

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management
Rule No. 335-14-8-.04
Rule Title: Changes to Permit-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 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 Mandy Elliott

Date November 18, 2022

REC'D & FILED
NOV 18 2022
LEGISLATIVE SERVICES AGENCY

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 335-14-8-.01 General Information (Amend)
335-14-8-.04 Changes to Permit- Treatment, Storage, and Disposal
Facilities (Amend)
335-14-8-.08 Procedures for Decision Making-Treatment, Storage, and
Disposal Facility Permits (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 January 24, 2023, at 2:00 pm 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: January 24, 2023

CONTACT PERSON AT AGENCY: Lynn Roper, Chief, Office of Land Services (334-271-7728)



Lance R. LeFleur
Director

335-14-8-.04 Changes to Permit - Treatment, Storage, and Disposal Facilities.

(1) Transfer of permits.

A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued [under 335-14-8-.04(2)(b)2., or a minor modification made under 335-14-8-.04(3)(a)1.(vii)], to identify the new permittee and incorporate such other requirements as may be necessary under the AHWMA.

(2) Major modification or revocation and reissuance of permits.

When the Department receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see 335-14-8-.03(1)), receives a request for modification or revocation and reissuance under 335-14-8-.08(2), or conducts a review of the permit file, it may determine whether or not one or more of the causes listed in 335-14-8-.04(2)(a) and (b) for modification, or revocation and reissuance, or both exist. If cause exists, the Department may modify, or revoke and reissue, the permit accordingly, subject to the limitations of 335-14-8-.04(2)(c), and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. (See 335-14-8-.08(3)(c)2.) If cause does not exist under 335-14-8-.04(2) or 335-14-8-.04(3), the Department shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in 335-14-8-.04(3) for a minor modification, the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in 335-14-8 followed.

(a) Causes for modification. The following are causes for modification, but not revocation and reissuance, of permits; the following may be causes for revocation and reissuance, as well as modification, when the permittee requests or agrees:

1. Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit;

2. Information. The Department has received information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance or test methods) and would have justified the application of different permit conditions at the time of issuance;

3. New statutory requirements or rules. The standards or rules on which the permit was based have been changed by statute, through promulgation

of new or amended standards or rules, or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause as follows:

(i) Department may modify the permit when the standards or rules on which the permit was based have been changed by statute or amended standards or rules.

(ii) Permittee may request modification when:

(I) The permit condition to be modified was based on a promulgated rule under Chapters 335-14-1 through 335-14-9; and

(II) The Department has revised, withdrawn, or modified that portion of the rule on which the permit condition was based; or

(III) A permittee requests modification in accordance with 335-14-8-.08(3) within ninety (90) days after action on which the request is based.

(iii) For judicial decisions, a court of competent jurisdiction has remanded and stayed Department promulgated rules if the remand and stay concern that portion of the rules on which the permit condition was based or a request is filed by the permittee in accordance with 335-14-8-.08(3) within ninety (90) days of judicial remand;

4. The Department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy;

5. The Department may also modify a permit:

(i) When modification of a closure plan is required under 335-14-5-.07(3)(c) or (9)(d);

(ii) After the Department receives the notification of expected closure under 335-14-5-.07(4), when the Department determines that extension of the 90 to 180 day periods under 335-14-5-.07(4), modification of the 30-year post-closure period under 335-14-5-.07(8)(a), a continuation of security requirements under 335-14-5-.07(8) (b), or permission to disturb the integrity of the containment system under 335-14-5-.07(8)(c) are unwarranted;

(iii) When the permittee has filed a request under 335-14-5-.08(8)(c) for a variance to the level of financial responsibility or when the Department demonstrates under 335-14-5-.08(8)(d) that an upward adjustment of the level of financial responsibility is required;

(iv) When the corrective action program specified in the permit under 335-14-5-.06(11) has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable period of time;

(v) To include a detection monitoring program meeting the requirements of 335-14-5-.06(9), when the owner or operator has been conducting a compliance monitoring program under 335-14-5-.06(10) or a corrective action program under 335-14-5-.06(11) and compliance period ends before the end of the post-closure care period for the unit;

(vi) When a permit requires a compliance monitoring program under 335-14-5-.06(10), but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard;

(vii) To include conditions applicable to units at a facility that were not previously included in the facility's permit; and

(viii) When a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions.

6. Notwithstanding any other provision in 335-14-8-.04(2), when a permit for a land disposal facility is reviewed by the Department under 335-14-8-.05(1)(d), the Department shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in Chapters 335-14-1 through 335-14-8.

(b) The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under 335-14-8-.04(4) and the Department determines that modification or revocation and reissuance is appropriate;

2. The Department has received notification (as required in the permit, see 335-14-8-.03(1)(l)3. of a proposed transfer of the permit).

(c) Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance;

(d) Newly listed or identified wastes and units.

