ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - SOLID WASTE PROGRAM ADMINISTRATIVE CODE

CHAPTER 335-13-8 PROCEDURES FOR VARIANCES

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335-13-8-.01 Variances.

The Department may grant individual variances from the specific provisions of Division 13 based upon the procedures of 335-13-8-.02 through 335-13-8-.05 whenever it is found by the Department, upon presentation of adequate proof, that the requested variance will not threaten the public health or unreasonably create environmental pollution. Specifically, variances may only be granted for those provisions of Division 13 that are in addition to or more stringent than analogous federal regulations. Variance requests will not be granted for provisions of Division 13 that are identical to a federal rule (i.e. those provisions that are not a state specific rule). Variances per se are not favored by the Department.

Author: Russell A. Kelly, S Scott Story
Statutory Authority: Code of Ala. 1975, §22-27-7.
History: November 18, 1981; **Amended:** July 21, 1988. **Amended:** Filed June 21, 1996; effective July 26, 1996. **Amended:** Published October 29, 2021; effective December 13, 2021.

335-13-8-.02 Petition For Variance.

(1) Applicability. Any person may request a variance from specific provisions of Division 13 by filing a Petition for Variance with the Department at least 120 days prior to the anticipated change and shall receive approval from the Department prior to the implementation of the proposed change.

(2) Petition Requirements. To enable the Department to rule on the Petition for Variance, the following information, where determined applicable by the Department, shall be included in the petition:

(a) A clear and complete statement of the precise extent of the relief sought including specific identification of the particular provisions of the regulations from which the variance is sought;

(b) An assessment, with supporting factual information, of the impact that the variance will impose on the public health and the environment in the affected area.

(c) Any additional information requested by the Department as necessary to evaluate the variance request.

(d) A concise factual statement of the reasons the petitioner believes that non-compliance with the particular provisions of Division 13 will not threaten the public health or unreasonably create environmental pollution.

(e) Applicable fees in accordance with Division 1.

(f) The name and mailing address of all property owners whose property, per county tax records, is adjacent to the proposed site shall be submitted as part of a Petition for Variance.

Author: Russell A. Kelly, S. Scott Story
Statutory Authority: Code of Ala. 1975, §22-27-7.
History: Effective: November 18, 1981; **Amended:** July 21, 1988. **Amended:** Filed June 21, 1996; effective July 26, 1996. **Amended:** Published October 29, 2021; effective December 13, 2021.

335-13-8-.03 Extension Of Prior Or Existing Variance.

A petition to extend a prior or existing variance granted by the Department shall be commenced by filing a Petition for Variance with the Department in accordance with the requirements of 335-13-8-.02.

(1) For petitions to extend an existing variance, the information required by 335-13-8-.02 that was included in the prior Petition for Variance for which extension is sought, shall be submitted, along with any additional information as necessary to update the existing Petition for Variance.

(2) A petition to extend a prior or existing variance shall be a new petition for Variance before the Department and shall be subject to all of the requirements of this Division except as provided in 335-13-8-.03(1).
Author: Russell A. Kelly, Heather M. Jones
Statutory Authority: Code of Ala. 1975, §22-27-7.
History: Effective November 18, 1981. **Amended:** July 21, 1988.
Amended: Published October 29, 2021; effective December 13, 2021.

335-13-8-.04 Department Action On Petitions For Variance (Repealed 12/13/21).

(REPEALED)
Author: Russell A. Kelly
Statutory Authority: Code of Ala. 1975, §22-27-7.
History: Effective November 18, 1981. **Amended:** July 21, 1988.
Repealed: Published October 29, 2021; effective December 13, 2021.

335-13-8-.05 Termination Of Variance.

Any variance granted by the Department may be terminated by the Department whenever the Department finds, after notice to the petitioner, that the petitioner is in violation of any requirement, condition, schedule, limitation or any other provision of the variance or that operation under the variance does not meet the minimum requirements established by state and federal laws and regulations or is unreasonably threatening the public health. Any variance granted by the Department may also be terminated after notice to and concurrence from the petitioner that the variance is no longer necessary or applicable.
Author: Heather M. Jones, Jason Wilson
Statutory Authority: Code of Alabama 1975, §22-27-7.
History: Effective November 18, 1981. **Amended:** July 21, 1988.
Amended: Published October 31, 2024; effective December 15, 2024.

