

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management

Rule No. 335-14-5-.01

Rule Title: General

 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 *Mark Elliott*

Date: July 21, 2020

REC'D & FILED
JUL 20 2020
(DATE FILED)
(STAMP) LEGISLATIVE SVC AGENCY

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DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME: DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

RULE NO. & TITLE:

335-14-5-.01 General (Amend)
335-14-5-.02 General Facility Standards (Amend)
335-14-5-.06 Releases from Solid Waste Management Units (Amend)
335-14-5-.07 Closure and Post-Closure (Amend)
335-14-5-.10 Tank Systems (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 September 17, 2020 at 10:30 AM 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: September 17, 2020

CONTACT PERSON AT AGENCY: Sonja Favors, Chief of the Industrial Hazardous Waste Branch, ADEM Land Division (334-279-3067)



Lance R. LeFleur
Director

335-14-5-.01 General.

(1) Purpose, scope and applicability.

(a) The purpose of 335-14-5 is to establish minimum standards which define the acceptable management of hazardous waste.

(b) The standards in 335-14-5 apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in 335-14-5 or 335-14-2.

(c) **[Reserved].**

(d) **[Reserved].**

(e) **[Reserved].**

(f) **[Reserved].**

(g) The requirements of 335-14-5 do not apply to:

1. The owner or operator of a facility permitted by the Department to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under 335-14-5 or 335-14-3-.01(4);

2. The owner or operator of a facility managing recyclable materials described in 335-14-2-.01(6)(a)2., 3. and 4. (except to the extent that requirements of 335-14-5 are referred to in 335-14-17 or 335-14-7-.03, 335-14-7-.06, 335-14-7-.07 or 335-14-7-.08);

3. A generator accumulating waste on-site in compliance with 335-14-3-.01, except as otherwise provided in 335-14-3;

4. A farmer disposing of waste pesticides from his own use in compliance with 335-14-3-.07(1);

5. The owner or operator of a totally enclosed treatment facility, as defined in 335-14-1-.02;

6. The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in 335-14-1-.02, provided that if the owner or operator is treating hazardous ignitable (D001) wastes [other than the D001 High TOC Subcategory defined in 335-14-9-.04(1), Table "Treatment Standards for Hazardous Wastes"], or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in 335-14-5-.02(8)(b).

7. **[Reserved].**

8.(i) Except as provided in 335-14-5-.01(1)(g)8.(ii), a person engaged in treatment or containment activities during immediate response to any of the following situations:

- (I) A discharge of a hazardous waste;
- (II) An imminent and substantial threat of a discharge of hazardous waste;
- (III) A discharge of a material which, when discharged, becomes a hazardous waste;
- (IV) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 335-14-1-.02.

(ii) An owner or operator of a facility otherwise regulated by Division 335-14 must comply with all applicable requirements of 335-14-5-.03 and 335-14-5-.04;

(iii) Any person who is covered by 335-14-5-.01(1)(g)8.(i) and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of 335-14-5 and 335-14-8;

(iv) In the case of an explosives or munitions emergency response, if a Federal, State of Alabama, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA Identification numbers or Alabama Hazardous Waste Transport Permits and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

9. **[Reserved].**

10. The addition of sorbent material to waste in a container or the addition of waste to sorbent material in a container, provided that these activities occur at the time waste is first placed in the container, and 335-14-5-.02(8)(b) and 335-14-5-.09(2) and (3) are complied with.

11. A generator treating hazardous wastes, generated on-site, by evaporation in tanks or containers, provided such treatment complies with 335-14-8-.01(1)(c)2.(viii).

