ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
AIR DIVISION
ADMINISTRATIVE CODE

CHAPTER 335-3-16
MAJOR SOURCE OPERATING PERMITS

TABLE OF CONTENTS

335-3-16-.01	**Definitions**
335-3-16-.02	**General Provisions**
335-3-16-.03	**Applicability**
335-3-16-.04	**Permit Application Requirements**
335-3-16-.05	**Permit Content**
335-3-16-.06	**Federally Enforceable Requirements**
335-3-16-.07	**Compliance Requirements**
335-3-16-.08	**General Permits**
335-3-16-.09	**Temporary Sources**
335-3-16-.10	**Permit Shield**
335-3-16-.11	**Exceptions To Violations Of Emissions Limits**
335-3-16-.12	**Permit Issuance**
335-3-16-.13	**Permit Modifications Or Amendments**
335-3-16-.14	**Off-Permit Changes**
335-3-16-.15	**Permit Review By EPA, Affected States And Public**

335-3-16-.01 Definitions.

(1) For the purposes of this Chapter only, the following words and phrases, unless a different meaning is plainly required by the content, shall have the following meanings.

(a) "Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

(b) "Affected source" means a source that includes one or more affected units subject to emission reduction requirements or limitations in Title IV of the Act.

(c) "Affected States" are all States:

1. Whose air quality may be affected and that are contiguous to the State in which permit modification or permit renewal is being proposed; or

2. That are within 50 miles of the permitted source.

(d) "Affected Unit" means any unit subject to emission reduction requirements or limitations under Title IV of the Act.

(e) "Applicable Requirement" means all of the following as they apply to emissions units (including requirements that have been promulgated or approved by EPA through rule making at the time of issuance but have future effective compliance dates):

1. Any standard or other requirement provided for in Alabama's State Implementation Plan approved or promulgated by EPA through rule making in Part 51 of Title 40 in the Code of Federal Regulations that implements the relevant requirements of the Act, including any revisions to that plan promulgated in Subpart B of Part 52 of Title 40 in the Code of Federal Regulation.

2. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including parts C or D, of the Act; (Air Pollution Prevention and Control, Prevention of Significant Deterioration and Plan Requirement for nonattainment areas);

3. Any standard or other requirement in Chapter 335-3-10 (NSPS); including Section 111(d);

4. Any standard or other requirement in Chapter 335-3-11 (NESHAPS), including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

5. Any standard or other requirement of the acid rain program under Title IV (Acid Deposition Control) of the Act or the regulations promulgated thereunder;

6. Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the Act;

7. Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

8. Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

9. Any standard or other requirement for tank vessels under Section 183(f) of the Act;

10. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone (Title VI of the Act, Stratospheric Ozone Protection) unless the

Administrator has determined that such requirements need not be contained in a Title V permit; and

11. Any national ambient air quality standard as defined in Rule 335-3-1-.03 or increment as defined in Rule 335-3-14-.04 (3) or visibility requirement in Rule 335-3-14-.04 (15), but only as it would apply to temporary sources permitted pursuant to Rule 335-3-16-.09.

(f) "The Department" means the Alabama Department of Environmental Management.

(g) "Designated Representative" means a responsible person or official authorized by the owner or operator of an Affected Unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to an Affected Unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Affected Unit.

(h) "Draft Permit" means the version of a permit for which the Department offers public participation under Rule 335-3-16-.15(4) or affected State review under Rule 335-3-16-.15(2) of this Chapter.

(i) "Emissions Allowable Under the Permit" means a federally enforceable permit term or condition determined at issuance of the permit to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

(j) "Emissions Unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV (Acid Deposition Control) of the Act.

(k) "The EPA" or "the Administrator" means the Administrator of the EPA or his/her designee.

(l) "Final Permit" means the version of a permit issued by the Department that has completed all review procedures required by Rules 335-3-16-.12 and 335-3-16-.15 of this Chapter.

(m) "Fugitive Emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(n) "General Permit" means a permit that meets the requirements of Rule 335-3-16-.08.

(o) "Insignificant Activity" generally means any air emissions or air emissions unit at a plant that has the potential to emit less than 5 tons per year of any criteria pollutant or less than 1,000 pounds per year of any pollutant listed in Appendix G of ADEM Admin. Code R. 335-3. Subject to EPA review and approval the Director may determine that certain types or classes of units may be considered insignificant at higher emission levels, or that, due to the nature of the pollutant(s) emitted, a unit may be considered significant at a lower emission rate. The Director shall maintain lists of air emissions or air emission units which are considered to be insignificant without a determination of emission levels by the permittee. Changes to this list are subject to EPA review and approval. Activities subject to applicable requirements as defined in paragraph (e) of this Rule shall not be classified as insignificant.

(p) "Interim Approval" means a conditional approval of ADEM Admin. Code 335-3-16 by the Administrator that may extend the implementation deadline of this Administrative Code.

(q) "Major Source" means any stationary source [or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)] belonging to a single major industrial grouping and that are described in paragraph (1) or (2) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two digit code) as described in the Standard Industrial Classification Manual, 1987.

1. A major source under Section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed in Appendix G of this Administrative Code, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated

equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

2. A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any regulated air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this Chapter, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) All other stationary source categories regulated by a standard promulgated under Chapters 10 and 11 of this Administrative Code.

3. No source shall be considered a major source for the purposes of this Chapter due soley to the emissions of greenhouse gas emissions.

(r) "Operating Permit" or "Permit" (unless the context suggests otherwise) means any permit or group of permits that is issued, renewed, amended, or revised pursuant to this Chapter.

(s) "Permit Modification" means a revision to a permit that meets the requirements of Rules 335-3-16-.13(3) and (4).

(t) "Permit Revision" means any permit modification or administrative permit amendment.

(u) "Potential to Emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source's potential to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of

this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV (Acid Deposition Control) of the Act or the regulations promulgated thereunder.

