

APA-1
11/96

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control 335 Department or Agency Environmental Management
Rule No. 335-14-8-.03
Rule Title: Permit Conditions-Treatment, Storage and Disposal Facilities

 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 Elliott

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:

335-14-8-.01	<u>General Information</u> (Amend)
335-14-8-.02	<u>Permit Application-Treatment, Storage and Disposal Facilities</u> (Amend)
335-14-8-.03	<u>Permit Conditions-Treatment, Storage and Disposal Facilities</u> (Amend)
335-14-8-.04	<u>Changes to Permits-Treatment, Storage and Disposal Facilities</u> (Amend)
335-14-8-.06	<u>Special Forms of Permits-Treatment, Storage and Disposal Facilities</u> (Amend)
335-14-8-.08	<u>Procedures for Decisionmaking-Treatment, Storage and Disposal Facility Permits</u> (Amend)
335-14-8-.09	<u>Permit Application-Transporters</u> (Amend)
335-14-8-.10	<u>Permit Conditions-Transporters</u> (Amend)
335-14-8-.15	<u>Integration with Maximum Achievable Control Technology (MACT) Standards</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

335-14-8-.03 Permit Conditions - Treatment, Storage and Disposal Facilities.

(1) Conditions applicable to all permits. The following conditions apply to all permits, and shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit.

(a) Duty to comply. The permittee must comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. [See 335-14-8-.06(1).] Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of the AHWMA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) Duty to reapply.

1. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

2. The permittee must submit an application for a new permit for both post-closure and solid waste management unit corrective action at least 180 calendar days before the expiration of this permit. The permittee must reapply in order to fulfill the 30-year post-closure care period required by 335-14-5-.07(8)(a)1. The Department may shorten or extend the post-closure care period applicable to the hazardous waste facility in accordance with 335-14-5-.07(8)(a)2. and 335-14-8-.03(1)(b).

(c) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

(e) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(g) Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege.

(h) Duty to provide information. The permittee shall furnish to the Department, within a reasonable time, any relevant information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit.

(i) Inspection and entry. The permittee shall allow duly designated officers and employees of the Department or their authorized representative, upon the presentation of credentials and other documents as may be required by law to:

1. Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the AHWMA, any substances or parameters at any location.

(j) Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by 335-14-5-.05(4)(b)9., and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the Department at any time. The permittee shall maintain records from all groundwater monitoring wells and associated groundwater surface elevations,

for the active life of the facility, and for disposal facilities for the post-closure care period as well.

3. Records for monitoring information shall include:

- (i) The date, exact place, and times of sampling or measurements;
- (ii) The individual(s) who performed the sampling or measurements;
- (iii) The date(s) analyses were performed;
- (iv) The individual(s) who performed the analyses;
- (v) The analytical techniques or methods used; and
- (vi) The results of such analyses.

(k) Signatory requirements. All applications, reports, or information submitted to the Department shall be signed and certified. [See 335-14-8-.02(2).]

(l) Reporting requirements.

1. Planned changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility.

2. Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store, or dispose of hazardous wastes; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility, until:

(i) The permittee has submitted to the Department by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(ii) (I) The Department has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

(II) Within 15 days of the date of submission of the letter in 335-14-8-.03(1)(l)2.(i), the permittee has not received notice from the Department of its intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

3. Transfers. This permit is not transferable to any person except after notice to the Department. The Department may require modification or revocation and reissuance of the permit to change the name of the permittee

and incorporate such other requirements as may be necessary under the AHWMMMA. (See 335-14-8-.04(1).)

4. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

5. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

6. Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger human health or the environment orally within 24 hours from the time the permittee becomes aware of the circumstances, including:

(I) Information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies.

(II) Any information of a release or discharge of hazardous waste or of a fire or explosion from the HWM facility, which could threaten the environment or human health outside the facility.

