

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management

Rule No. 335-13-16-.03

Rule Title: Specific Requirements for Land Application of By-Product Materials

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 action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? NO

***** 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

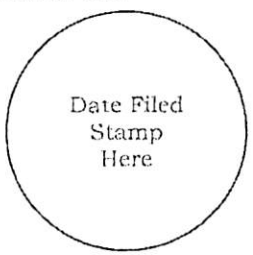
I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer Mary Elliott

Date January 20, 2022

REC'D & FILED JAN 20 2022

LEGISLATIVE SVC AGENCY



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Environmental Management

<u>RULE NO. & TITLE:</u>	335-13-16-.02	Definitions (Amend)
	335-13-16-.03	Specific Requirements for Land Application of By-Product Materials (Amend)
	335-13-16-.04	Registration Application Requirements (Amend)
	335-13-16-.05	Operating Criteria for Storage, Staging and Land Application of By-Product Materials (Amend)
	335-13-16-.06	Operating Criteria for Mine-Land Recovery (Amend)
	335-13-16-.07	Operating Criteria for Food Processing Residuals (Amend)
	335-13-16-.08	Operating Criteria for Food Processing Residuals Treatment Impoundments (New)
	335-13-16-.09	Recordkeeping and Reporting Requirements (New)
	335-13-16-.10	Variances (New)
	335-13-16-Appendix I	Constituent Concentration Limits (New)

INTENDED ACTION: The Alabama Department of Environmental Management proposes to amend rule 335-13-16-.02, 335-13-16-.03, 335-13-16-.04, 335-13-16-.05, 335-13-16-.06, 335-13-16-.07, 335-13-16-.08, 335-13-16-.09, 335-13-16-.10, and 335-13-16-Appendix I

SUBSTANCE OR PROPOSED ACTION:

Revisions to the ADEM Administrative Code Chapter 335-13-16 are being proposed to amend existing regulations for the beneficial use of by-product materials for the purpose of land application. In addition, new standards and procedures for the operating criteria for Food Processing Residuals (FPR) and FPR Treatment Impoundments are being added.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Comments may be submitted in writing or orally at a public hearing to be held at 9:30 a.m., March 17, 2022, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: March 17, 2022 at 5:00 PM

CONTACT PERSON AT AGENCY: Lynn T. Roper, (334) 271-7728



Lance R. LeFleur
Director

335-13-16-.03 Specific Requirements for Land Application of By-Product Materials.

(1) By-product materials may be eligible for consideration for land application under this rule, where such materials meet the following requirements:

(a) The material, proposed for beneficial use, must be a "by-product" as defined in 335-13-16-.02; and
~~16-.02.~~

(b) ~~The by-product material proposed for beneficial use must: be adequately characterized to confirm that the proposed use is adequately protective of the human health and the environment and that the by product possesses physical and/or chemical properties which make the material suitable for the intended agronomic rate as defined in 335-13-16-.02.~~

1. Be characterized [as required by ADEM Admin. Code r. 335-13-16-.04(2)(c)10.];

2. Possess physical and/or chemical properties which make the material suitable for the intended agronomic application rate as defined in ADEM Admin. Code r. 335-13-16-.02; and

3. Not be a hazardous waste as defined in ADEM Admin. Code r. 335-14-1-.02.

~~(c) The by product material proposed for beneficial use must not be a hazardous waste as defined in 335-14-1-.02.~~

(2) ~~The proposed beneficial use must conform to the following use specific standards. Residential End-Users are exempt from this chapter unless an immediate threat to human health or the environment is observed in association with this use.~~

(3) Generators and/or Distributors conducting Mine-Land Recovery activities must utilize biosolids, as defined in this chapter, and must adhere to all applicable requirements of 40 C.F.R. § 503.

(4) The proposed beneficial use must conform to the following use-specific standards:

(a) ~~The proposed beneficial use must utilize a by-product in such a manner that the by-product serves as a suitable replacement for a raw material or other feedstock and, through its use, provides a benefit comparable to the material it is proposed to replace;~~

(b) The proposed beneficial use of by-product material must not be managed in a manner that constitutes serve the purpose of discarding or disposing of the by product, as determined provided in ADEM Admin. Code r. 335-13-16-.04(8)(c); by the Department.

(c) An Operations Plan (OP) and a Nutrient Management Plan (NMP) are required for the site or sites where by-product materials will be applied. These plans are to be amended updated as application site locations or conditions change. The amended plan must be submitted in accordance with ADEM Admin. Code r. 335-13-16-.04(5)(b), except as provided below: Class A biosolids, and industrial by products approved by the Department on a case-by case basis, are exempt from the requirements to develop a Nutrient Management Plan.

1. An NMP is not required for properties on which only Class A Biosolids (e.g. not mixed with other materials) are land applied; and

2. An exemption from the development of an NMP may be requested for an industrial by-product. This request must include by-product characterization as required by ADEM Admin. Code r. 335-13-16-.07(3). An industrial by-product proposed to be exempted from the requirement for a NMP may include materials from privately owned industrial facilities which treat self-generated industrial wastewater, and shall not contain the following:

i. FPR material;

ii. Material that is generated or treated by publically owned or privately owned treatment works treating domestic sewage and municipal wastewater; or

iii. Hazardous waste as defined in ADEM Admin. Code r. 335-14-1-.02.

~~1. An industrial by product proposed to be exempted from the development of a nutrient management plan pursuant to the citation above, must not contain food processing waste material nor sewage sludge that is generated or treated by publically owned or privately owned treatment works treating domestic sewage and municipal wastewater. Industrial by-products may include materials from privately owned industrial facilities which treat domestic sewage along with industrial wastewater.~~

~~(d) Applicators and end users who do not own the property on which the by product material is proposed to be utilized shall obtain written consent from the landowner prior to the land application of by product material. Distributors who do not own the property on which the by-product material is proposed to be utilized shall obtain written consent from the landowner prior to the land application of by-product material. The Distributor must provide the landowner information including the material characterization as required by ADEM Admin. Code r. 335-13-16-.07(3), any potential odor issues, and any crop restrictions; and~~

~~(e) These rules and regulations do not supersede any other state or federal regulations regarding beneficial use or waste disposal. Persons generating or utilizing, distributors, and end users of beneficially used by-product materials shall comply with this chapter and any other applicable state and federal rules and regulations.~~

(5) The placement, dumping, disposal, or other use of a by-product material in a manner inconsistent with the requirements of this chapter may be considered an unauthorized dump as defined in ADEM Admin Code r. 335-13-1-.03. The responsible party may be subject to revocation of the Registration and enforcement action by the Department in accordance with ADEM Admin. Code r. 335-13-1-.13.

~~(3) (6) Land application of by product materials regulated under ADEM Admin. Code div. 335-6 Volume 1 is exempt from the requirements of this chapter. Land application of by-product materials regulated by the following are exempt from the requirements of this chapter:~~

(a) ADEM Admin. Code chap. 335-6-8 (Ground Water – and – Underground Injection Control);

(b) ADEM Admin. Code chap. 335-6-7 (...Animal Mortality Management Requirements for Owners and Operators of Animal Feeding Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs); and

(c) _____ Products licensed by the Alabama Department of Agriculture and Industries as a commercial fertilizer, fertilizer material, soil conditioner, or soil amendment or permitted by the Alabama Department of Agriculture and Industries as a liming material.

Author: S. Scott Story; Richard T. Kelsey

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

History: Filed: February 28, 2020; Effective: April 13, 2020; Proposed: January 20, 2022