

APA-1  
07/04

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management  
Rule No. 335-5-1-.03  
Rule Title: Definitions

         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

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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.

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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         Wanda Elliott        

Date October 22, 2012

APA-2  
07/04

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
LAND DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME: DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

<u>RULE NO. &amp; TITLE</u>	335-5-1-.02	<u>Applicability</u> (Amend)
	335-5-1-.03	<u>Definitions</u> (Amend)
	335-5-1-.05	<u>Registry of Environmental Covenants</u> (Amend)
	335-5-1-.06	<u>Fees</u> (Amend)
	335-5-1-.07	<u>Process for Entering a Covenant</u> (Amend)

INTENDED ACTION:

Revise Division 5 of the ADEM Administrative Code to amend Rules 335-5-1-.02 (Applicability), 335-5-1-.03 (Definitions), 335-5-1-.05 (Registry of Environmental Covenants), 335-5-1-.06 (Fees), 335-5-1-.07 (Process for Entering a Covenant).

SUBSTANCE OR PROPOSED ACTION:


Revisions to Division 5 are being proposed to amend rules 335-5-1-.02, 335-5-1-.03, 335-5-1-.05, 335-5-1-.06, and 335-5-1-.07 to address changes required by Alabama Act 2-12-317 concerning underground storage tanks, to address applicability to federal facilities and to clarify programmatic requirements for environmental covenants.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Comments may be submitted in writing or orally at a public hearing to be held December 13, 2012 at 1:00 p.m. in the ADEM Main Hearing Room, ADEM Building, 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: December 13, 2012

CONTACT PERSON AT AGENCY: James L. Bryant (334)271-7771

  
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Lance R. LeFleur  
Director

**335-5-1-.03 Definitions.** For the purpose of this Division, the following words and phrases, unless the context of 335-5 plainly indicates otherwise, shall have the following meanings:

(a) Activity and Use Limitations - Restrictions or obligations created under this Act with respect to real property.

(b) ADEM or Department - The Alabama Department of Environmental Management.

(c) Alabama Uniform Environmental Covenants Act or "Act" - Code of Alabama 1975, §§ 35-19-1 to 35-19-14.

(d) Common Interest Community - A condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(e) Director - The Director of the Alabama Department of Environmental Management or his or her designated representative.

(f) Environmental Covenant - A servitude arising under an environmental response project that imposes activity and use limitations.

(g) Environmental Response Project - A plan or work performed for environmental remediation of real property and conducted under a federal or state program governing environmental remediation of real property.

(h) Holder - The grantee of an environmental covenant that meets the requirements of 335-5-2-.01.

(i) Land Use Controls - Any restriction or control that serves to protect human health and the environment by limiting the use of or exposure to any portion of a property or site, including water resources. These controls include, but are not limited to:

1. Engineering controls for remedial actions directed toward containing or controlling the migration of contaminants through the environment. These include, but are not limited to, stormwater conveyance systems, slurry walls, liner systems, caps, leachate collection systems, pump-and-treat systems, and groundwater recovery systems. Engineering controls are classified as:

(i) Class 1, which include multi-layer caps or liner systems, soil vapor extraction systems, groundwater pump-and-treat systems, leachate and groundwater recovery systems, stormwater conveyance systems, slurry walls and active ventilation of closed spaces.

(ii) Class 2, which include clay or soil caps or liner systems, sub-structural vapor barriers, and passive ventilation of closed spaces.

(iii) Class 3, which include asphalt caps and fencing systems.

(iv) For other engineering controls not listed, ADEM shall determine the classification of the engineering control upon the request of an owner or operator or other responsible person.

2. Institutional controls that are legal or contractual restrictions on property use which remain effective after remediation is completed and are used to meet an approved ~~remediation~~ environmental response project plan or proposal. These include, but are not limited to, deed notations, deed restrictions, groundwater use restrictions, restrictive covenants, conservation easements, and limited development rights. Institutional controls are classified as:

(i) Class 1, which includes any water use restriction.

(ii) Class 2, which include restrictive covenants for industrial or commercial use only or no schools or daycares, and imposition of conservation easements or limited developmental rights.

(iii) Class 3, which include restrictive covenants for no excavations, for use as greenspace only, and no hunting or fishing.

(iv) For other institutional controls not listed, ADEM shall determine the classification of the institutional control upon the request of an owner or operator or other responsible person.

~~3. Water use restrictions that can be placed on the use of a particular water supply source that has been identified as being contaminated with a hazardous waste, hazardous constituent, hazardous substance or petroleum product in order to protect human health and the environment.~~

(j) Owner or Operator - Includes the following:

1. In the case of a property or site, any person owning or operating that property or site.

2. Any person who owned, operated, or otherwise controlled activities at a property or site immediately prior to conveyance of title of that property or site to a unit of state or local government or loss of control of that property or site due to bankruptcy, foreclosure, tax delinquency, or abandonment.

3. The definition does not include the following:

(i) A person acting solely in a fiduciary capacity who can show evidence of ownership and who did not actively participate in the management, disposal, or release of hazardous wastes, hazardous constituents, hazardous substances or petroleum product from the property or site.

(ii) A unit of a state or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or

any other circumstance where the government involuntarily acquires title by virtue of its function as sovereign. This exclusion shall not apply to any state or local government that has caused or contributed to the release of hazardous wastes, hazardous constituents, or hazardous substances from the property or site.

(k) Person - An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(l) Property or Site - A parcel of land defined by boundaries of a legal description where a hazardous waste, hazardous constituent, hazardous substance or petroleum product has been or is suspected to have been deposited, discharged, stored, disposed of, placed, or otherwise come to be located.

(m) Record - Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(n) Response Action - Action taken in the event of a release or threatened release of a hazardous waste, hazardous substance, petroleum product, or other pollutant into the environment to remove or to prevent or minimize the threat to public health or the environment.

(o) Responsible Person - Any person who has contributed or is contributing to a release of any hazardous waste, hazardous constituent or hazardous substance at a property. This term includes any person who has contributed or is contributing to a release of petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils. This term includes persons described in §§107(a)(1) through 107(a)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC Section 9601, et seq. (CERCLA). This term excludes persons described in §107(b) of CERCLA.

(p) Restricted Use - Any use of a property or site other than unrestricted use.

(q) State - The State of Alabama.

(r) Unrestricted Use - The designation of acceptable future use at a property or site where the remediation levels, based on either background or standard exposure factors, shall have been attained in all media to allow the property or site to be used for any purpose.

**Authors:** James L. Bryant; Lawrence A. Norris.

**Statutory Authority:** Code of Alabama, 1975, §§35-19-2; 35-19-13.

**History:** May 26, 2009; XXXXXXX, 2013.