1. The permittee is authorized to continue to manage wastes listed or identified as hazardous under Chapter 335-14-2, or to continue to manage hazardous waste in units newly regulated as hazardous waste units, if:

(i) The unit was in existence as a hazardous waste facility with respect to the newly listed or characterized waste or newly regulated waste management unit on the effective date of the rule listing or identifying the waste, or regulating the unit;

(ii) The permittee submits a minor modification request under 335-14-8-.04(3)(a)15. on or before the date on which the waste or unit becomes subject to the new requirements;

(iii) The permittee is in compliance with the applicable standards of Chapters 335-14-6 and 335-14-7;

(iv) Unless 335-14-8-.04(2)(d)2. applies, the permittee submits a complete permit modification request under 335-14-8-.04(2) within 180 days after the effective date of the rule listing or identifying the waste, or subjecting the unit to 335-14 management standards; and

(v) In the case of land disposal units, the permittee certifies that such unit is in compliance with all applicable requirements of Chapter 335-14-6 for groundwater monitoring and financial responsibility on the date 12 months after the effective date of the rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit.

(vi) If the owner or operator fails to clarify compliance with all requirements of 335-14-8-.04(2)(d)1.(i) through (d)1.(v), he or she shall lose authority to operate under 335-14-8-.04(2).

2. A major permit modification shall not be required to add newly listed or identified wastes to a facility's permit provided:

(i) The Permittee has complied with 335-14-8-.04(2)(d)1.(i), (ii), and (iii);

(ii) The newly listed wastes are managed in containers, tanks, surface impoundments, or landfills;

(iii) The management of the wastes does not require the addition of units to the permit or the modification of permitted units;

(iv) The management of the wastes does not require a change in the treatment, storage, or disposal processes or management standards for the facility;

(v) The wastes are not dioxin-containing wastes (F020, F021, F022, F023, F026, F027, F028);

(vi) The unit(s) have previously received wastes of the same type (e.g., incinerator scrubber water, incinerator ash); and

(vii) In the case of surface impoundments and landfills, the wastes are:

(I) Wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in rule 335-14-9-.01(8)(a)2.(ii) and provided that the unit meets the minimum technological requirements stated in 335-14-9-.01(5)(h)2; or

(II) Residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 335-14-9-.01(5)(h)2.

(e) Military hazardous waste munitions treatment and disposal.

1. The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if:

(i) The facility was in existence as a hazardous waste facility, and the facility was already permitted to handle the waste military munitions, on the date when the waste military munitions became subject to hazardous waste regulatory requirements;

(ii) The permittee submits a minor modification request under 335-14-8-.04(3)(a)16. to remove or amend the permit provision restricting the receipt of off-site waste munitions on or before the date on which the waste military munitions become subject to the hazardous waste regulatory requirements;

(iii) The permittee is in compliance with the applicable standards of Chapters 335-14-6 and 335-14-7; and

(iv) The permittee submits a complete permit modification request under 335-14-8-.04(2) within 180 days of the date when the waste military munitions became subject to hazardous waste regulatory requirement.

2. If the owner or operator fails to clarify compliance with all requirements of 335-14-8-.04(2)(e)1.(i) through (e)1.(iv), he or she shall lose authority to operate under 335-14-8-.04(2).

(3) Minor modifications of permits. Upon the consent of the permittee, the Department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in 335-14-8-.04(3), without following the procedures of rule 335-14-8-.08. Any permit modification not processed as a minor modification under 335-14-8-.04(3) must be made for cause and with rule 335-14-8-.08 draft permit and public notice as required in 335-14-8-.04(2).

(a) Except as provided in 335-14-8-.04(3)(b), minor modifications are limited to the following actions:

1. General Permit Provisions.

(i) Administrative and informational changes.

(ii) Correction of typographical errors.

(iii) Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls).

(iv) Changes in the frequency of, or procedures for, monitoring, reporting, sampling, or maintenance activities by the permittee to provide for more frequent monitoring, reporting, sampling, or maintenance.

(v) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement.

(vi) Change in expiration date of permit to allow earlier permit termination. This does not apply to permits which require post-closure care, post-closure monitoring or corrective action to be conducted.

(vii) Allow for a change in ownership or operational control of a facility where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees has been submitted to the Department. Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the previous owner or operator shall comply with the requirements of rule 335-14-5-.08 (Financial Requirements), until the new owner or operator has demonstrated to the Department that he is complying with the requirements of that rule. The new owner or operator must demonstrate compliance with rule 335-14-5-.08 requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the Department by the new owner or operator of compliance with rule 335-14-5-.08, the Department shall notify the previous owner or operator in writing that he no longer needs to comply with rule 335-14-5-.08 as of the date of demonstration.

(viii) Changes to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility).

(ix) Changes to remove permit conditions applicable to a unit excluded under the provisions of 335-14-2-.01(4).

(x) Changes in the expiration date of a permit issued to a facility at which all units are excluded under the provisions of 335-14-2-.01(4).

2. General Facility Standards.

(i) Changes to waste sampling or analysis methods which are made to conform with Department guidance or regulations.

(ii) Changes to analytical quality assurance/control plan which are made to conform with Department guidance or regulations.

(iii) Changes in procedures for maintaining the operating record.