(v) "Proposed Permit" means the version of a permit that the Department proposes to issue and forwards to the Administrator for review in compliance with Rule 335-3-16-.15(2).

(w) "Regulated Air Pollutant" means the following:

1. Nitrogen oxides or any volatile organic compounds;

2. Any pollutant for which a national ambient air quality standard has been promulgated;

3. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;

4. Any Class I or II substance subject to a standard promulgated under or established by Title VI (Stratospheric Ozone Protection) of the Act; or

5. Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act; and

(ii) Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

6. As of July 1, 2011 and after, greenhouse gases as defined in 335-3-16-.01(cc).

(x) "Renewal" means the process by which a permit is reissued at the end of its term.

(y) "Responsible Official" means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for

the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the Department;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this Chapter, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

4. For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV (Acid Deposition Control) of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this Chapter.

(z) "Section 502(b)(10) Changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

(aa) "Stationary Source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Appendix G of this Administrative Code.

(bb) "Trivial Activity" means any air emissions from a unit that is considered inconsequential, as determined by the Director. The Director shall maintain a list of air emission units that have been determined to be trivial activities.

(cc) Greenhouse gases (GHGs) means the aggregate of: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(dd) CO2 equivalent emissions (CO2e) shall represent the amount of GHGs emitted as computed by the following:

1. Multiplying the mass amount of emissions (TPY) for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential as listed in Appendix I.

2. Sum the resultant value determined in subparagraph (dd)1. for each gas to calculate the TPY of CO2e.

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335-3-16-.02 General Provisions.

(1) Any Major Source operating without an Air Permit, an Operating Permit or a Synthetic Minor Operating Permit (as defined in Chapters 14, 15 and 16 of this Administrative Code) may continue to operate (or may restart) only if its owner or operator obtains an Operating Permit or a Synthetic Minor Operating Permit prior to a date to be set by the Director (or prior to restarting).

(2) Display of Operating Permit. A person who has been granted an Operating Permit for any article, machine, equipment, or other contrivance shall keep such permit under file or on display at all times at the site where the article, machine, equipment, or other contrivance is located and will make such a permit readily available for inspection by any and all persons who may request to see it.

(3) The Director shall have the authority to decide cases where an article, machine, equipment, or other contrivance is not clearly subject to nor exempt from the application of this Rule. The operator or builder of such an article, machine, equipment, or other contrivance may appeal the Director's classification to the Commission, which shall overrule the Director only if it is shown that he acted arbitrarily and contrary to the purposes of the Act.

(4) The Director may issue an Operating Permit subject to conditions which will bring the operation of any article, machine, equipment, or other contrivance within the standards of subparagraph (8)(a) of this Rule in which case the conditions shall be specified in writing. Commencing construction or operation under such an Operating Permit shall be deemed acceptance of all the conditions specified. The Director may issue an Operating Permit with revised conditions upon receipt of a new application, if the applicant demonstrates that the article, machine, equipment, or other contrivance can operate within the standards of subparagraph (8)(a) of this Rule under the revised conditions.

(5) Provision of Sampling and Testing Facilities. A person operating or using any article, machine, equipment or other contrivance for which this Administrative Code require a permit shall provide and maintain such sampling and testing facilities as specified in the Operating Permit.

(6) Transfer. An Operating Permit shall not be transferable whether by operation of law or otherwise, either from one location to another, from one piece of equipment to another, or from one person to another, except as provided in Rule 335-3-16-.13(1)(a)5.

(7) Delegation of Operating Permit Requirements to Local Air Pollution Control Programs.

(a) Local air pollution control programs may receive delegation of authority from the Director to administer the requirements of Chapter 335-3-16 of the ADEM Administrative Code within their jurisdiction provided the local air pollution control program:

1. adopts regulations insuring applicants are required to satisfy the same requirements as contained in the Department's regulations; and

2. adopts regulations which require the Director to be provided with an opportunity to review the permit application, the analysis of the permit, and proposed permit conditions at least 30 days prior to issuance of an Operating Permit.

(b) If the Director of the Department determines that local program procedures for implementing all the portions of Chapter 335-3-16 are inadequate, or are not being effectively carried out, any authority delegated to the local programs to administer Chapter 335-3-16 may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the local air pollution control program.

(c) The Director reserves the authority contained in subparagraph (8)(e) of this Rule, to revoke any Operating Permit issued pursuant to this Chapter.

(d) Any Operating Permit issued by a local air pollution control program, including all conditions contained therein, is enforceable by the Department.

(8) General Standards for Granting Operating Permits.

(a) The Director shall deny an Operating Permit if the applicant does not show that every article, machine, equipment, or other contrivance, the use of which may cause the issuance of air contaminants, is so designed, controlled, or equipped with such air pollution control equipment, that it is expected to operate without emitting or without causing to be emitted air contaminants in violation of this Administrative Code.

(b) The Director shall deny an Operating Permit if the applicant does not present, in writing, a plan whereby the emission of air contaminants by every article, machine, equipment, or other contrivance described in the permit application, will be reduced during periods of an Air Pollution Alert, Air Pollution Warning, and Air Pollution Emergency in accordance with the provisions of Chapter 335-3-2, where such plan is required.

(c) Before an Operating Permit is granted, the Director may require the applicant to provide and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the nature, extent, quantity or degree of air contaminants discharged into the atmosphere from the article, machine, equipment, or other contrivance described in the Operating Permit. In the event of such a requirement, the Director shall notify the applicant in writing of the required size, number, and location of the sampling platform; the access to the sampling platform; and the utilities for operating and sampling and testing equipment. The Director may also require the applicant to install, use, and maintain such monitoring equipment or methods, including enhanced monitoring methods prescribed under Section 504(b) or Section 114(a)(3); sample such emissions in accordance with such methods, at such locations, intervals, and procedures as may be specified; and provide such information as the Director may require.

(d) Before acting on an application for an Operating Permit, the Director may require the applicant to furnish further information or further plans or specifications.

