

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management
Rule No. 335-3-14-.01
Rule Title: General Provisions

 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?

NO

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 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.

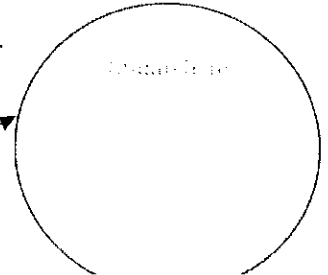
Certification of Authorized Official

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 Reference Service.

Signature of certifying officer *Maury Elliott*

Date 01-20-17

Date Filed



APA-2
11/96

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
AIR DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME:

Alabama Department of Environmental Management

RULE NO. & TITLE:

335-3-14-.01 General Provisions (Amend)
335-3-14-.04 Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)] (Amend)
335-3-14-.05 Air Permits Authorizing Construction In or Near Non-Attainment Areas (Amend)
335-3-14-.06 Requirements for Control Technology [Determinations for Major Sources in Accordance with Clean Air Act Section 112(g)] (Amend)

INTENDED ACTION: Revise Division 3 of the ADEM Administrative Code with the amendment of Rules 335-3-14-.01 (General Provisions), 335-3-14-.04 (Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)]), 335-3-14-.05 (Air Permits Authorizing Construction In or Near Non-Attainment Areas), and 335-3-14-.06 (Requirements for Control Technology [Determinations for Major Sources in Accordance with Clean Air Act Section 112(g)]).

SUBSTANCE OF PROPOSED ACTION:

Revisions to the Division 3 Code are being proposed to amend Rules 335-3-14-.01, 335-3-14-.04, 335-3-14-.05, and 335-3-14-.06 in Chapter 335-3-14 in order to incorporate amendments to EPA public notice regulations that removed the mandatory requirement to provide public notice for draft permits (and certain other program actions) by newspaper publication and instead provides for electronic-notice (e-notice) of these actions.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Comments may be submitted in writing or orally at a public hearing to be held 10:00 a.m., March 8, 2017, in ADEM Hearing Room, 1400 Coliseum Blvd., Montgomery, Alabama 36110.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: March 10, 2017

CONTACT PERSON AT AGENCY:

Larry Brown (334) 271-7878

Lance R. Lefleur

Lance R. Lefleur
Director

335-3-14-.01 General Provisions.

(1) Air Permit.

(a) Any person building, erecting, altering, or replacing any article, machine, equipment, or other contrivance, the use of which may cause the issuance of or an increase in the issuance of air contaminants or the use of which may eliminate or reduce or control the issuance of air contaminants, shall submit an application for an Air Permit at least 10 days prior to construction.

(b) Before any article, machine, equipment, or other contrivance described in subparagraph (a) of this paragraph may be operated or used, authorization shall be obtained from the Director in the form of an Air Permit. No Permit shall be granted for any article, machine, equipment or contrivance described in subparagraph (a) of this paragraph, constructed or installed without notification as required by subparagraph (a) of this paragraph, until the information required is presented to the Director and such article, machine, equipment or contrivance is altered, if necessary, and made to conform to the standards established by the Department.

(c) Any article, machine, equipment, or other contrivance described in subparagraph (a) of this paragraph which is presently operating (or which is not presently operating but which is capable of being operated) without an Air Permit may continue to operate (or may restart) only if its owner or operator obtains an Air Permit prior to a date to be set by the Director (or prior to restarting).

(d) Display of Air Permit. A person who has been granted an Air Permit for any article, machine, equipment, or other contrivance shall keep such permit under file or on display at all times at the site where the article, machine, equipment, or other contrivance is located and will make such a permit readily available for inspection by any and all persons who may request to see it.

(e) The Director shall have the authority to decide cases where an article, machine, equipment, or other contrivance is not clearly subject to nor exempt from the application of this rule. In addition, the Director may rule that a particular article, machine, equipment, or other contrivance is subject to the application of this rule even though it is exempt from the system according to subparagraph (a) of this paragraph and paragraph (5) of this rule. The operator or builder of such an article, machine, equipment, or other contrivance may appeal the Director's classification to the Commission, which shall overrule the Director only if it is shown that he acted arbitrarily and contrary to the purposes of the Act.

(f) Upon completion of construction by a new facility, the Director shall, within a reasonable period of time, dispatch an inspector to the facility in question. If the inspector determines that the facility has been constructed according to the specifications as set forth under the Air Permit or that any changes to the facility would reduce or affect to an insubstantial degree that

quantity of air contaminants emitted by the facility, and if a reviewing officer of the Division agrees with this conclusion, then the Director shall authorize initial operation of the facility until an official inspection of the facility under actual operating conditions can be made and the results reviewed or until the Air Permit is suspended or revoked by the Director. The Director may authorize initial operation of the facility without an inspection if upon completion of the construction, an owner or operator familiar with the application for an Air Permit submits a letter to the Director, testifying that the construction under application has been completed and is in accordance with the specification as set down in the Air Permit. The Director is empowered to reject that testimony if the Director decides that the owner or operator's qualifications are insufficient to allow him to accurately and completely assess the equipment in question. An owner or operator may appeal any such judgment to the Commission.

(g) The Director may issue an Air Permit subject to conditions which will bring the operation of any article, machine, equipment, or other contrivance within the standards of rule 335-3-14-.03(1) in which case the conditions shall be specified in writing. Commencing construction or operation under such an Air Permit shall be deemed acceptance of all the conditions specified. The Director shall issue an Air Permit with revised conditions upon receipt of a new application, if the applicant demonstrates that the article, machine, equipment, or other contrivance can operate within the standards of rule 335-3-14-.03(1) under the revised conditions.

