

APA-1
07/04

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management
Rule No. 335-5-1-.07
Rule Title: Process for Entering a Covenant

 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 Mandy Elliott

Date October 22, 2012

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME: DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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

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-.07 Process for Entering a Covenant.

(1) The owner or operator, the other responsible person or the person conducting an environmental response project may use land use control in lieu of remediating the property to a level supporting unrestricted use. ~~The appropriate ADEM organizational unit under which the response action is being conducted shall approve the remediation environmental response project plan~~ which proposes a land use control.

~~(2) The owner or operator, the other responsible person or the person conducting an environmental response project may be required to enter into an environmental covenant with the Department in accordance with 335-5-1-.02(1). If requesting~~ For properties not remediated to a level supporting unrestricted use, an environmental covenant is required in accordance with 335-5-1-.02. To enter an environmental covenant, the owner or operator, the other responsible person or the person conducting an environmental response project shall submit the following to the ~~appropriate ADEM~~ organizational unit under which the response action is being conducted:

(a) A draft of the proposed environmental covenant.

(b) The applicable ~~processing and review fees~~ identified in Fee Schedule J of 335-1-6 and 335-5-1-.06.

(c) All pertinent information required in 335-5-2-.01(1).

(3) ADEM shall review and approve the draft covenant or request modifications. If requesting modifications to the draft covenant, ADEM shall provide the applicant with its reasons for requesting change. Upon submittal by the applicant of acceptable modifications, ADEM shall approve the draft covenant.

(4) Following ADEM review and approval of the draft covenant, the applicant shall submit two copies of the final covenant which complies with 335-5-2 for signature by the Director. Upon execution by the Director, both copies shall be returned to the applicant.

(5) Upon receiving the executed copies of the covenant from ADEM, the applicant shall have the covenant recorded in the land records of the county where the site is located, in compliance with 335-5-3-.02.

(6) One copy of the recorded covenant shall be submitted to ADEM in compliance with 335-5-1-.05(3) for entry into the ADEM Registry of Environmental Covenants.

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

Statutory Authority: Code of Alabama 1975, §§35-19-3; 35-19-13.

History: May 26, 2009; XXXXXXX, 2013.