(e) If the Director finds that the article, machine, or other contrivance has been constructed not in accordance with the

Operating Permit application, and if the changes noted are of a substantial nature in that the amount of air contaminants emitted by the article, machine, equipment, or other contrivance may be increased, or in that the effect is unknown, then he shall revoke the Operating Permit. The Director shall not accept any further application for an Operating Permit until the article, machine, equipment, or other contrivance has been reconstructed in accordance with said Operating Permit or until the applicant has proven to the satisfaction of the Director that the change will not cause an increase in the emission of air contaminants.

(9) Revocation of Operating Permits. Any Operating Permit granted by the Director may be revoked for any of the following causes:

(a) failure to comply with any conditions of the permit;

(b) failure to establish and maintain such records, make such reports, install, use and maintain such monitoring equipment or methods; and sample such emissions in accordance with such methods at such locations, intervals and procedures as the Director may prescribe in accordance with Rule 335-3-1-.04(2);

(c) failure to comply with any provisions of any Departmental administrative order issued concerning the permitted Stationary Source or facility;

(d) failure to allow employees of the Department upon proper identification, to:

1. enter any premises where any article, machine, equipment, or other contrivance described in Rule 335-3-16-.03(1) is located or in which any records are required to be kept under provisions of the permit and/or this Administrative Code;

2. have access to and copy any records required to be kept under provisions of the permit and/or this Administrative Code;

3. inspect any monitoring equipment or practices being maintained pursuant to the permit and/or this Administrative Code; and

4. have access to and sample any discharge of air contaminants resulting directly or indirectly from the operation of any article, machine, equipment, or other contrivance described in Rule 335-3-16-.03(1).

(e) failure to comply with this or any other Administrative Code of the Department.

(f) for any other cause, after a hearing which establishes, in the judgment of the Department, that continuance of the permit is not consistent with the purpose of the Act or this Administrative Code.

(10) Stack Heights.

(a) Definitions. For purposes of this paragraph, the following terms will have the meanings ascribed in this subparagraph.

1. "Emission limitation" and "emission standard" mean a requirement, established by ADEM or the EPA Administrator, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

2. "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

3. "A stack in existence" means that the owner or operator had (1) begun, or caused to begin, a continuous program of physical on-site construction of the stack or (2) entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

4. "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) Using that portion of a stack which exceeds good engineering practice stack height;

(ii) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(iii) Increasing final exhaust gas plume rise by manipulating source-process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(iv) The preceding sentence does not include:

(I) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream; or,

(II) The merging of exhaust gas streams where:

I. The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

II. After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

III. Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Director shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Director shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

(III) Smoke management in agricultural or silvicultural prescribed burning programs;

(IV) Episodic restrictions on residential woodburning and open burning; or

(V) Techniques under subparagraph (a)4.(iii) of this paragraph which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

5. "Good engineering practice" (GEP) stack height means the greater of:

(i) 65 meters measured from the ground-level elevation at the base of the stack:

(ii) For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required under 40 CFR 51 and 52, provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

$H_g = 2.5H$

(I) For all other stacks,

$H_g = H + 1.5\ L,$

where

Hg = good engineering practice stack height measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width of nearby structure(s),

provided that the Director may require the use of a field study or fluid model to verify GEP stack height for the source; or

(iii) The height demonstrated by a fluid model or a field study approved by the Director, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures, or nearby terrain features.

6. "Nearby" as used in subparagraph (a)5. of this paragraph is defined for a specific structure or terrain feature and

(i) for purposes of applying the formulas provided in subparagraph (a)5.(ii) of this paragraph means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile), and

(ii) for conducting demonstrations under subparagraph (a)5.(iii) of this paragraph means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (h_t) of the feature, not to exceed 2 miles if such feature achieves a height (h_t) 0.8 km from the stack that is at least 40 percent of the GEP stack height determined by the formula provided in subparagraph (a)5.(ii)(I) of this paragraph or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

7. "Excessive concentration" is defined for the purpose of determining GEP stack height under subparagraph (a)(5)(iii) of this paragraph and means:

(i) for sources seeking credit for stack height exceeding that established under subparagraph (a)5.(ii) of this paragraph, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than a NAAQS. For sources subject to the PSD program (Rule 335-3-14-.04), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emissions rate to be used in making demonstrations under this Rule shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Director, an alternative emission rate shall be established in consultation with the source owner or operator;

(ii) for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subparagraph (a)5.(ii) of this paragraph, either:

(I) a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects as provided in subparagraph (a)7.(i) of this paragraph, except that the emission rate specified elsewhere in this Administrative Code (or, in the absence of such a limit, the actual emission rate) shall be used, or

(II) the actual presence of a local nuisance caused by the existing stack, as determined by the Director; and

(iii) for sources seeking credit after January 12, 1979, for a stack height determined under subparagraph (a)5.(ii) of this paragraph where the Director requires that use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subparagraph (a)5.(ii) of this paragraph, a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(b) Before acting on any Major Source Operating Permit, the Director shall require that the degree of emission limitation required of any source for control of any air pollutants shall not be affected by so much of any source's stack height that exceeds GEP or by any other dispersion technique, except as provided in subparagraph (c) of this paragraph.

(c) The provisions of subparagraph (b) of this paragraph shall not apply to stack heights in existence, or dispersion techniques implemented, prior to December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in Section 111(a)(3) of the Clean Air Act, which were constructed, or reconstructed or for which major modifications, as defined pursuant to Rules 335-3-14-.05(2)(d) and 335-3-14-.04(2)(b), were carried out after December 31, 1970.

(d) If any existing source, after appropriate application of the preceding limitations and provisions, is found to exceed

or potentially exceed a NAAQS or PSD increment, when operating within previously established emission limitations, the emissions limitations applicable to that source shall be modified so as to eliminate and prevent the exceedance.

(e) If any new source or source modification, after appropriate application of the preceding limitations and provisions, is predicted to exceed a NAAQS or PSD increment when evaluated under emission limitations consistent with other applicable rules and regulations, the emission limitations considered shall be deemed inadequate and different emission limits, based on air quality considerations, shall be made applicable.

