

APA-2
11/96

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
AIR DIVISION**

NOTICE OF INTENDED ACTION

AGENCY NAME: Environmental Management

RULE NO. & TITLE: Rule 335-3-16-.01 – Definitions (Amend)

INTENDED ACTION: Revise Division 3 of the ADEM Administrative Code with the amendment of Rules 335-3-16-.01 (Definitions).

SUBSTANCE OF PROPOSED ACTION:

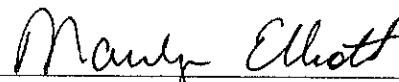
Revisions to the Division 3 Code are being proposed to amend Rule 335-3-16-.01 to be consistent with the recent U.S. Supreme Court decision concerning the regulation of Greenhouse Gases (GHGs). Chapter 335-3-16 is not considered as a part of the federally enforceable State Implementation Plan (SIP). As such, any revisions to this Chapter/Rule are not proposed to be incorporated into Alabama's SIP.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., September 10, 2014, in the ADEM Hearing Room, 1400 Coliseum Blvd., Montgomery, Alabama 36110.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: September 12, 2014

CONTACT PERSON AT AGENCY: Chris Howard (334) 271-7878



Lance R. Lefleur
Director

335-3-16-.01 Definitions.

(1) For the purposes of this chapter only, the following words and phrases, unless a different meaning is plainly required by the content, shall have the following meanings.

(a) "Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

(b) "Affected source" means a source that includes one or more affected units subject to emission reduction requirements or limitations in Title IV of the Act.

(c) "Affected States" are all States:

1. Whose air quality may be affected and that are contiguous to the State in which permit modification or permit renewal is being proposed; or

2. That are within 50 miles of the permitted source.

(d) "Affected Unit" means any unit subject to emission reduction requirements or limitations under Title IV of the Act.

(e) "Applicable Requirement" means all of the following as they apply to emissions units (including requirements that have been promulgated or approved by EPA through rule making at the time of issuance but have future effective compliance dates):

1. Any standard or other requirement provided for in Alabama's State Implementation Plan approved or promulgated by EPA through rule making in Part 51 of Title 40 in the Code of Federal Regulations that implements the relevant requirements of the Act, including any revisions to that plan promulgated in Subpart B of Part 52 of Title 40 in the Code of Federal Regulation;

2. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including parts C or D, of the Act; (Air Pollution Prevention and Control, Prevention of Significant Deterioration and Plan Requirement for nonattainment areas);

3. Any standard or other requirement in chapter 335-3-10 (NSPS); including Section 111(d);

4. Any standard or other requirement in chapter 335-3-11 (NESHAPS), including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

5. Any standard or other requirement of the acid rain program under Title IV (Acid Deposition Control) of the Act or the regulations promulgated thereunder;

6. Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the Act;

7. Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

8. Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

9. Any standard or other requirement for tank vessels under Section 183(f) of the Act;

10. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone (Title VI of the Act, Stratospheric Ozone Protection) unless the Administrator has determined that such requirements need not be contained in a Title V permit; and

11. Any national ambient air quality standard as defined in rule 335-3-1-.03 or increment as defined in rule 335-3-14-.04(3) or visibility requirement in rule 335-3-14-.04(15), but only as it would apply to temporary sources permitted pursuant to rule 335-3-16-.09.

(f) "the Department" means the Alabama Department of Environmental Management.

(g) "Designated Representative" means a responsible person or official authorized by the owner or operator of an Affected Unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to an Affected Unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Affected Unit.

(h) "Draft Permit" means the version of a permit for which the Department offers public participation under rule 335-3-16-.15(4) or affected State review under rule 335-3-16-.15(2) of this chapter.

(i) "Emissions Allowable under the Permit" means a federally enforceable permit term or condition determined at issuance of the permit to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

(j) "Emissions Unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV (Acid Deposition Control) of the Act.

(k) "The EPA" or "the Administrator" means the Administrator of the EPA or his/her designee.

(l) "Final Permit" means the version of a permit issued by the Department that has completed all review procedures required by rules 335-3-16-.12 and 335-3-16-.15 of this chapter.

(m) "Fugitive Emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(n) "General Permit" means a permit that meets the requirements of rule 335-3-16-.08.

