

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management
Rule No. 335-14-4-.04
Rule Title: Financial 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 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 Mary Elliott

Date October 22, 2012

APA-2
11/96

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION**

NOTICE OF INTENDED ACTION

AGENCY NAME: DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

RULE NO. & TITLE: 335-14-4-.03 Hazardous Waste Discharges (Amend)
335-14-4-.04 Financial Requirements (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 Thursday, December 13, 2012 at 10:00 a.m. 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: Thursday, December 13, 2012 at 5:00 p.m.

CONTACT PERSON AT AGENCY: James L. Bryant, Chief of the Environmental Services Branch, ADEM Land Division (334/271-7771)


Lance R. LeFleur
Director

335-14-4-.04 Financial Requirements.

(1) Any person proposing to transport hazardous waste shall submit, with their application for an Alabama Hazardous Waste Transport Permit, one of the following:

(a) A surety bond in which the applicant is the principal obligor and the Department is the obligee;

1. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury or be a corporate surety licensed to do business in the State of Alabama; and

2. The wording of the surety bond must be identical to the following:

SURETY BOND

Date bond executed: _____

Effective date: _____

Principal: [legal name, business address and EPA identification number of applicant]

Type of organization: [insert "individual", "joint venture", "partnership" or "corporation"]

State of incorporation: _____

Surety(ies): [name(s) and business address(es)]

Total penal sum of bond: \$ _____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Alabama Department of Environmental Management (hereinafter, "the Department"), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other

purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Alabama Hazardous Wastes Management and Minimization Act of 1978, as amended (AHWMMA), to have a permit in order to transport hazardous waste, and

Whereas said Principal is required by Code of Alabama 1975, § 22-30-12(c)(4) to provide financial assurance for compliance with the AHWMMA, the regulations promulgated thereunder, the permit issued to the Principal and any orders issued to the Principal by the Department, and for damages to human health and the environment, including the costs of cleanups caused by spills.

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully comply with the AHWMMA, the regulations promulgated thereunder, the permit issued to the Principal, any order(s) issued to the Principal by the Department, and correct any damages to human health or the environment, including the cleanup of spills as approved by the Department for the term of the permit issued to the Principal and the Surety(ies) gives notice of intent not to renew this Performance Bond not less than 90 days prior to the expiration of the permit issued to the Principal,

Or, if the Principal shall provide alternate financial assurance as specified in rule 335-14-4-.04(1)(b) or (c) of the Alabama Department of Environmental Management Administrative Code and obtain the Department's written approval of such assurance within 90 days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies) then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Department that the Principal has been found in violation of the AHWMMA, the regulations promulgated thereunder, the permit issued to the Principal or any order(s) issued to the Principal for activities regulated pursuant to the AHWMMA, the Surety(ies) shall correct the violation, including the cost of any remedial action, and pay any penalties assessed by the Department against the Principal or shall within 15 days after notification by the Department, pay to the Department the amount designated as the total penal sum of the bond or such amount as remains if previous violations have been assessed against this bond.

The Surety(ies) hereby waive(s) notification of amendments to permits, applicable laws and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in rule 335-14-4-.04(1)(a) of the Alabama Department of Environmental Management Administrative Code as such rule was constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)] _____

[Name(s)] _____

[Title(s)] _____

[Corporate seal] _____

CORPORATE SURETY(IES)

[Name and address] _____

State of incorporation: _____

Liability limit: \$ _____

[Signature(s)] _____

[Name(s) and title(s)] _____

[Corporate seal]

[For every co-surety provide the above required information, signature(s) and corporate seal.]