(f) If any source provides a field study or fluid modeling demonstration proposing a GEP stack height greater than that allowed by subparagraphs (a)5.(i) and (a)5.(ii) of this paragraph, then the public will be notified of the availability of the study and provided the opportunity for a public hearing before any new or revised emission limitation or permit is approved.

(g) The actual stack height used or proposed by a source shall not be restricted in any manner by requirements of this paragraph.

Author: Richard E. Grusnick
Statutory Authority: Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8.
History: **New Rule:** Filed November 23, 1993; Effective Date: December 28, 1993. **Amended:** Filed October 17, 1996; effective November 21, 1996. **Amended:** Filed December 9, 1999; effective January 13, 2000. **Amended:** Filed August 3, 2000; effective September 7, 2000.

335-3-16-.03 Applicability.

(1) Except as exempted under paragraph (2) below and elsewhere herein, the following sources are subject to the permitting requirements under this Administrative Code:

(a) Any major source as defined under Rule 335-3-16-.01 of this Chapter;

(b) Any source subject to a standard, limitation, or other requirement under Chapters 335-3-10 or 335-3-11 of this Administrative Code;

(c) Any affected source as defined under Rule 335-3-16-.01 of this Chapter;

(2) The following sources are exempt from the requirements of this Chapter:

(a) Non-major sources subject to Chapters 335-3-10 or 335-3-11 of this Administrative Code prior to July 21, 1992;

(b) Non-major sources subject to Chapters 335-3-10 or 335-3-11 of this Administrative Code which have an applicability date after July 21, 1992 that have been exempted by the Administrator from the requirements of 40 CFR 70; and

(c) Asbestos demolitions and renovation sources subject to Chapter 335-3-11 of this Administrative Code.

Author: Richard E. Grusnick
Statutory Authority: Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8.
History: **New Rule:** Filed November 23, 1993; Effective Date: December 28, 1993. **Amended:** Filed October 17, 1996; effective November 21, 1996.

335-3-16-.04 Permit Application Requirements.

(1) Upon becoming subject to this Administrative Code, a source must submit an application, as described in this Rule within 12 months. The Director may require some sources to submit their applications earlier than 12 months after the Rules in this Chapter become applicable if it is determined that an earlier submittal is necessary to satisfy the requirements in Rule 335-3-16-.12(1). The Department shall notify any emission source that must submit early applications at least one year in advance of the date the submittal is due.

(2) Sources subject to Rule 335-3-14-.06 or subject to preconstruction review under Title I of the Act must apply for a permit under this Chapter within 12 months after commencing operation, except, when an existing permit issued under this Chapter prohibits construction or a change in operation, a permit revision must be obtained before commencing operation.

(3) Renewal. An application for renewal shall be submitted at least six (6) months before the date of permit expiration, unless a longer period (not to exceed 18 months) is specified in the permit.

(4) Applications for initial phase II acid rain permits shall be submitted by January 1, 1996 for sulfur dioxide (SO_2) and by January 1, 1998 for nitrogen oxides (NOx).

(5) Complete application. Unless the Department notifies the permit applicant in writing that the application is not complete,

the application is considered complete 60 days after receipt by the Department. If, while processing the application, the Department determines that more information is needed to evaluate the application, the applicant must submit such information within 30 days or for such other reasonable time as set by a written request(s) by the Department.

(6) A source may operate without a permit under this Chapter between the date the application has been deemed complete and the date the final permit is issued, provided that the applicant submits any requested additional material by the deadline(s) specified by the Department.

(7) Duty to supplement or correct an application. A source must submit additional information to the Department to supplement or correct an application promptly after becoming aware of the need for additional or corrected information. Also, a source must supply to the Department additional information concerning any new requirements which have become applicable after a complete application has been filed but before a draft permit is released.

(8) Standard application form and required information. The following information shall be included in an application by a source for a permit under this Chapter:

(a) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact;

(b) A description of the source's processes and products (by four-digit Standard Industrial Classification Code), including any processes and products associated with each alternate scenario that is identified by the source and a list of insignificant sources and the basis for the determination(s);

(c) The following emissions-related information:

1. A list of all emissions of pollutants for which the source is considered to be major and a list of all emissions of regulated air pollutants. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under this Rule. The source shall submit additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to determine the amount of any permit fees owed under the fee schedule approved pursuant to Rule 335-1-7-.04 of the ADEM Administrative Code;

2. Identification and description of all points of emissions described in subparagraph (c)1. of this

paragraph in sufficient detail to establish the basis for fees and the applicability of the requirements of this chapter;

3. Emissions rates of all pollutants in tons per year (tpy) and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, or alternative method approved by the Department's Director;

4. The following information to the extent it is needed to determine or regulate emissions: fuels to be used, rate of fuel use, raw materials that will be used in the production process, production rates, and operating schedules;

5. Identification and description of all air pollution control equipment and compliance monitoring devices or activities that will be used by the source;

6. Limitations that will be placed on the source's operation so as to affect emissions or any work practice standards that will be implemented, where applicable, for all regulated pollutants.

7. Other information that may be required to address other applicable requirements (including, but not limited to, information relating to stack height limitations developed pursuant to Section 123 of the Act).

8. Calculations on which the information in subparagraphs 1. through 7. above are based.

9. Trivial and insignificant activities.

(i) Insignificant activities shall not necessarily be listed in permits, issued pursuant to the provisions of this Chapter, provided they are listed in the permit application, and they are not expected to violate any generally applicable requirements listed in the permit.

(ii) Trivial activities shall not be subject to the provisions of this Chapter.

(d) The following air pollution control requirements:

1. Citations and descriptions of all applicable statutory and administrative code requirements, and

2. A description of or reference to any applicable test methods for determining compliance with each applicable statutory or administrative code requirement.

