used oil with products.

1. Except as provided in 335-14-17-.02(1)(d)2., mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under 335-14-17.

2. Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to 335-14-17 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of rule 335-14-17-.03.

(e) Materials derived from used oil.

1. Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in manner constituting disposal (e.g., re-refined lubricants) are:

(i) Not used oil and thus are not subject to 335-14-17, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of Chapters 335-14-1 through 335-14-9 as provided in 335-14-2.

2. Materials produced from used oil that are burned for energy recovery (e.g., used oil fuels) are subject to regulation as used oil under 335-14-17.

3. Except as provided in 335-14-17-.02(1)(e)4., materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(i) Not used oil and thus are not subject to 335-14-17, and

(ii) Are solid wastes and are therefore subject to the Division 335-13 - Solid Waste regulations. If the materials are listed or identified as hazardous wastes, then they are subject to the applicable hazardous waste regulations found in Chapters 335-14-1 through 335-14-9.

4. Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to 335-14-17.

(f) Wastewater. Wastewater, the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act

(including wastewaters at facilities which have eliminated the discharge of wastewater), contaminated with de minimis quantities of used oil are not subject to 335-14-17. For purposes of 335-14-17-.02(1)(f), "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility.

1. Used oil mixed with crude oil or natural gas liquids (e.g., in a production separator or crude oil stock tank) for insertion into a crude oil pipeline is exempt from 335-14-17. The used oil is subject to 335-14-17 prior to the mixing of used oil with crude oil or natural gas liquids.

2. Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from 335-14-17.

3. Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from 335-14-17 provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to 335-14-17.

4. Except as provided in 335-14-17-.02(1)(g)5., used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from 335-14-17 only if the used oil meets the specification of rule 335-14-17-.02(2). Prior to insertion into the petroleum refining facility process, the used oil is subject to 335-14-17.

5. Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from 335-14-17. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system (e.g., by pouring collected used oil into the wastewater treatment system).

6. Used oil tank bottoms from stock used oil tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from 335-14-17.

(h) Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to 335-14-17 until it is transported ashore.

(i) Used oil containing PCBs. Used oil containing PCBs (as defined at 40 CFR 761.3) at any concentration less than 50 ppm is subject to the requirements of this chapter unless, because of dilution, it is regulated under 40 CFR Part 761 as a used oil containing PCBs at 50 ppm or greater. PCB-containing used oil subject to the requirements of this Chapter may also be subject to the prohibitions and requirements found at 40 CFR Part 761, including § 761.20(d) and (e). Used oil containing PCBs at concentrations of 50 ppm or greater is not subject to the requirements of this chapter, but is subject to the regulation under 40 CFR Part 761. No person may avoid these provisions by diluting used oil containing PCBs, unless otherwise specifically provided for in this Chapter or Part 761. In addition to the requirements of Chapter 335-14-17, marketers and burners of used oil who market used oil containing any quantifiable level of PCBs are subject to the requirements found at 40 CFR 761.20(e).

(2) Used oil specifications. Used oil burned for energy recovery, and any fuel produced from used oil by used oil processing, blending, or other treatment is subject to regulation under 335-14-17 unless it is shown not to exceed any of the allowable levels of the constituents and properties shown in Table 1. Once used oil that is to be burned for energy recovery has been shown not to exceed any allowable level and the person making that showing complies with rules 335-14-17-.08(3), (4), and (5)(b), the used oil is no longer subject to 335-14-17.

Constituent/property	Allowable level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum.
Chromium.	10 ppm maximum.
Lead.	100 ppm maximum.
Flash point	100 °F minimum.
Total halogens.	4,000 ppm maximum. ²

¹ The allowable levels do not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste [see rule 335-14-17-.02(1)(b)].

² Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under rule 335-14-17-.02(1)(b)1.(ii). Such used oil is subject to rule 335-14-7-.08 rather than 335-14-17 when burned for energy recovery, unless the presumption of mixing can be successfully rebutted.

[**Note:** Applicable standards for the burning of used oil containing PCBs are imposed by 40 CFR 761.20(e).]

(3) Prohibitions.

(a) Surface impoundment prohibition. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under Chapters 335-14-5 or 335-14-6.

(b) Use as a dust suppressant. The use of used oil as a dust suppressant is prohibited.

(c) Burning in particular units. Off-specification used oil fuel may be burned for energy recovery in only the following devices:

1. Industrial furnaces identified in rule 335-14-1-.02.
2. Boilers, as defined in rule 335-14-1-.02, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or

(iii) Used oil-fired space heaters provided that the burner meets the provisions of rule 335-14-17-.03(5).

3. Hazardous waste incinerators subject to regulation under rules 335-14-5-.15 and 335-14-6-.15.

Author: James T. Shipman; Bradley N. Curvin; Theresa A. Maines; C. Wayne Crockett.

Statutory Authority: Code of Alabama 1975, §§ 22-22A-4(n), 22-22A-5(3), 22-22A-5(4), 22-22A-5(20), and 22-30-9(5).

History: January 5, 1995.

Amended: January 12, 1996; March 27, 1998; April 2, 1999; April 13, 2001; March 31, 2005; April 4, 2006;XXXXXXXX.