335-13-8-.06 [Reserved].
Author:
Statutory Authority:
History:

335-13-8-.07 [Reserved].
Author:
Statutory Authority:
History:

335-13-8-.08 [Reserved].
Author:
Statutory Authority:
History:

335-13-8-.09 [Reserved].
Author:
Statutory Authority:
History:

335-13-8-.10 [Reserved].
Author:
Statutory Authority:
History:

335-13-8-.11 [Reserved].
Author:
Statutory Authority:
History:

335-13-8-.12 Public Notice.

(1) Notice Requirements.

(a) The Department shall provide notice and an opportunity for a public hearing on Petition for Variance from a specific provision of this Division.

(b) The following procedures shall be observed:

1. The Department shall send a copy of the notice to persons on a mailing list developed by:

(i) Including those who request in writing to be on the list;

(ii) Notifying the public of the opportunity to be put on the mailing list through the Department's website, periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals (the Director may update the mailing list from time to time by requesting written indication of continued interest from those listed and may delete from the list the name of any person who fails to respond to such a request);

2. The Department shall notify interested and potentially interested persons of the Petition for Variance by posting a notice to the Department's website. The Petition for Variance shall be posted on the website for the duration of the public comment period.

3. The notice shall be given not less than 35 days prior to the proposed approval of the petition.

4. The notice shall contain the specific type and nature of the petition, the owner or operator requesting the petition, and the descriptive location of the subject facility or unit, address and telephone number of the Department, and how the public may submit comments and request a public hearing on the proposed petition.

5. The Department shall send by certified mail, a written copy of the public notice to landowners adjacent to the subject facility at the address as indicated on county tax records and provided by the applicant as part of the Petition for Variance. The list and addresses of adjacent land owners, as provided in the Petition for Variance, shall be verified and/or updated by the applicant and such documentation shall be provided to the Department within 90 days prior to the public notice date. Documentation that notice was sent shall include copies of the signed receipts of certified mail delivery or a copy of any returned certified mail item, that is refused or otherwise undeliverable.

(2) Departmental Action. After the comment period closes, the Department shall review, consider and respond to all public comments received by the close of the comment period and take one of the following actions:

(a) The petition may be dismissed if the Department determines that it is not adequate under 335-13-8-.02;

(b) The Department may grant the variance as petitioned or by imposing such conditions as the Division may require, including the establishment of schedules of compliance and monitoring requirements; or

(c) The Department may deny the petition. If such a denial is made, the Department shall notify the petitioner in writing the reasons for denial and outline procedures for appeal.

Author: Heather M. Jones
Statutory Authority: Code of Ala. 1975, §§22-22A-5, 22-27-7.
History: New Rule: Published October 29, 2021; effective December 13, 2021.

335-13-8-.13 Public Hearing.

(1) Authorization. The Department shall authorize a public hearing at its discretion, or upon receipt of significant number of technical requests as provided in 335-13-8-.13(2).

(2) Procedures.

(a) Requests for public hearings shall be submitted in writing to the Department.

1. Frivolous or nontechnical requests shall be denied by the Department.

2. Requests for public hearings must be submitted within 35 days after the publication of the public notice and must contain the following:

(i) The name, address and telephone number of the person requesting the hearing.

(ii) A brief statement of the person's interest and the information the person wishes to submit.

(iii) The person's signature, if an individual, or the signature of a responsible officer of an organization or legal entity.

(b) When a hearing has been authorized, the Department shall appoint a hearing officer to conduct the hearing and shall establish a time, date, and location for the hearing. The location for the hearing shall comply with the requirements of the Americans with Disabilities Act.

(c) The Department shall give notice of the public hearing in the manner set forth in 335-13-8-.13(1), and also to the persons requesting the hearing in 335-13-8-.13(2). The notice shall be given not less than 35 days prior to the time of the public hearing and shall include:

1. A summary of the Petition for Variance.

2. The place, time, and date of the hearing.

3. The name, address, and telephone number of an office at which interested persons may receive further information.

(3) Departmental Action. After the public hearing and close of the comment period, the Department shall review, consider and respond to comments received by the close of the comment period and take one of the following actions:

(a) The petition may be dismissed if the Department determines that it is not adequate under 335-13-8-.02;

(b) The Department may grant the variance as petitioned or by imposing such conditions as the Division may require, including the establishment of schedules of compliance and monitoring requirements; or

(c) The Department may deny the petition. If such a denial is made, the Department shall notify the petitioner in writing the reasons for denial and outline procedures for appeal.

Author: Heather M. Jones
Statutory Authority: Code of Ala. 1975, §§22-22A-5, 22-27-7.
History: New Rule: Published October 29, 2021; effective December 13, 2021.