(h) Reserved.

(i) Reserved.

(j) Reserved.

(k) An existing facility which holds a Synthetic Minor Operating Permit issued under chapter 335-3-15 or an Operating Permit issued under chapter 335-3-16 is exempt from the requirements of this chapter provided that:

1. the Synthetic Minor Operating Permit is modified as required by chapter 335-3-15 prior to the initial operation of any new or modified sources, or
2. the Operating Permit is modified as required by chapter 335-3-16 and any modifications are not subject to the requirements of rule 335-3-14-.04, or
3. for a modification which is subject to the requirements of rule 335-3-14-.04, the Operating Permit is issued prior to commencement of construction of the modification, and the Operating Permit fulfills all requirements of rule 335-3-14-.04, or
4. the Operating Permit is modified as required by chapter 335-3-16 and any modifications are not subject to the requirements of rule 335-3-14-.05, or
5. for a modification which is subject to the requirements of rule 335-3-14-.05, the Operating Permit is issued prior to commencement of

construction of the modification, and the Operating Permit fulfills all requirements of rule 335-3-14-.05.

(2) Provision of Sampling and Testing Facilities. A person operating or using any article, machine, equipment or other contrivance for which these rules and regulations require a permit shall provide and maintain such sampling and testing facilities as specified in the Air Permit.

(3) The holder of a Permit under this rule shall comply with conditions contained in such Permit as well as all applicable provisions of these rules and regulations.

(4) Transfer. An Air Permit shall not be transferable whether by operation of law or otherwise, either from one location to another, from one piece of equipment to another, or from one person to another.

(5) Exemptions. From time to time the Director may specify certain classes or sizes of articles, machines, equipment, or other contrivances which would normally be subject to the requirements to apply for an Air Permit as being exempt from the requirement to apply for such permits. Exempt sources are subject in every other way to these rules and regulations.

(6) Delegation of Air Permit requirements to Local Air Pollution Control Programs.

(a) Local air pollution control programs may receive delegation of authority from the Director to administer the general Air Permit requirements of paragraph (1) of this rule within their jurisdiction provided the local air pollution control program:

1. adopts regulations insuring applicants are required to satisfy the same requirements as contained in the Department's regulations; and

2. adopts regulations which require the Director to be provided with an opportunity to review the permit application, the analysis of the permit, and proposed permit conditions at least 10 days prior to issuance of an Air Permit.

(b) Local air pollution control programs may receive delegation of authority from the Director to administer the Air Permit requirements of rules 335-3-14-.05 and 335-3-14-.04 within their jurisdiction provided:

1. the requirements of subparagraph (a)1. of this paragraph are met; and

2. the local air pollution control program demonstrates that it has the necessary manpower and technical expertise to implement the requirements of said regulations; and

3. the local air pollution control program adopts regulations which require that the local air pollution control program shall provide the Director a copy of preliminary determinations and public comment notices for all permits issued

pursuant to rules 335-3-14-.05 and 335-3-14-.04 ~~at the same time~~ before the notice is forwarded for publication in the newspaper issued.

(c) If the Director of ADEM determines that local program procedures for implementing all the portions of rules 335-3-14-.01(1), 335-3-14-.04, and 335-3-14-.05 are inadequate, or are not being effectively carried out, any authority delegated to the local programs to administer rules 335-3-14-.01(1), 335-3-14-.04, and 335-3-14-.05 may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the local air pollution control program.

(d) The Director reserves the authority contained in rule 335-3-14-.02(4), to revoke any Air Permit issued pursuant to this rule.

(e) Any Air Permit issued by a local air pollution control program, including all conditions contained therein, is enforceable by the ADEM.

(7) Public Participation.

~~(a) Notice shall be given by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice and also to persons on a mailing list developed by the Department for persons desiring notice of permit action, including persons who have requested in writing to be on such a list, under the following circumstances:~~

1. Construction at a Greenfield Site.

(i) For the purposes of this paragraph, a "Greenfield Site" shall mean a new development or the initial operation of a new facility.

2. The Director, at his discretion, may require Public Notification for any application received in accordance with subparagraph (1)(a) of this rule.

(b) Notices issued in accordance with rule 335-3-14-.01(7) (a) shall be posted for the duration of the public comment period on the Department's web site, and shall include:

1. A notice of availability of the proposed permit for public comment;

2. A link to the proposed permit; and,

3. Information on how to access the administrative record for the proposed permit.

(c) Notices issued in accordance with rule 335-3-14-.01(7) (a) shall also be transmitted to a list developed by the Department for persons desiring notice of permit action, including persons who have requested in writing to be on such a list.

(bd) Public comments will be received by the Department for a period of 15 days following the ~~publication~~-posting of the public notice.

(ee) Public Notice will be held in accordance with the requirements of rules 335-3-14-.04, 335-3-14-.05, or 335-3-14-.06 for any application which is subject to the requirements of rules 335-3-14-.04, 335-3-14-.05, or 335-3-14-.06, respectively.

(el) Construction of any article, machine, equipment, or other contrivance as described in subparagraph (1)(a) of this rule shall not commence until after an Air Permit is issued if a public notice is required under this rule.

Author: James W. Cooper and John E. Daniel.

Statutory Authority: Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.

History: Effective Date: January 18, 1972.

Amended: April 3, 1979; February 13, 1985; December 28, 1993; November 21, 1996; March 27, 1998.; XXXXXX, 2017.