(ii) The description of the occurrence and its cause shall include:

(I) Name, address, and telephone number of the owner or operator;

(II) Name, address, and telephone number of the facility;

(III) Date, time, and type of incident;

(IV) Name and quantity of material(s) involved;

(V) The extent of injuries, if any;

(VI) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

(VII) Estimated quantity and disposition of recovered material that resulted from the incident.

(iii) A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance. The Department may waive the five day written notice requirement in favor of a written report within fifteen days.

7. Manifest discrepancy report: If a significant discrepancy in a manifest is discovered, the permittee must attempt to reconcile the discrepancy. If not resolved within fifteen days, the permittee must submit a letter report, including a copy of the manifest, to the Department. [See 335-14-5-.05(3).]

8. Unmanifested waste report: This report must be submitted to the Department within 15 days of receipt of unmanifested waste. [See 335-14-5-.05(7).]

9. Biennial report: A biennial report must be submitted covering facility activities during odd numbered calendar years. [See 335-14-5-.05(6).]

10. Other noncompliance. The permittee shall report all instances of noncompliance not reported under 335-14-8-.03(1)(l)4., (l)5. and (l)6., at the time monitoring reports are submitted. The reports shall contain the information listed in 335-14-8-.03(1)(l)6.

11. Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

(m) Information repository. The Department may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in 335-14-8-.08(1)(c)2. The information repository will be governed by the provisions in 335-14-8-.08(1)(c)3. through 6.

(2) Requirements for recording and reporting of monitoring results.
All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in Chapters 335-14-5 and 335-14-7. Reporting shall be no less than specified in the above regulations.

(3) Establishing permit conditions.

(a) In addition to conditions required in all permits [335-14-8-.03(1)], the Department shall establish conditions, as required on a case-by-case basis, in permits under 335-14-8-.05(1) [duration of permits], 335-14-8-.03(4)(a) [schedules of compliance] and 335-14-8-.03(2) [monitoring].

(b) 1. Each AHWMMMA permit shall include permit conditions necessary to achieve compliance with the AHWMMMA and rules, including each of the applicable requirements specified in Chapters 335-14-5 and 335-14-7 through 335-14-9. In satisfying this provision, the Department may incorporate applicable requirements of Chapters 335-14-5 and 335-14-7 through 335-14-9 directly into the permit or establish other permit conditions that are based on these Chapters.

2. Each permit issued under the AHWMMMA shall contain terms and conditions as the Department determines necessary to protect human health and the environment.

(c) An applicable requirement is a statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. 335-14-8-.08(9) (reopening of comment period) provides a means for reopening permit proceedings at the discretion of the Department where new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in 335-14-8-.04(2).

(d) New or reissued permits, and to the extent allowed under 335-14-8-.04(2), modified or revoked and reissued permits shall incorporate each of the applicable requirements referenced in 335-14-8-.03(2).

(e) All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

(4) Schedules of compliance.

(a) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the AHWMMMA and rules.

1. Any schedules of compliance under 335-14-8-.03(4) shall require compliance as soon as possible.

2. Except as provided in 335-14-8-.03(4)(b)1.(ii), if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of an interim requirement is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

3. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Department in writing, of its compliance or noncompliance with the interim or final requirements.

(b) A permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of hazardous waste and, for treatment and storage HWM facilities, closing pursuant to applicable requirements; and, for disposal HWM facilities, closing and conducting post-closure care pursuant to applicable requirements) rather than continue to operate and meet permit requirements as follows:

1. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit;

2. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements;

3. If the permittee is undecided whether to cease conducting regulated activities, the Department may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements;

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under 335-14-8-.03(4)(b)3.(i) it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities; and

4. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Department, such as resolution of the board of directors of a corporation.

Author: Stephen C. Maurer; Amy P. Zachry; Michael B. Champion; Vernon H. Crockett.

Statutory Authority: Code of Alabama 1975, §§ 22-40-11 and 22-30-12.

History: July 19, 1982.

Amended: April 9, 1986; September 29, 1986; February 15, 1988; August 24, 1989; March 28, 1997; March 27, 1998; April 13, 2001; April 17, 2003; May 27, 2004; XXXXXXX.