

APA-1  
07/04

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management  
Rule No. 335-5-1-.06  
Rule Title: Fees

         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.

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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         Mandy Elliott        

Date     October 22, 2012

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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



Lance R. LeFleur  
Director

**335-5-1-.06 Fees.** The Department may assess fees to implement the provisions of the Act.

(a) A Processing and Review Fee shall be required to cover the cost of processing the covenant application and for reviewing the draft and final covenants. For sites utilizing both institutional controls and engineering controls, the processing and review fees shall be the greater of the applicable fees.

(b) A Registry Recording Fee shall be required to cover cost of establishing and maintaining the ADEM Registry of Environmental Covenants, for entering the site in this Registry, and for performing routine inspections at the site for a period of thirty (30) years to determine compliance with the covenant restrictions. For sites with more than one classification of institutional or engineering control, the Registry Recording Fee shall be the greater of the applicable fees.

~~(ac) An owner or operator or other responsible person desiring to enter an environmental covenant shall submit a formal request, along with a processing and review fee. For sites utilizing both institutional controls and engineering controls, the processing and review fees shall be the greater of the applicable fees~~ draft environmental covenant and all required fees.

~~(b) An owner or operator or other responsible person entering the environmental covenant in the registry pursuant to 335-5-1-.05 shall submit a registry recording fee with the submittal of all information required by the covenant and the Department. For sites with more than one classification of institutional or engineering control, the registry recording fee shall be the greater of the applicable fees. Modification~~

~~(ed) Fees required pursuant to this section are included in 335-1-6-.04, Schedule J.~~

~~(de) Exemptions. The following sites are exempt from paying fees in 335-1-6-.04, Fee Schedule J and in 335-5-1-.06, as specified below. These sites will be entered in the ADEM Registry of Environmental Covenants.~~

~~(d) A site that is eligible for remediation under the Alabama Underground Storage Tank Trust Fund, pursuant to 335-6-16, is exempt from paying all fees.~~

~~(#1.) A site that is enrolled in the ADEM Voluntary Cleanup Program pursuant to 335-15 is exempt from paying processing and review fees in Fee Schedule J.~~

~~(#2.) A site regulated under the programs listed in 335-5-1-.02(2) that has a provision for a post-closure permit which is renewable by payment of a permit fee and a provision for routine inspection by the Department or other environmental regulatory agency is exempt from paying all fees in Fee Schedule J.~~

(iv3.) A site regulated under the programs listed in 335-5-1-.02(2) that has a provision for cost reimbursement to the Department as contained in a cooperative agreement, a memorandum of agreement or an administrative order is exempt from paying the Processing and Review Fees in Fee Schedule J, to the extent such costs are reimbursable under these agreements.

(e) An owner or operator or other responsible person desiring to enter an environmental covenant for an remediationenvironmental response project containing multiple individually deeded parcels off-site of the property or site which are subject to the environmental response project plan may submit an alternative fee schedule to the Department as part of its formal submittal of the environmental covenant in lieu of fees required in 335-1-6-.04, Fee Schedule J.

(i1.) If submitting an alternative fee schedule, the owner or operator or other responsible person shall be required to pay the applicable processing and review fees found in 335-1-6-.04, Fee Schedule J for each individually worded covenant for off-site property that is different from land use controls or restrictions found in other covenants utilized for other individually deeded parcels off-site of the property or site subject to the environmental response project plan.

(#2.) If submitting an alternative fee schedule, the owner or operator or other responsible person shall propose how to reimburse the Department for the registry recording fee which covers its cost to inspect each individually deeded off-site parcel to determine compliance with the covenant. The method to reimburse the Department shall be included in an order or agreement executed between the owner or operator or other responsible person and the Department. The length of time in years over which inspections will be conducted by the Department shall be negotiable and included in the covenant.

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

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

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