(e) Other information that may be required by the Department to enforce and implement other requirements of this Chapter;

(f) An explanation of all proposed exemptions from otherwise applicable requirements;

(g) Additional information determined by the Department to be necessary to define alternative operating scenarios that are identified by the source pursuant to Rule 335-3-16-.05(1), or to define permit terms or conditions implementing Rule 335-3-16-.05(m) or Rule 335-3-16-.14.

(h) A compliance plan for the source that contains the following:

1. A description of the compliance status of the source with respect to all applicable requirements and a compliance schedule.

2. A statement that the source will continue to comply with all regulatory requirements that it is now in compliance with;

3. A statement that the source will, on a timely basis, meet such requirements that will become effective during the permit term unless a more detailed schedule is expressly required by the applicable requirement;

4. A narrative description of how the source will achieve compliance with requirements for which the source is not in compliance at the time of permit issuance with a compliance schedule for the source. Any schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. The compliance schedule shall be at least as stringent as any compliance schedule that is contained in any judicial consent decree or administrative order to which the source is subject. Any schedule of compliance shall be supplemental to, and shall not sanction non-compliance with, the applicable requirements on which it is based.

5. A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.

6. The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations

promulgated under Title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(i) A compliance certification, including the following:

1. A certification of compliance with all applicable requirements by a responsible official consistent with paragraph (9) of this Rule and Section 114(a)(3) of the Act, as it relates to the enhanced monitoring requirements;

2. A statement of methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods;

3. A schedule for submission of compliance certifications during the permit term, which shall be submitted annually, or more frequently if required by the underlying applicable requirement or by the Department; and

4. A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(j) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans as required by regulations promulgated under Title IV of the Act.

(9) Certification of truth, accuracy and completeness. Any application form, report, or compliance certification submitted pursuant to this Administrative Code shall contain certification by a responsible official of truth, accuracy, and completeness. This Certification and any other certification required under this Chapter shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

Author: Richard E. Grusnick, Ronald W. Gore
Statutory Authority: Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8.
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335-3-16-.05 Permit Content.

All permits required under this Chapter shall include certain standard permit requirements. The permits shall contain the following:

(a) Applicable emissions limitations and standards and operational requirements and limitations necessary to assure compliance with all applicable requirements at the time of permit issuance. In addition, the permit shall include:

1. A statement or reference to the origin and authority for each term or condition in the permit and any difference in form as compared to the applicable requirement under this Chapter upon which the term or condition is based; and

2. A statement to the effect that where an applicable requirement of this Chapter is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Department.

(b) Duration of Operating Permits.

1. The Department shall issue permits for a fixed period of five years, except as provided in subparagraph (b)2. below.

2. Solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the Act shall have a fixed term not to exceed 12 years. However, said permits shall be reviewed every five years.

3. Permits which are issued for new emission units before the units become operational shall be effective for five years after operation of the unit commences.

(c) Monitoring and record keeping requirements.

1. Permits shall contain the following requirements with respect to monitoring:

(i) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to Sections 114(a)(3) or 504(b) of the Act;

(ii) Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (e.g. record keeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that is representative of the source's compliance with the permit, as reported pursuant to subparagraph (c) of this paragraph. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. In certain instances record keeping provisions may be sufficient to meet the requirements of this paragraph; and

(iii) As necessary, information concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

2. With respect to record keeping, the permit shall incorporate all requirements of this Chapter and require, where appropriate, the following:

(i) Records of required monitoring information of the source that include the following:

(I) The date, place as defined in the permit, and time of all sampling or measurements;

(II) The date(s) analyses were performed;

(III) The company or entity that performed the analyses;

(IV) The analytical techniques or methods used;

(V) The results of all analyses; and

(VI) The operating conditions that existed at the time of sampling or measurement;

(ii) Retention of records of all required monitoring data and support information of the source for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation and copies of all reports required by the permit.

3. Permits shall incorporate all reporting requirements of this Chapter and require the following:

(i) The source to submit reports to the Department of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in said reports. All required reports must be certified by a responsible official consistent with Rule 335-3-16-.04(9).

(ii) The source to report deviations from permit requirements within 2 working days of such deviations, including those attributable to upset conditions as defined in the permit, the probable cause of said deviations, and any corrective actions or preventive measures that were taken.

(d) Permits shall contain statements to the effect that emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder are prohibited. Furthermore, the following shall be applicable:

1. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

2. No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

3. Any such allowance shall be accounted for according to the procedures established in regulations promulgated pursuant to Title IV of the Act.

(e) Permits shall include a severability clause for the purpose of continuation of a permit in the event a portion(s) of the permit is successfully challenged in a legal forum.

(f) Permits shall contain a provision that states that the source (permittee) must comply with all conditions of this Administrative Code: Noncompliance with a permit will constitute a violation of the Act and this Administrative Code and may result in an enforcement action; including but not limited to, permit termination, revocation and reissuance, or modification; or denial of a permit renewal application by the source.

(g) Permits shall contain a provision that states the source (permittee) shall not use as a defense in an enforcement action, that maintaining compliance with conditions of the permit would have required halting or reducing the permitted activity.

(h) Permits shall contain a provision that states that the permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the source (permittee) for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance will not stay any permit condition.

(i) Permits shall contain a provision that states that no property rights of any sort, or any exclusive privilege are conveyed through the issuance of the permit.

(j) Permits shall contain a provision that states that the source (permittee) shall furnish to the Department, within 30 days or for such other reasonable time as the Department may set, any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon receiving a specific request, the permittee shall also furnish to the Department copies of records required to be kept by the permit.

(k) Permits shall state that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(l) The permit shall contain a provision that quantifies the terms and conditions for reasonably anticipated alternative operating scenarios that were identified by the source in its application and are acceptable to the Department. The alternative operating scenarios terms and conditions shall:

1. Require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

2. Ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this Chapter.

(m) The permit shall contain terms and conditions, if specifically requested by the applicant, which authorize the trading of emissions increases and decreases in the permitted facility solely for the purposes of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade.

