

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management
Rule No. 335-13-16-.04
Rule Title: Registration Application Requirements

 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.

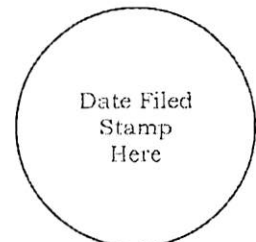
Signature of certifying officer Nancy Elliott

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-.04 Notification and/or Registration Application Requirements.

~~(1) Initial Notification. In order for the Department to develop the universe of potentially regulated entities, the Department requires the following information: Generators that produce one hundred (100) dry short tons per calendar year or more of eligible by-product material for beneficial use in the State of Alabama must electronically submit the following items to the Department:~~

~~(a) All generators and distributors or suppliers that handle and/or use by product material for beneficial use, and are not exempt from the requirements of this chapter, must within 90 days of the effective date of these rules, notify the Department in writing of the following information: A completed electronic ADEM Form 569 with the applicable fees in accordance with ADEM Admin. Code div. 335-1;~~

~~1. The quantity of by product materials in dry tons handled during the previous calendar year;~~

~~2. Type(s) of by product materials land applied in the past calendar year; and~~

~~3. Counties within the State where the land application has occurred within the past calendar year.~~

~~(b) All generators and distributors or suppliers desiring to handle and/or use by-product material for beneficial use after the effective date of this chapter shall notify the Department in writing with the following information at least forty five (45) days prior to handling and/or using by product material for beneficial use: The type of material being generated, such as FPR, Class A Biosolids, Class B Biosolids, etc., and expected quantity (in dry short tons) to be generated for use under this chapter per calendar year; and~~

~~1. The expected quantity of by product materials in dry tons to be handled during a calendar year; and,~~

~~2. The expected type(s) of by product materials to be applied in a calendar year; and~~

~~3. The counties within the State where the land application is expected to occur in a calendar year.~~

~~(c) A list of Distributors that manage and land apply the by-product materials for beneficial use in the State of Alabama.~~

~~(2) Registration Application Requirements: Distributors that manage and land apply one hundred (100) dry short tons per year or more of eligible by-product material for beneficial use in the State of Alabama must electronically submit the following items to the Department:~~

~~(a) Generators that handle 100 dry tons per year or more of eligible by product material for beneficial use must submit the following items to the Department: A completed ADEM Form 569 with the applicable fees in accordance with ADEM Admin. Code div. 335-1;~~

~~1. A completed application form with the applicable fees, and;~~

~~2. A list of distributors or suppliers that handle the by product materials.~~

~~(b) Distributors or Suppliers subject to the requirements of this chapter that handle 100 dry tons per year or more of eligible by-product material for beneficial use must submit the following items to the Department: The type of material being distributed, such as FPR, Class A Biosolids, Class B Biosolids, etc., and expected quantity (in dry short tons) to be land applied under this chapter per calendar year;~~

~~1. A completed application form with the applicable fees;~~

~~2. A Nutrient Management Plan(s) prepared and signed by a person certified by the Natural Resources Conservation Service (NRCS) for nutrient management planning or prepared, signed and sealed by a professional engineer licensed in the State of Alabama, or prepared and signed by other certified professionals approved by the Department.~~

~~(c) A NMP which, at a minimum, includes the following:~~

~~(i) 1. The Nutrient Management Plan, at a minimum, should include the following: Signature certification, including applicable credentials, clearly displayed on the first page of the plan, that the plan was prepared by a person certified by the Natural Resources Conservation Service (NRCS) for nutrient management planning, by a professional engineer licensed in the State of Alabama, or by other appropriate professionals approved by the Department;~~

~~(i) 2. Property description; Brief site specific description of the operation; including the type/classification of material being land applied;~~

~~(ii) 3. Brief description of the operation; Crops and soils information, including: site suitability for proposed application activities, crop rotation plans, harvesting cycle plans, and seasonal land application schedule;~~

~~(iii) 4. Crops and soils information; Yield goal for the given crop and site, or Department approved equivalent;~~

~~(iv) 5. Yield goal information; The recommended nitrogen and phosphorus application rates for the crops to be grown on each application zone. Limits for nitrogen and phosphorous may be imposed by the Department to protect human health and the environment;~~

~~(v) 6. The recommended nitrogen application rates for the crops to be grown on each application zone; Timing and specific method of applications for each site;~~

~~(vi) 7. Timing and method of applications; and, Description of best management practices to be implemented at each site to protect human health and the environment including but not limited to preventing run-off, managing run-on, and minimizing odors;~~

~~(vii) 8. Best management practices to protect human health and the environment. Property description(s), site(s) address(es), site(s) coordinates in decimal degrees, and aerial view of property boundaries;~~

~~9. Provide copies of signed permission by the landowners where by-products are land applied. This permission shall include acknowledgement of compliance with ADEM Admin. Code r. 335-13-16-.03(4)(d); and~~

10. Testing analysis/results for the ceiling concentration of constituents listed in ADEM Admin. Code r. 335-13-16-Appendix I shall be provided and the concentrations shall not exceed those listed. Testing for fecal coliform shall be conducted in accordance with 40 C.F.R. § 503.32(b)(2). Fecal coliform limits may be imposed by the Department to protect human health and the environment. The Department may require testing for additional constituents as applicable.

