

APA-1  
11/96

**TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION**

Control 335 Department or Agency Environmental Management  
Rule No. 335-14-8-.08  
Rule Title: Procedures for Decisionmaking-Treatment, Storage and Disposal  
Facility Permits

         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

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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.

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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 Mandy 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

<u>RULE NO. &amp; TITLE:</u>	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)

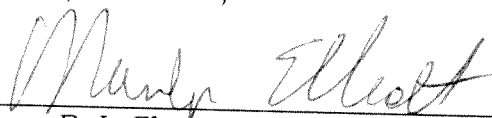
INTENDED ACTION: Revise Division 14 of the ADEM Administrative Code.

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-.08 Procedures for Decisionmaking - Treatment, Storage, and Disposal Facility Permits.**

(1) Specific Procedures Applicable to AHWMMMA Permits.

(a) Pre-application public meeting and notice.

1. Applicability. The requirements of 335-14-8-.08(1) shall apply to all AHWMMMA Part B applications seeking initial permits for hazardous waste management units over which ADEM has permit issuance authority. The requirements of 335-14-8-.08(1) shall also apply to AHWMMMA Part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of 335-14-8-.08(1), a "significant change" is any change that would qualify as a major permit modification under 335-14-8-.04(2). The requirements of 335-14-8-.08(1) do not apply to permit modifications under 335-14-8-.04(2) and (3) or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

2. Prior to the submission of an AHWMMMA Part B permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

3. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under 335-14-8-.08(1)(a)2., and copies of any written comments or materials submitted at the meeting, to the Department as a part of the Part B application, in accordance with 335-14-8-.02(5)(b).

4. The applicant must provide public notice of the pre-application meeting at least 30 days prior to the meeting. The applicant must maintain, and provide to the Department upon request, documentation of the notice.

(i) The applicant shall provide public notice in all of the following forms:

(I) A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in 335-14-8-.08(1)(a)4.(ii), in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Department shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Department determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

(II) A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in

335-14-8-.08(1)(a)4.(ii). If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

(III) A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in 335-14-8-.08(1)(a)4.(ii), at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Department.

(IV) A notice to the Department. The applicant shall send a copy of the newspaper notice to the Department and to the appropriate units of State of Alabama and local government, in accordance with 335-14-8-.08(6)(c)1.(v).

(ii) The notices required under 335-14-8-.08(1)(a)4.(i) must include:

(I) The date, time, and location of the meeting;

(II) A brief description of the purpose of the meeting;

(III) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

(IV) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and

(V) The name, address, and telephone number of a contact person for the applicant.

(b) Public notice requirements at the application stage.

1. Applicability. The requirements of 335-14-8-.08(1) shall apply to all AHWMMA Part B applications seeking initial permits for hazardous waste management units over which ADEM has permit issuance authority. The requirements of 335-14-8-.08(1) shall also apply to AHWMMA Part B applications seeking renewal of permits for such units under 335-14-8-.05(2). The requirements of 335-14-8-.08(1) do not apply to permit modifications pursuant to 335-14-8-.04(2) and (3) or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

2. Notification at application submittal.

(i) The Department shall provide public notice as set forth in 335-14-8-.08(6)(c)1.(iv), and notice to appropriate units of State of Alabama and local government as set forth in 335-14-8-.08(6)(c)1.(v), that a Part B permit application has been submitted to the Department and is available for review.

(ii) The notice shall be published within a reasonable period of time after the application is received by the Department. The notice must include:

- (I) The name and telephone number of the applicant's contact person;
- (II) The name and telephone number of the Department's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;
- (III) An address to which people can write in order to be put on the facility mailing list;
- (IV) The location where copies of the permit application and any supporting documents can be viewed and copied;
- (V) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and
- (VI) The date that the application was submitted.

3. Concurrent with the notice required under 335-14-8-.08(1)(b)2., the Department must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the Department's office.