1. Such terms and conditions:

(i) Shall include all terms required under Rule 335-3-16-.05 and Rule 335-3-16-.07 to determine compliance;

(ii) May extend the permit shield described in Rule 335-3-16-.10 to all terms and conditions that allow such increases and decreases in emissions; and

(iii) Must meet all applicable requirements and requirements of this Chapter.

2. All requests for emissions trading under this Rule shall include proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. Such requests shall also include sufficient proposed monitoring, recordkeeping, and reporting as necessary to ensure compliance with all applicable requirements. The applicant shall provide written notice of requests for emissions trading under this Rule to the Department and EPA at least 7 days prior to the anticipated change. The notice shall state when the change would occur and shall describe the changes in emissions that would result and how these increases and decreases in emissions would comply with the terms and conditions of the permit.

Author: Richard E. Grusnick, Ronald W. Gore
Statutory Authority: Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8.
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335-3-16-.06 Federally Enforceable Requirements.

(1) All terms in a permit that are required to be part of a permit pursuant to the Act are federally enforceable by EPA, the Department and citizens in general. However, those provisions of a permit that are not required under the Act are considered to be state permit provisions and consequently, are not federally enforceable by EPA and citizens in general.

(2) Those provisions of a permit that are state provisions shall be separated from the federally enforceable terms. Such state provisions shall be clearly identified in the permit.

Author: Richard E. Grusnick
Statutory Authority: Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8.

History: New Rule: Filed November 23, 1993; Effective Date: December 28, 1993. **Amended:** Filed August 3, 2000; effective September 7, 2000.

335-3-16-.07 Compliance Requirements.

Permits shall contain the following elements with respect to compliance:

(a) Compliance certification, testing, monitoring, reporting, and record keeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document [including reports submitted by the source (permittee)] that is required in a permit shall contain a certification by a responsible official that meets the requirements of Rule 335-3-16-.04(9).

(b) Inspection and entry requirements that mandate that, the permittee shall allow the Department or an authorized representative, upon presentation of credentials and other documents that may be required by law, to conduct the following:

1. Enter upon the permittee's premises where a source is located or emissions-related activity is conducted, or where records must be kept pursuant to the conditions of a permit;

2. Review and/or copy, at reasonable times, any records that must be kept pursuant to the conditions of a permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required pursuant to a permit; and

4. Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or other applicable requirements.

(c) A schedule of compliance consistent with Rule 335-3-16-.04(8)(h).

(d) Progress reports consistent with an applicable schedule of compliance and Rule 335-3-16-.04(8)(h) to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Department. Such progress reports shall contain the following:

1. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and/or

dates when such activities, milestones or compliance were achieved; and

2. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(e) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

1. The frequency of submissions of compliance certifications, which shall be at least annually unless more frequent periods are specified according to the specific rule governing the source or required by the Department.

2. A means for monitoring the compliance of the source with its emissions limitations, standards, and work practices in accordance with Rule 335-3-16-.05(c);

3. A requirement that the compliance certification include the following:

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The compliance status;

(iii) Whether compliance has been continuous or intermittent;

(iv) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with Rule 335-3-16-.05(c); and

(v) Such other facts as the Department may require to determine the compliance status of the source;

4. A requirement that all compliance certifications be submitted to the Administrator as well as to the Department; and

5. Such additional requirements as may be specified pursuant to Sections 114(a)(3) and 504(b) of the Act.

(f) Such other provisions as the Department may require.

Author: Richard E. Grusnick
Statutory Authority: Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8.

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335-3-16-.08 General Permits.

(1) The Department may issue a general permit to any source category if it concludes that the category is appropriate for permitting on a generic basis after notice and opportunity for public participation provided under Rule 335-3-16-.15(4). No general permit may be issued for affected sources under the acid rain program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) A general permit may be issued for a source category based upon an application from a source within the source category or upon the Department's own initiative. The same procedures for issuance of a general permit are applicable as for any other permit issued under this Chapter.

(3) A general permit may be issued for the following purposes:

(a) to establish terms and conditions to implement applicable requirements for a source category;

(b) to establish terms and conditions to implement applicable requirements for specified categories of changes to permitted sources;

(c) to establish terms and conditions for new requirements that apply to sources with existing permits; and

(d) to establish federally-enforceable caps on emissions from sources in a specified category.

(4) The Department may issue a general permit if it finds that:

(a) there are several permittees or permit applicants who have the same or substantially similar operations, emissions, activities, or facilities;

(b) the permittees or permit applicants emit the same types of regulated air pollutants;

(c) the operations, emissions, activities, or facilities are subject to the same or similar standards, limitations, and operating requirements; and

(d) the operations, emissions, activities, or facilities are subject to the same or similar monitoring requirements.

(5) A general permit issued under this Rule shall identify criteria by which sources may qualify for the general permit. After a general permit has been issued, any source may submit a request to be covered under the permit.

(a) A request for coverage under a general permit shall identify the source and provide information sufficient to demonstrate that it falls within the source category covered by the general permit, together with any additional information that may be specified in the general permit.

(b) A final action approving a request for coverage under a general permit shall not require repeating the public participation procedures.

(6) A copy of the general permit, together with a list of sources approved for coverage under it, shall be kept on file for public review at the Department's office in Montgomery.

(7) If some, but not all, of a source's operations, activities, and emissions are eligible for coverage under one or more general permits, the source may apply for and receive coverage under the general permits for the operations, activities, and emissions that are so eligible. If the source is required under Rule 335-3-16-.04 to obtain a permit addressing the remainder of its operations, activities, and emissions, it may apply for and receive a permit that addresses specifically only those items not covered by general permits. In such a case, the source's permit shall identify all operations, activities, and emissions that are subject to general permits and incorporate those general permits by reference or use this for General Permits instead of paragraphs (1) - (6) above.

