ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
GENERAL ADMINISTRATION
ADMINISTRATIVE CODE

CHAPTER 335-1-4
PETITIONS FOR DECLARATORY RULINGS

TABLE OF CONTENTS

335-1-4-.01 Applicability
335-1-4-.02 Definitions
335-1-4-.03 Right To Petition
335-1-4-.04 Petition Form And Contents
335-1-4-.05 Disposition Of Petition
335-1-4-.06 Circumstances In Which Declaratory Rulings Will Not Be Issued

335-1-4-.01 Applicability.

This Chapter prescribes the procedures for the submission, consideration and disposition of petitions for declaratory rulings.
Author: David A. Ludder, Ronald W. Farley
Statutory Authority: Code of Ala. 1975, §§22-22A-5, 22-22A-6, 22-22A-8, 41-22-11.
History: Effective March 6, 1987. **Amended:**

335-1-4-.02 Definitions.

For purposes of this Chapter, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

(a) "declaratory ruling" means a written decision identified as a declaratory ruling and issued by the Department with respect to the validity of a rule, the applicability of any rule or statute enforceable by the Department to any person, property, or existing state of facts or facts certain to arise, or the meaning and scope of any order issued by the Department.

(b) "Department" means the Alabama Department of Environmental Management established by the Alabama Environmental Management Act, Code of Ala. 1975, §22-22A-1 et seq., as amended.

(c) "order" means those orders issued by the Department pursuant to Code of Ala. 1975, §22-22A-5, as amended, or any other statute administered by the Department.

(d) "person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency as defined in Code of Ala. 1975, §41-22-3.

Author: David A. Ludder, Ronald W. Farley
Statutory Authority: Code of Ala. 1975, §§22-22A-5, 22-22A-6, 22-22A-8, 41-22-11.
History: Effective March 6, 1987. **Amended:**

335-1-4-.03 Right To Petition.

Any person substantially affected by a rule, order or statute may petition the Department for a declaratory ruling to determine the validity of the rule, the applicability of the rule or statute enforceable by the Department, or the meaning and scope of the order issued by the Department by making and filing a written petition in accordance with Rule 335-1-4-.04. At least ten days prior to filing a petition, the prospective petitioner must present in writing the substance of his question to the Department to determine that in the opinion of the Department no previously issued declaratory ruling addresses the question in a manner sufficient to resolve the matter without the need for further consideration by the Department.

Author: David A. Ludder, Ronald W. Farley
Statutory Authority: Code of Ala. 1975, §§22-22A-5, 22-22A-6, 22-22A-8, and 41-22-11.
History: Effective March 6, 1987. **Amended:**

335-1-4-.04 Petition Form And Contents.

(1) A petition requesting a declaratory ruling shall be in writing and shall contain the following information:

(a) the name, address and telephone number of the person making the petition;

(b) a statement identifying the rule, statute or order, and provision thereof, on which the declaratory ruling is sought;

(c) a statement of the exact question presented to the Department for ruling;

(d) a statement of the particular facts sufficient to show that the petitioner is substantially affected by the rule, statute or order on which the declaratory ruling is sought,

and sufficient to answer the question presented to the Department for ruling;

(e) a statement identifying all other rules, statutes, orders or statements from officials of the Department, whether formal or informal, which are relevant to the question presented by the petition;

(f) a statement of the reasons for submitting the petition, including a full disclosure of the petitioner's interest in obtaining the declaratory ruling;

(g) a statement as to whether the question presented by the petitioner is presently pending before or under consideration by the Department or any other adjudicative body;

(h) a statement certifying that the preliminary written inquiry of previously issued declaratory rulings has been made of the Department as required by Rule 335-1-4-.03 and providing the details of any reply to his preliminary inquiry including a copy of any written response received; and

(i) subscription and verification of the petition before a notary.

(2) A petition for a declaratory ruling shall be filed with the Department by delivering the same, either personally or by United States Mail as certified mail, return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered to:

Director

Alabama Department of Environmental Management

1400 Coliseum Boulevard

Montgomery, Alabama 36110

(3) A petition for declaratory ruling may be accompanied by a memorandum which urges the Department to issue a declaratory ruling of specified content. Such memorandum should contain the arguments therefor and any relevant authorities in support thereof.

Author: David A. Ludder, Ronald W. Farley, Russell Kelly
Statutory Authority: Code of Ala. 1975, §§22-22A-5, 22-22A-6, 22-22A-8, 41-22-11.
History: Effective March 6, 1987. **Amended:** Filed December 6, 2001; effective January 9, 2002.

335-1-4-.05 Disposition Of Petition.

(1) After determining whether any circumstances exist which preclude the issuance of a declaratory ruling under Rule 335-1-4-.06, the Department shall, not later than 45 days after receipt of the petition, either:

(a) issue a declaratory ruling;

(b) deny the request for a declaratory ruling; or

(c) fail to respond to the petition in which case the Department's failure to respond shall be deemed to be a denial of the request for a ruling as well as a denial of the merits of the request.

(2) All declaratory rulings and written denials of requests for declaratory rulings issued by the Department shall contain an explanation of the relevant facts and conclusions which served as the basis for the ruling or the denial.
Author: David A. Ludder, Ronald W. Farley
Statutory Authority: Code of Ala. 1975, §§22-22A-5, 22-22A-6, 22-22A-8, and 41-22-11.
History: Effective March 6, 1987. **Amended:**

335-1-4-.06 Circumstances In Which Declaratory Rulings Will Not Be Issued.

Circumstances in which declaratory rulings will not be issued include, but are not necessarily limited to:

(a) lack of jurisdiction;

(b) lack of clarity concerning the question presented;

(c) the existence of pending or imminent litigation or administrative action or adjudication which may either answer the question presented by the petition or otherwise make an answer unnecessary;

(d) the petition presents a hypothetical question or otherwise presents an issue not of immediate concern to or having impact on the petitioner;

(e) the statute, rule, or order on which a declaratory ruling is sought is clear and not in need of interpretation to answer the question presented by the petition;

(f) the facts presented in the petition are not sufficient to answer the question presented;

(g) the petition fails to contain any of the information required by Rule 335-1-4-.04;

(h) the petitioner is not substantially affected by the rule, statute or order on which a declaratory ruling is sought;

(i) the petitioner is not faced with existing facts or those certain to arise which raise a question concerning the rights, status, or other legal relations between the petitioner and the Department;

(j) no controversy exists concerning the petitioner and regarding the validity of any rule, the applicability of any rule or statute enforceable by the Department or the meaning and scope of any order issued by the Department;

(k) the question presented by the petition concerns the validity of a statute;

(l) the petitioner has not suffered an injury or threatened injury fairly traceable to the validity of any rule, the application of any rule or statute enforceable by the Department or the meaning or scope of any order issued by the Department; or

(m) the injury suffered by or threatened to the petitioner cannot be remedied by a declaratory ruling or other relief following therefrom.

Author: David A. Ludder, Ronald W. Farley
Statutory Authority: Code of Ala. 1975, §§22-22A-5, 22-22A-6, 22-22A-8, 41-22-11.
History: Effective March 6, 1987. **Amended:**