~~3. (d) An Operations Plan for handling and transportation of the by product material which, at a minimum shall include best management practices for minimizing the following:~~

1. Signature certification, including applicable credentials, clearly displayed on the first page of the plan that the plan was prepared by a person certified by the NRCS for nutrient management planning, by a professional engineer licensed in the State of Alabama, or by other appropriate professionals approved by the Department; and

2. The plan shall include best management practices and mitigation actions detailing the handling, transportation, and application of the by-product material to minimize:

~~(i) Vectors and birds;~~

~~(ii) Birds, Odors and fugitive air borne dust;~~

~~(iii) Spills; and, Odors;~~

~~(iv) The amount of time in transit, Fugitive air borne dust;~~

~~(v) Spills; and~~

(vi) Time in transit, with consideration to the type of material, which includes efforts made to avoid traffic congestion, accidents, populated areas, or other factors as determined by the Department.

~~(e) (3) All entities subject to 335-13-16-.04(2)(a) or (2)(b) shall submit a registration application to the Department within one hundred eighty (180) days of the effective date of 335-13-16. New entities desiring to begin operation after the effective date of 335-13-16 must submit a completed registration application to the Department prior to beneficially using a by product as required by 335-13-16-.04(2)(a) or (2)(b). All Distributors that manage or land apply less than one hundred (100) dry short tons per year of eligible by-product material for beneficial use in the State of Alabama must maintain all required records to be available for inspection upon request in accordance with ADEM Admin. Code r. 335-13-16-.04(2)(c) and (d).~~

~~(3) (4) Upon the review and determination that an application is consistent with these regulations, the Department shall issue a registration to the applicant, subject to the following conditions: No later than October 1, 2022, FPR Treatment Facilities subject to the requirements of this chapter that manage eligible by-product materials for beneficial use in the State of Alabama must electronically submit the following items to the Department:~~

(a) Registrations issued by the Department are only valid for uses conducted within the state of Alabama. A completed ADEM Form 569 with the applicable fees in accordance with ADEM Admin. Code div. 335-1; and

~~(a)(b)~~ All items required in ADEM Admin Code r. 335-13-16-.08. ~~Upon utilization of the material, a by product for which a Registration has been issued shall no longer be subject to 335-13-1 through 335-13-15 regulations provided the by product is utilized in a manner consistent with the terms and conditions of the Registration.~~

(5) Registration Modifications.

(a) A request to modify an existing registration that changes the registration type and/or causes changes to the previously issued registration, outside of the registration renewal period, must electronically submit ADEM Form 569, all applicable fees in accordance with ADEM Admin. Code div. 335-1, and any further pertinent records at least thirty (30) days before the desired registration change.

(b) Submissions of addendums to the NMP and/or OP, excluding those defined in ADEM Admin. Code r. 335-13-16-.04(5)(a), are considered Registration Information Updates. A Registration Information Update including addendums or additions to the approved NMP and OP must be electronically submitted for Department review at least fourteen (14) calendar days prior to the anticipated initial land application date. Upon determining the Registration Information Update to be complete, the Department will acknowledge completion to the registrant and incorporate the updated information into the current registration.

(6) Beginning on October 1, 2022, these registrations will transition to a three (3) year registration cycle.

(7) Applicants who submit a complete registration renewal application at least thirty (30) days prior to the expiration date of their existing registration, shall have their existing registration administratively extended, until such time as the Department makes a final determination on the registration renewal application.

(8) Upon the Department's review and determination that an application is consistent with these regulations, the Department shall issue, renew, or modify a registration to the applicant, subject to the following conditions:

(a) Registrations issued by the Department are only valid for activities conducted within the State of Alabama.;

(b) By-product material for which a Registration has been issued shall no longer be subject to ADEM Admin. Code chaps. 335-13-1 through 335-13-15 provided the by-product is utilized in a manner consistent with the terms and conditions of the Registration and the requirements of ADEM Admin. Code chap. 335-13-16;

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

~~(e)(d)~~ The issuance of a Registration does not exempt the ~~generator, distributor, nor end user~~ registrant from compliance with other applicable regulatory requirements when managing or beneficially using a by-product under these regulations.; and

~~(d)(c)~~ If a ~~registrant~~ registrant or applicant is determined to be in significant noncompliance

with the requirements of this chapter, the ~~R~~egistration may be revoked or the application for ~~r~~Registration may be denied by the Department.

~~(4) All generators and distributors or suppliers that handle less than 100 dry tons per year of eligible by product material for beneficial use along with all applicators and end users must maintain records on site as contained in paragraphs (2)(b)2. and 3. of this section.~~

~~(a) The placement, dumping 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 under 335-13-1.03 and the responsible party may be subject to enforcement actions by the Department under 335-13-1.13.~~

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