(c) Information repository.

1. Applicability. The requirements of 335-14-8-.08(1) apply to all applications seeking AHWMMMA permits for hazardous waste management units over which ADEM has permit issuance authority.

2. The Department may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Department shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Department determines, at any time after submittal of a permit application, that there is a need for a repository, then the Department shall notify the facility that it must establish and maintain an information repository. [See 335-14-8-.03(1)(m) for similar provisions relating to the information repository during the life of a permit.]

3. The information repository shall contain all documents, reports, data, and information deemed necessary by the Department to fulfill the purposes for which the repository is established. The Department shall have the discretion to limit the contents of the repository.

4. The information repository shall be located and maintained at a site chosen by the facility. If the Department finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Department shall specify a more appropriate site.

5. The Department shall specify requirements for informing the public about the information repository. At a minimum, the Department shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

6. The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Department. The Department may close the repository at its discretion, based on the factors in 335-14-8-.08(1)(c)2.

(2) Application for a permit.

(a) Any person who requires a permit shall complete, sign, and submit to the Department an application for each permit required under 335-14-8-.01(1).

(b) The Department shall not begin the processing of a permit until the applicant has fully complied with the requirements for that permit as set out in the applicable portions of 335-14-8.

(c) Permit applications must comply with the signature and certification requirements of 335-14-8-.02(2).

(d) The Department shall review for completeness every application for a permit. Upon completing the review, the Department shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Department shall list the information necessary to make the application complete. The Department shall specify in the notice of deficiency a date for submitting the necessary information. The Department may request any information necessary to clarify, modify, or supplement previously submitted material but requests for items not required by rules 335-14-8-.02 or 335-14-8-.13 will not render an application incomplete.

(e) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement action may be taken.

(3) Modification, revocation and reissuance or termination of permits.

(a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Department's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 335-14-8-.04(2) or (4). All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the Department decides that the request is not justified, it shall send the requester a brief written response giving a reason for the decision. Denials of such requests are not subject to public notice, comment or hearings.

(c) 1. If the Department tentatively decides to modify or revoke and reissue a permit under 335-14-8-.04(2), it shall prepare a draft permit under 335-14-8-.08(4) incorporating the proposed changes. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated application. In case of revoked and reissued permits, the Department shall require the submission of a new application.

2. In a permit modification under 335-14-8-.08(3), only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under 335-14-8-.08(3), the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

3. Minor modifications as defined in 335-14-8-.04(3) are not subject to the requirements of 335-14-8-.08(3).

(d) If the Department tentatively decides to terminate a permit under 335-14-8-.04(4), it shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures of any draft permit prepared under 335-14-8-.08(4).

(4) Draft permits.

(a) Once an application is complete, the Department shall tentatively decide whether to prepare a draft permit or deny the application.

(b) If the Department tentatively decides to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit prepared under 335-14-8-.08(4). If the Department's final decision is that the tentative decision to deny the permit application was incorrect, it shall withdraw the notice of intent to deny and proceed to prepare a draft permit under 335-14-8-.08(4)(c).

(c) If the Department decides to prepare a draft permit, it shall prepare a draft permit that contains the following information:

1. All conditions under 335-14-8-.03(1) and (3);
2. All compliance schedules under 335-14-8-.03(4);
3. All monitoring requirements under 335-14-8-.03(2); and
4. Standards for treatment, storage or disposal and other permit conditions under 335-14-8-.03(1).

(d) Draft permits prepared under 335-14-8-.08(4) shall be accompanied by a fact sheet if required under 335-14-8-.08(5).

(5) Fact sheet.

(a) A fact sheet shall be prepared for every draft permit for a major HWM facility and for every draft permit that the Department finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The Department shall send this fact sheet to the applicant and, upon request, to any other person.