12. Universal waste handlers and universal waste transporters [as defined in 335-14-1-.02] handling the wastes listed below. These handlers are subject to regulation under 335-14-11, when handling the below listed universal wastes:

- (i) Batteries as described in 335-14-11-.01(2);
- (ii) Pesticides as described in 335-14-11-.01(3);
- (iii) Mercury-containing equipment as described in 335-14-11-.01(4);
and
- (iv) Lamps as described in 335-14-11-.01(5); and
- (v) ~~Aerosol cans as described in 335-14-11-.01(6);~~

13. Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in 335-14-1-.02. Reverse distributors are subject to regulation under 335-14-7-.16 in lieu of 335-14-5 for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(h) The requirements of 335-14-5 apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in 335-14-9.

(i) 335-14-7-.13(6) identifies when the requirements of 335-14-5-.01 apply to the storage of military munitions classified as solid waste under 335-14-7-.13(3). The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in 335-14-1 through 335-14-9.

(j) The requirements of 335-14-5-.02, 335-14-5-.03, 335-14-5-.04 and 335-14-5-.06(12) do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional RCRA permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, 335-14-5-.02, 335-14-5-.03, 335-14-5-.04 and 335-14-5-.06(12) do apply to the facility subject to the traditional RCRA permit.) Instead of the requirements of 335-14-5-.02, 335-14-5-.03, and 335-14-5-.04 owners or operators of remediation waste management sites must:

1. Obtain an EPA identification number by applying to ADEM using ADEM Form 8700-12;

2. Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store or dispose of the waste according to 335-14-5 and 335-14-9, and must be kept accurate and up to date;

3. Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Department that:

(i) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock who may enter the active portion of the remediation waste management site; and

(ii) Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, will not cause a violation of 335-14-5;

4. Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and must remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner/operator must take remedial action immediately;

5. Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of 335-14-5, and on how to respond effectively to emergencies;

6. Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive and incompatible waste;

7. For remediation waste management sites subject to regulation under 335-14-5-.09 through 335-14-5-.15 and 335-1-5-.24, the owner/operator must design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of 335-14-5-.02(9)(b);

8. Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave;

9. Develop and maintain a construction quality assurance program for all surface impoundments, waste piles and landfill units that are required to comply with 335-14-5-.11(2)(c) and (d), 335-14-5-.12(2)(c) and (d), and 335-14-5-.14(2)(c) and (d) at the remediation waste management site, according to the requirements of 335-14-5-.02(10);

10. Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation

waste management units at the site. The goal of the plan must be to minimize the possibility of, and the hazards from, a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store and dispose of the hazardous remediation waste in question, and must be implemented immediately in the event of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;

11. Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. The emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan;

12. Develop, maintain and implement a plan to meet the requirements in 335-14-5-.01(1)(j)2. through (j)6. and (j)9. through (j)10.; and

13. Maintain records documenting compliance with 335-14-5-.01(1)(j)1. Through (j)12.

(2) **[Reserved].**

(3) Relationship to interim status standards. A facility owner or operator who has fully complied with the requirements for interim status must comply with the Rules specified in 335-14-6 in lieu of 335-14-5, until final administrative disposition of his Hazardous Waste Facility Permit is made; except as provided under 335-14-5-.19.

(4) Imminent hazard action. Notwithstanding any other provisions of these Rules, enforcement actions may be brought pursuant to Section 7003 of RCRA and the AHWMA.

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Statutory Authority: Code of Alabama 1975, §§22-30-11, 22-30-16.

History: November 19, 1980. **Amended:** Effective: April 9, 1986; **Amended:** Effective: August 24, 1989; **Amended:** Effective: January 5, 1995; **Amended:** Effective: April 28, 1995; **Amended:** Effective: January 12, 1996; **Amended:** Effective: March 27, 1998; **Amended:** Effective: March 31, 2000; **Amended:** Effective: April 13, 2001; **Amended:** Effective: March 15, 2002; **Amended:** Effective: April 17, 2003; **Amended:** Effective: March 31, 2005; **Amended:** Effective: April 4, 2006; **Amended:** Effective: April 3, 2007; **Amended:** Effective: April 3, 2012; **Amended:** Effective: April 6, 2018; **Amended:** Filed: February 28, 2020; Effective: April 13, 2020; **Amended:** Proposed: July 21, 2020.