(8) If a source that is covered by a general permit is later determined to have not qualified for such general permit, the source shall have been operating without an operating permit.
Author: Richard E. Grusnick
Statutory Authority: Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8.
History: **New Rule:** Filed November 23, 1993; Effective Date: December 28, 1993. **Amended:** Filed October 17, 1996; effective November 21, 1996.

335-3-16-.09 Temporary Sources.

(1) One permit for sources which move at least once during the term of the permit may be issued authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit.

(2) No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(a) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(b) Requirements that the owner or operator notify in writing the permitting authority at least ten days in advance of each change in location; and

(c) Conditions that assure compliance with all other provisions of this Rule.

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Statutory Authority: Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8.
History: **New Rule:** Filed November 23, 1993; Effective Date: December 28, 1993. Amended Filed October 17, 1996; effective November 21, 1996.

335-3-16-.10 Permit Shield.

(1) Except as provided in this Rule, the Department may expressly include in an Operating Permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The Department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An Operating Permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this Rule or in any Operating Permit shall alter or affect the following:

(a) The provisions of section 303 of the Act (emergency orders), including the authority of the Administrator under that section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(c) The applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

(d) The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

Author: Richard E. Grusnick.
Statutory Authority: Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8.
History: **New Rule:** Filed November 23, 1993; Effective Date: December 28, 1993.

335-3-16-.11 Exceptions To Violations Of Emissions Limits.

(1) The Director may, in the operating permit, exempt on a case-by-case basis exceedances of emission limits which cannot reasonably be avoided, such as during periods of start-up, shut-down or load change. For emission limits established by federal rules (e.g., NSPS, NESHAP, and MACT) exemptions may be granted only where provisions for such exemptions are contained in the applicable rule or its general provisions.

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Statutory Authority: Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8.
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335-3-16-.12 Permit Issuance.

(1) Initial.

(a) All major sources must be issued operating permits within 3 years of the date that EPA approves the Department's program.

(b) At least one-third of the permits for sources subject to this chapter must be issued each of the three years following EPA's approval of the Department's program.

(c) If the Department is granted interim approval, then the provisions of subparagraphs (a) and (b) do not apply.

1. During each year of interim approval, at least 20% of the permits subject to this Chapter must be acted upon. Thereafter, at least one-third of the remaining sources subject to this Chapter must be acted upon each year.

(d) Any application for a new source must be acted on within 18 months of receiving a complete application.

(2) Renewals.

(a) Applications for permit renewal shall be subject to the same procedural requirements, including those for public participation, and affected State and EPA review, that apply to initial permit issuance under this chapter.

(b) A source's right to operate shall terminate upon the expiration of its permit unless a timely and complete renewal application has been submitted at least six months, but not more than 18 months, before the date of expiration or the Department has taken final action approving the source's application for renewal by the expiration date.

(c) If a timely and complete application for a permit renewal is submitted, but the Department fails to take final action to issue or deny the renewal permit before the end of the term of the previous permit, then the permit shall not expire until the renewal permit has been issued or denied, and any permit shield granted for the permit shall continue in effect during that time.

Author: Richard E. Grusnick
Statutory Authority: Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8.
History: **New Rule:** Filed November 23, 1993; Effective Date: December 28, 1993. **Amended:** Filed October 17, 1996; effective November 21, 1996.

335-3-16-.13 Permit Modifications Or Amendments.

(1) Administrative.

(a) An administrative permit amendment is a permit revision that:

1. Corrects typographical errors;

2. Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

3. Requires more frequent monitoring or reporting by the permittee;

4. Incorporates a general permit into an Operating Permit.

5. Allows for a change in ownership or operational control of a source where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department;

6. Incorporates into a permit issued under this Chapter the requirements from preconstruction review permits authorized under this Administrative Code, provided that the process used meets procedural requirements substantially equivalent to the requirements Rules 335-3-16-.12 and 335-3-16-.15 of this Chapter that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in Rules 335-3-16-.05 through 335-3-16-.11 of this Chapter; or

7. Incorporates any other type of change which the Department has determined, and the Administrator has approved as part of an approved operating permit program to be similar to those in subparagraphs 1. - 5. above.

(b) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(c) An administrative permit amendment may be made by the Department consistent with the following:

1. The Department shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.

2. The Department shall submit a copy of the revised permit to the Administrator.

3. The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(2) Flexibility (i.e., Section 502(B) 10 changes): Modifications which are not modifications under Title I of the Act, that contravene an existing permit condition and do not exceed emissions allowable under the permit can be done without modifying the permit if:

(a) Written notification is given that describes the proposed change, the date of the change, any change in emissions, and any term or condition of the permit which is no longer valid due to the change; and

(b) Notice is given to the Department and EPA at least 7 days before the change is made.

(3) Minor permit modification procedures.

(a) Criteria.

1. Minor permit modification procedures may be used only for those permit modifications that:

(i) Do not violate any applicable requirement;

(ii) Do not involve significant changes to existing monitoring, reporting, or record keeping requirements in the permit;

(iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(I) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I; and

(II) An alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act;

(v) Are not modifications under any provision of Title I of the Act; and

(vi) Are not required by Rule 335-3-16-.13(4) to be processed as a significant modification.

2. Notwithstanding subparagraph (a) of this paragraph, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor

permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA.

(b) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of Rule 335-3-16-.04(8) of this Chapter relative to the modification and shall include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

2. The source's suggested draft permit;

3. Certification by a responsible official, consistent with Rule 335-3-16-.04(9), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

4. Completed forms for the Department to use to notify the Administrator and affected States as required under Rule 335-3-16-.15.

(c) EPA and affected State notification. Within 5 working days of receipt of a complete permit modification application, the Department shall notify the Administrator and affected States of the requested permit modification. The Department promptly shall send any notice of refusal to accept any recommendations made by the Administrator or the affected States to the Administrator.