(b) The fact sheet shall include when applicable:

1. A brief description of the type of facility or activity which is the subject of the draft permit;

2. The type and quantity of wastes which are proposed to be or are being treated, stored, or disposed of;

3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

4. Reasons why any requested variances or alternatives to required standards do not appear justified;

5. A description of the procedures for reaching a final decision on the draft permit including:

(i) The beginning and ending dates of the comment period under 335-14-8-.08(6) and the address where comments will be received;

(ii) Procedures for requesting a hearing or the date and time of the hearing if scheduled at the time the draft permit is issued, and the nature of the hearing;

(iii) Any other procedures by which the public may participate in the final decision; and

6. Name and telephone number of a person to contact for additional information.

(6) Public notice of permit actions and public comment period.

(a) Scope.

1. The Department shall give public notice that the following actions have occurred:

(i) A permit application has been tentatively denied under 335-14-8-.08(4)(b);

(ii) A draft permit has been prepared under 335-14-8-.08(4)(c); or



(iii) A hearing has been scheduled under 335-14-8-.08(8).

2. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under 335-14-8-.08(3)(b). Written notice of the denial shall be given to the requester and to the permittee.

3. Public notices may describe more than one permit or permit action.

(b) Timing.

1. Public notice of the preparation of a draft permit required under 335-14-8-.08(6)(a) shall allow at least 45 days for public comment.

2. Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be made in the notice in 335-14-8-.08(6) (b)1.)

(c) Public notice of activities described in 335-14-8-.08(6)(a)1. shall be given by the following methods:

1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under 335-14-8-.08(6)(c) may waive his right to receive notice):

(i) The applicant;

(ii) Any other agency which the Department knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit for the same facility or activity;

(iii) Federal and State of Alabama agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State of Alabama Historic Preservation Officers, including any affected States (Indian Tribes). [For purposes of 335-14-8-.08(6)(c), and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States.]

(iv) Persons on a mailing list developed by:

(I) Including those who request in writing to be on the list;

(II) Soliciting persons for area lists from participants in past permit proceedings in that area; and

(III) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and State of Alabama funded newsletters, environmental bulletins, or State of Alabama law journals. The Department may update the mailing list from time to time by requesting written indication of continued interest from

those listed. The Department may delete from the list the name of any person who fails to respond to such a request; and

(v) (I) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(II) To each State of Alabama agency having any authority under State of Alabama law with respect to the construction or operation of such facility.

2. Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

3. Any other method reasonably calculated to give actual notice of the action in question to persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d) Contents.

1. All public notices issued under 335-14-8-.08 shall contain the following minimum information:

(i) Name and address of the office processing the permit action for which the notice is being given;

(ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(iii) A brief description of the business conducted at the facility or activity described in the permit application;

(iv) Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application; and

(v) A brief description of the comment procedures required by 335-14-8-.08(7) and (8) and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.

2. In addition to the general public notice described in 335-14-8-.08(6)(d)1., of the public notice for a hearing under 335-14-8-.08(8) shall contain the following information:

(i) Reference to the date of previous public notices relating to the permit;

(ii) Date, time, and place of the hearing; and

(iii) A brief description of the nature and purpose of the hearing, including applicable rules and procedures.

(e) In addition to the general public notice described in 335-14-8-.08(6)(d)1., all persons identified in 335-14-8-.08(6)(c)1.(i), (ii), and (iii), shall be mailed a copy of the fact sheet, the permit application and the draft permit. Upon determination of the number of these persons, the Department will inform the applicant in writing of that number and the applicant shall provide sufficient copies of the permit application to the Department as requested.

(7) Public comments and request for public hearings.

During the public comment period provided under 335-14-8-.08(6), any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in 335-14-8-.08(11).

(8) Public hearings.