(o) "Insignificant Activity" generally means any air emissions or air emissions unit at a plant that has the potential to emit less than 5 tons per year of any criteria pollutant or less than 1000 pounds per year of any pollutant listed in Appendix G of ADEM Admin. Code r. 335-3. Subject to EPA review and approval, the Director may determine that certain types or classes of units may be considered insignificant at higher emission levels, or that, due to the nature of the pollutant(s) emitted, a unit may be considered significant at a lower emission rate. The Director shall maintain lists of air emissions or air emission units which are considered to be insignificant without a determination of emission levels by the permittee. Changes to this list are subject to EPA review and approval. Activities subject to applicable requirements as defined in paragraph (e) of this rule shall not be classified as insignificant.

(p) "Interim Approval" means a conditional approval of ADEM Admin. Code 335-3-16 by the Administrator that may extend the implementation deadline of this Administrative Code.

(q) "Major Source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person [or persons under common control]) belonging to a single major industrial grouping and that are described in paragraph (1) or (2) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two digit code) as described in the Standard Industrial Classification Manual, 1987.

1. A major source under Section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed in Appendix G of this Administrative Code, 25 tpy or more of any combination

of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

2. A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any regulated air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this chapter, unless the source belongs to one of the following categories of stationary source:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;

- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (xxvii) All other stationary source categories regulated by a standard promulgated under chapters 10 and 11 of this Administrative Code.

3. ~~A stationary source shall be major as a result of greenhouse gas emissions only if:~~

~~(i) The stationary source directly emits or has the potential to emit, 100 tpy or more of GHGs (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this chapter, unless the source belongs to one of the categories of stationary sources listed in 335-3-16-.01(q)2.(i) through (xxvii), and~~

~~(ii) The stationary source directly emits or has the potential to emit, 100,000 tpy or more of GHGs on a CO₂e basis (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this chapter, unless the source belongs to one of the categories of stationary sources listed in 335-3-16-.01(q)2.(i) through (xxvii). No source shall be considered a major source for the purposes of this Chapter due solely to the emissions of greenhouse gas emissions.~~

(r) "Operating Permit" or "Permit" (unless the context suggests otherwise) means any permit or group of permits that is issued, renewed, amended, or revised pursuant to this chapter.

(s) "Permit Modification" means a revision to a permit that meets the requirements of rules 335-3-16-.13(3) and (4).

(t) "Permit Revision" means any permit modification or administrative permit amendment.

(u) "Potential to Emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source's potential to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV (Acid Deposition Control) of the Act or the regulations promulgated thereunder.

(v) "Proposed Permit" means the version of a permit that the Department proposes to issue and forwards to the Administrator for review in compliance with rule 335-3-16-.15(2).

(w) "Regulated Air Pollutant" means the following:

1. Nitrogen oxides or any volatile organic compounds;
2. Any pollutant for which a national ambient air quality standard has been promulgated;
3. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;
4. Any Class I or II substance subject to a standard promulgated under or established by Title VI (Stratospheric Ozone Protection) of the Act; or
5. Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including the following:
 - (i) Any pollutant subject to requirements under Section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act; and
 - (ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.
6. As of July 1, 2011 and after, greenhouse gases as defined in 335-3-16-.01(cc).

(x) "Renewal" means the process by which a permit is reissued at the end of its term.

(y) "Responsible Official" means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the Department;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this chapter, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

4. For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV (Acid Deposition Control) of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this chapter.

(z) "Section 502(b)(10) Changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

(aa) "Stationary Source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Appendix G of this Administrative Code.

(bb) "Trivial Activity" means any air emissions from a unit that is considered inconsequential, as determined by the Director. The Director shall maintain a list of air emission units that have been determined to be trivial activities.

(cc) Greenhouse gases (GHGs) means the aggregate of: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. ~~Prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).~~

(dd) CO₂ equivalent emissions (CO₂e) shall represent the amount of GHGs emitted as computed by the following:

1. Multiplying the mass amount of emissions (TPY) for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential as listed in Appendix I.

2. Sum the resultant value determined in subparagraph (dd)1. for each gas to calculate the TPY of CO₂e.

Author: Richard E. Grusnick; Ronald W. Gore.

Statutory Authority: Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8.

History: Effective Date: December 28, 1993.

Amended: November 21, 1996; September 7, 2000; October 3, 2002; May 23, 2011; May 28, 2013; XXXXXX.