(d) Timetable for issuance. The Department may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the Department that EPA will not object to issuance of the permit modification, whichever is first. Within 90 days of the Department's receipt of an application under minor permit modification procedures or 15 days after the end of the Administrator's 45-day review period under Rule 335-3-16-.15(3), whichever is later, the Department shall:

1. Issue the permit modification as proposed;

2. Deny the permit modification application;

3. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

4. Revise the draft permit modification and transmit to the Administrator the new proposed permit modification as required by Rule 335-3-16-.15(1) of this Chapter.

(e) Source's ability to make change.

1. Ten days after the application has been submitted to the Department, the source may make the change for which they applied unless the change qualifies as a significant modification. After the source makes the change allowed by the preceding sentence, and until the Department takes any of the actions specified in subparagraphs (d)1. - 4. above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

2. If the Department notifies the source that the modification does not qualify as a minor modification within 10 days after receiving the application, then the source shall apply for the change as a significant modification.

(f) The permit shield under Rule 335-3-16-.10 shall not extend to minor permit modifications.

(4) Significant Modifications. Modifications that are significant modifications under Rules 335-3-14-.04 or 335-3-14-.05 or are modifications under the NSPS or NESHAPS regulations must be incorporated in the Operating Permit using the requirements for sources initially applying for an Operating Permit, including those for applications, public participation, review by affected States, and review by EPA, as described in Rules 335-3-16-.04 and .14.

(5) Reopening for cause.

(a) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

1. Additional applicable requirements under the Act become applicable to a major source with a remaining permit term of 3 or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required

if the effective date of the requirement is later than the date on which the permit is due to expire.

2. Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

3. The Department or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

4. The Administrator or the Department determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(b) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(c) Reopenings under subparagraph (a) of this paragraph shall not be initiated before a notice of such intent is provided to the source by the Department at least 30 days in advance of the date that the permit is to be reopened, except that the Department may provide a shorter time period in the case of an emergency.

Author: Richard E. Grusnick
Statutory Authority: Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8.
History: **New Rule:** Filed November 23, 1993; Effective Date: December 28, 1993. **Amended:** Filed October 17, 1996; effective November 21, 1996. **Amended:** Filed August 3, 2000; effective September 7, 2000.

335-3-16-.14 Off-Permit Changes.

(1) Any change at a source holding an operating permit which is not addressed or prohibited in the federally enforceable terms and conditions of the permit may be designated by the owner or operator as an off-permit change, and may be made without revision to the federally enforceable terms and conditions of the operating permit, provided that the change:

(a) shall meet all applicable requirements;

(b) does not violate any federally enforceable permit term or condition;

(c) is not subject to any requirement or standard under Title IV of the Clean Air Act; and

(d) is not a modification under Title I.

(2) Designation of a change as state-only affects only the federal requirements for processing of the change under the federal operating permit program. The owner or operator must comply with all applicable state permitting and preconstruction review requirements. Any change designated as state-only will be treated as a permit revision under state permitting requirements and shall be processed in accordance with the administrative permit amendment provisions in Rule 335-3-16-.13(1) or the minor permit modification provisions in Rule 335-3-16-.13(3), except that the provisions of Rule 335-3-16-.13(3)(d) shall not apply.

(3) The owner or operator of any permitted source who plans to make a change meeting the criteria set forth in this Rule may submit a request that the Director process the change application as an off-permit change, in accordance with paragraph (2) of this Rule.

(4) Any application pertaining to a change designated by the applicant as an off-permit change shall be submitted by the applicant to EPA in fulfillment of the obligation to provide written notice, provided, that no change meeting the criteria for an insignificant activity or trivial activity is subject to the procedures set forth in this Rule.
Author: Richard E. Grusnick
Statutory Authority: Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8.
History: **New Rule:** Filed November 23, 1993; Effective Date: December 28, 1993. **Amended:** Filed October 17, 1996; effective November 21, 1996.

335-3-16-.15 Permit Review By EPA, Affected States And Public.

(1) Transmission of information to EPA.

(a) The Department shall submit each application, each proposed permit and each final permit to EPA. The Department may require the applicant to submit a copy of its application directly to EPA. The Department also shall submit a copy of the draft permit to the applicant at the same time that EPA is sent a copy.

(b) Upon agreement with EPA, the Department may submit a summary of the application instead of the full application.

(c) The Department shall keep 5 years of records of the information sent to EPA that is required in subparagraph (a) of this paragraph.

(2) Review by affected states.

(a) The Department shall give notice to each affected state of each draft permit on or before public notice, unless public notice is not required.

(b) The Department shall respond in writing its reasons for refusing to accept an affected State's recommendations or for refusing to accept the Administrator's recommendations.

(3) EPA objection.

(a) If EPA objects in writing within 45 days of receipt of a proposed permit or prior to issuance of a final permit, the Department shall not issue the permit, except that the Department may issue a permit that is valid pursuant to Alabama's Air Pollution Control Act only. However, the Department shall advise the source that issuance of such permit shall not provide any protection from federal requirements.

(b) The objection must include the reasons for the objection and a description of the terms that the permit must include to respond to the objections. EPA must supply the applicant with a copy of the objection.

(c) Failure of the Department to do any of the following are also grounds for objection:

1. Comply with paragraphs (1) or (2) of this Rule.

2. Submit any information requested by EPA in writing necessary to review the permit.

3. Process the permit under the significant permit modification procedures (unless the modification is minor)

(4) Public participation. Except for modifications qualifying for administrative or minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall use the following procedures for public notice:

(a) Notice shall be posted on the Department’s web site for the duration of the public comment period and also transmitted to a list developed by the Department for persons desiring notice of permit action, including persons who have requested

in writing to be on such a list. The notice shall contain a link to the draft permit;

(b) The notice shall identify the affected facility; the name and address of the permittee; the address of the Department; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person person (or an email or web site address) from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, monitoring and compliance certification report, except for information entitled to be kept confidential, and all other materials available to the Department that are relevant to the permit decision; a brief description of the comment procedures required by this Chapter; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled);

(c) The Department shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing; and

(d) The Department shall keep a record of the comments made during the public participation process.

Author: Richard E. Grusnick
Statutory Authority: Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8.
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