(a) 1. The Department shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of interest in a draft permit(s);

2. The Department may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision;

3. The Department shall hold a public hearing whenever it receives written notice of opposition to a draft permit and a request for a hearing within 45 days of public notice under 335-14-8-.08(6)(b)1.;

4. The Department shall hold a public hearing on all proposed disposal facility permits;

5. Whenever possible the Department shall schedule a hearing under 335-14-8-.08(8) at a location convenient to the nearest population center to the proposed facility;

6. Public notices of the hearing shall be given as specified in 335-14-8-.08(6).

(b) Any person may submit oral or written statements or data concerning the draft permit. Reasonable time limits may be set upon the time allowed for oral statements and the submission of statements in writing may be required. The comment period will automatically extend to the close of any public hearing under 335-14-8-.08(8). The hearing officer may also extend the comment period by so stating at the hearing.

(c) A written transcript of the public hearing shall be available for public inspection.

(9) Obligation to raise issues and provide information during the public comment period.

All persons, including applicants, who believe that any condition of a draft permit is inappropriate or that the Department's tentative decision to deny an application, terminate a permit or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the comment period. Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State of Alabama or federal statutes or regulations, Department documents of general applicability or other generally available reference materials. Commenters shall make supporting documents not already included in the administrative record available to the Department as it shall direct.

(10) Reopening of the public comment period.

(a) 1. The Department may order the comment period reopened if the procedures of 335-14-8-.08(10)(a) could expedite the decision making process. When the public comment period is reopened under 335-14-8-.08(10)(a), all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Department's tentative decision to deny an application, terminate a permit or prepare a draft permit is inappropriate must submit all reasonable available factual grounds supporting their position, including all supporting material, by a date, not less than sixty days after public notice under 335-14-8-.08(10)(a)2., set by the Department. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than twenty days after the date set for filing of the material, set by the Department.

2. Public notice of any comment period under 335-14-8-.08(10)(a) shall identify the issues to which the requirements of 335-14-8-.08(10)(a) apply.

(b) If any data, information, or arguments submitted during the public comment period, including information or arguments required under 335-14-8-.08(9), appear to raise substantial new questions concerning a permit, the Department may take one or more of the following actions:

1. Prepare a new draft permit, appropriately modified, under 335-14-8-.08(4);

2. Prepare a revised fact sheet under 335-14-8-.08(5) and reopen the comment period under 335-14-8-.08(10); or

3. Reopen or extend the comment period under 335-14-8-.08(6) to give interested persons an opportunity to comment on the information or arguments submitted.

(c) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under 335-14-8-.08(6) shall define the scope of the reopening.

(d) Public notice of any of the actions in 335-14-8-.08(10) shall be given as specified in 335-14-8-.08(6).

(11) Response to comments.

(a) At the time any final permit is issued, the Department shall issue a response to comments. This response shall:

1. Specify which provisions, if any, of the draft permit have been changed in the final permit and the reasons for the change; and

2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(b) The response to comments shall be available to the public.

(12) Issuance of permit.

After the close of the public comment period under 335-14-8-.08(6) on a draft permit, the Department shall issue a final permit decision [or a decision to deny a permit for the active life of a AHWMMMA hazardous waste management facility or unit under 335-14-8-.02(20)].

(13) Severability. If an appeal of a final permit decision under 335-14-8-.08(12) is sought under Code of Alabama 1975, § 22-22A-7 and a portion of the permit decision is stayed as provided in Code of Alabama 1975, § 22-22A-7(c)(4):

(a) Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions;

(b) All other provisions shall remain fully effective and enforceable; and

(c) Existing facilities shall remain subject to the interim status permit standards in Chapter 335-14-6 in lieu of any stayed provisions.

**Author:** Stephen C. Maurer; Stephen A. Cobb; Amy P. Zachry;  
C. Edwin Johnston.

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

**History:** July 19, 1982.

**Amended:** April 9, 1986; September 29, 1986; August 24, 1989;  
December 6, 1990; January 1, 1993; March 28, 1997; April 13, 2001;  
March 15, 2002; April 17, 2003;XXXXXXXX.