Bond premium:
\$

3. The amount of the surety bond for environmental restoration shall be established as follows:

(i) Transporters proposing to transport liquid or flammable solid hazardous wastes shall be required to provide a surety bond in an amount equal to \$50,000 per vehicle transporting such wastes to a maximum of \$1,000,000 or proof of net worth as provided in 335-14-4-.04(1)(b);

(ii) Transporters proposing to transport nonflammable solid hazardous wastes shall be required to provide a surety bond in an amount equal to \$25,000 per vehicle transporting such wastes to a maximum of \$1,000,000 or proof of net worth as provided in 335-14-4-.04(1)(b); and

(iii) If the assurance surety bond is drawn upon, the Department may require additional assurance from the permittee and if the permittee fails to provide the assurance as required, the Department may terminate the permit as set out in 335-14-8-.11(2).

(b) Evidence satisfactory to the Department that the person proposing to transport hazardous waste has a net worth equal to ten times the value of the proposed surety bond. Such evidence shall be submitted in the form of a letter from the chief financial officer of the applicant and shall be in a form identical to the following:

DEMONSTRATION OF NET WORTH

Letter from the Chief Financial Officer

(To demonstrate net worth as required by Code of Alabama 1975, § 22-30-12(c)(4) in order to demonstrate financial responsibility for noncompliance with the Alabama Hazardous Wastes Management and Minimization Act of 1978, the regulations promulgated thereunder and any permits or orders issued to the applicant and to demonstrate financial responsibility for damages to human health and the environment, including the costs of cleanups, caused by spills. This demonstration may be used in conjunction with other allowable mechanisms in order to provide the required coverage.)

[Address to the Director, Alabama Department of Environmental Management, ~~1400 Coliseum Boulevard~~ P.O. Box 301463, Montgomery, Alabama ~~36130-1463~~ 36102-0591]

I am the chief financial officer of [applicant's name, address and EPA transporter identification number]. This letter is in support of the use of the demonstration of net worth to demonstrate financial responsibility as required by Code of Alabama 1975, § 22-30-12(c)(4) and rule 335-14-4-.04 of the Alabama Department of Environmental Management Administrative Code.

This applicant [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this applicant ends on [month, day]. The figures for the following items marked with an asterisk are derived from a year-end financial statement(s) for the latest completed fiscal year, ended [date], prepared for the applicant by an independent auditor.

Net Worth

- | | | |
|--|-----|----|
| 1. Amount of annual aggregate financial responsibility to be demonstrated..... | \$ | |
| *2. Total assets | \$ | |
| *3. Total liabilities..... | \$ | |
| *4. Net worth (line 2. minus line 3.) | \$ | |
| *5. If less than 90% of assets are located in the U.S. give total U.S. assets..... | \$ | |
| 6. Is line 4 at least 10 times line 1.? | | |
| | Yes | No |

I hereby certify that the wording of this letter is identical to that in rule 335-14-4-.04(1)(b) of the Alabama Department of Environmental Management Administrative Code.

[Signature] _____
 [Name] _____
 [Title] _____
 [Date] _____

(c) Proof of insurance in a minimum amount of \$1,000,000 to cover damages to human health or the environment, exclusive of legal defense costs as defined in 335-14-1-.02. Such insurance may not include a pollution exclusion clause. Proof of insurance must be provided on a Certificate of

Insurance form naming the Alabama Department of Environmental Management as the certificate holder and giving at least 30 days written Notice of Cancellation to the certificate holder. Nothing in 335-14-4-.04(1)(c) shall be construed to allow a transporter to operate in violation of the United States Department of Transportation rules and regulations governing financial assurance.

(2) A transporter must demonstrate to the satisfaction of the Department that the financial document submitted with their application as required in 335-14-4-.04 is in force for the entire duration of the permit. The Department may request a permitted transporter at any time to demonstrate that financial assurance is in force for the duration of the hazardous waste transporter permit.

Author: Stephen C. Maurer; James T. Shipman; Lawrence A. Norris.

Statutory Authority: Code of Alabama 1975, §§ 22-30-11 and 22-30-12(f).

History: November 19, 1980.

Amended: April 9, 1986; September 29, 1986; February 15, 1988; August 24, 1989; January 5, 1995; April 13, 2001; March 15, 2002; March 31, 2009, XXXXXX, 2013.