(iv) Changes in inspection schedules to increase inspection frequency.

(v) Changes in the training plan which do not affect the type or decrease the amount of training given to employees.

(vi) Changes in the contingency plan which are limited to:

(I) The replacement with functionally equivalent equipment, upgrade, or relocation of emergency equipment listed in the contingency plan.

(II) The inclusion of additional equipment in the contingency plan.

(III) Changes in name, address or phone number of coordinators or other persons or agencies identified in the contingency plan.

(vii) Changes in the construction quality assurance plan which are limited to:

(I) Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specifications.

(II) Reserved.

3. Groundwater Protection.

(i) Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well.

(ii) Changes in groundwater sampling or analysis procedures or monitoring schedule which do not reduce the frequency of monitoring.

(iii) Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred.

4. Closure.

(i) Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility.

(ii) Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period.

(iii) Changes in the expected year of final closure, where other permit conditions are not changed.

(iv) Changes in procedures for decontamination of facility equipment or structures.

5. Post-Closure.

(i) Changes in name, address, or phone number of contact in post-closure plan.

(ii) Changes in the expected year of final closure, where other permit conditions are not changed.

6. Containers.

(i) Addition of a roof to a container unit without alteration of the containment system.

(ii) Reserved.

7. Tanks.

(i) Replacement of a tank with a tank that meets the same design standards and has a capacity within +/- 10 percent of the replaced tank, provided:

(I) The capacity difference is no more than 1500 gallons;

(II) The facility's permitted tank capacity is not increased; and

(III) The replacement tank meets the same conditions in the permit.

(ii) Addition of a roof to a tank unit without alteration of the tank(s) or of the containment system.

8. Waste Piles.

(i) Addition of a roof to a waste pile unit without alteration of the containment system.

(ii) Reserved.

9. Incinerators, boilers, and industrial furnaces.

(i) Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness.

(ii) Changes in the operating requirements set in the permit for conducting a trial burn, provided that the changes are minor.

(iii) Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided that the changes are minor.

(iv) Substitution of an alternative type of non-hazardous waste fuel that is not specified in the permit.

(v) Combustion facility changes to meet part 63 MACT standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under 335-14-8.

(I) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that were in effect prior to October 12, 2000, (See 40 CFR Part 63 revised as of July 1, 2000) in order to request a permit modification under 335-14-8.

(II) [Reserved]

(vi) Technology changes needed to meet standards under 40 CFR part 63 (Subpart EEE – National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of 335-14-8-.04(3)(a)9.(v) are followed.

10. Drip Pads.

(i) Addition of a roof to a drip pad unit without alteration of the containment system.

(ii) Reserved.

11. Containment Buildings.

(i) Replacement of a containment building with a containment building that meets the same design standards provided:

(I) The unit capacity is not increased; and

(II) The replacement containment building meets the same conditions in the permit.

(ii) Reserved.

12. [Reserved]

13. [Reserved]

14. [Reserved]

15. Newly listed or identified wastes.

(i) Addition of wastes listed or identified as hazardous waste under Chapter 335-14-2 after the date of permit issuance, subject to the conditions of 335-14-8-.04(2)(d).

(ii) Reserved.

16. Military hazardous waste munitions.

(i) Additions of waste military munitions listed or identified as hazardous waste under 335-14-2 after the date of permit issuance, subject to the conditions of 335-14-8-.04(2)(e).

(ii) Reserved.

(b) Other Modifications.

1. In the case of modifications not explicitly listed in 335-14-8-.04(3)(a), the permittee may submit a major modification request to the Department under 335-14-8-.04(2), or he or she may request a determination by the Department that the modification should be reviewed and approved as a minor modification under 335-14-8-.04(3). If the permittee requests that the modification be classified as a minor modification, he or she must provide the Department with the necessary information to support the requested classification.

2. The Department shall make the determination described in 335-14-8-.04(3)(b)1. as promptly as practicable. In determining the appropriate classification for a specific modification, the Department shall consider:

(i) The similarity of the modification to other modifications codified in 335-14-8-.04; and

(ii) The criteria that minor modifications apply only to changes that:

(I) Keep the permit current with routine changes to the facility or its operation; and

(II) Do not substantially alter the permit conditions.

(4) Termination of permits.

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

1. Noncompliance by the permittee with any condition of the permit, any applicable regulation under Division 335-14, any provision of the AHWMMMA or any provision of any order issued by the Department under authority of the AHWMMMA or the Alabama Environmental Management Act, (Code of Alabama 1975, §§ 22-22A-1 to 22-22A-16);

2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(b) The Department shall follow the applicable procedures in rule 335-14-8-.08 in terminating any permit under 335-14-8-.04(4).

Author: Stephen C. Maurer; Stephen A. Cobb; C. Edwin Johnston. Jonah L. Harris

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, January 25, 1992; January 1, 1993; January 5, 1995; March 28, 1997; March 27, 1998; April 2, 1999; April 13, 2001; March 15, 2002; April 17, 2003; April 3, 2012;

Proposed: November 18, 2022.