

Case No. 2200431

IN THE ALABAMA COURT OF CIVIL APPEALS

Bobby Lewis; Michael Del Vecchio; David Del Vecchio;
Peggy R. Del Vecchio; William P. Novack; and Tara Novack,
Appellants,

v.

Alabama Department of Environmental Management; Lance R.
Lefleur, in his official capacity as Director of the Alabama Department
of Environmental Management; Environmental Management
Commission of the Alabama Department of Environmental
Management; Samuel L. Miller; Kevin Mckinstry; Thomas P. Walters,
Ruby L. Perry, Mary J. Merritt, and John H. Masingill, III, in their
official capacities as members of the Environmental Management
Commission of the Alabama Department of Environmental
Management; and the City of Dothan, Alabama,
Appellees.

ON APPEAL FROM THE
MONTGOMERY COUNTY CIRCUIT COURT
CIVIL ACTION NO. CV-20-900877

PRINCIPAL BRIEF OF APPELLANTS

ORAL ARGUMENT REQUESTED

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STATEMENT REGARDING ORAL ARGUMENT

Appellants request oral argument. This appeal involves novel questions of statutory and administrative rule construction. The relevant facts and legal arguments are somewhat complicated but not ambiguous. Therefore, Appellants suggest that the decisional process of this Court is likely to be aided by oral argument.

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STATEMENT OF JURISDICTION

This is an appeal of the February 2, 2021 final judgment of the Montgomery County Circuit Court affirming an order of the Environmental Management Commission of ADEM (EMC) approving the renewal and modification of an ADEM permit. C. 372-73. On March 15, 2021, the Appellants filed a timely notice of appeal with the Circuit Court. C. 374-76; Rule 4(a)(1), Ala. R. App. P.

The subject matter jurisdiction of this Court is invoked under Ala. Const. 1901, art. VI, § 141(b) (Off. Recomp.) and Ala. Code 1975 §§ 41-22-21 and 12-3-10.

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STATEMENT OF THE CASE

In 2018, the City of Dothan submitted to ADEM an application for renewal and modification of Solid Waste Disposal Facility Permit No. 35-06.¹ On May 6, 2019, ADEM issued a renewal and modification of Permit No. 35-06 to the City of Dothan for construction and operation of an existing and expanded municipal solid waste landfill and a new construction and demolition landfill.² On June 4, 2019, Petitioners³ filed a timely request for hearing with the EMC pursuant to Ala. Code 1975 § 22-22A-7(c) to contest the renewal and modification of the permit. The EMC designated a Hearing Officer to conduct the contested case hearing requested by Petitioners.⁴ Subsequently, the City of Dothan was admitted as a party.⁵ After hearing testimony and receiving exhibits, the Hearing Officer issued a report recommending that the EMC disapprove ADEM's

¹ C. Supp.-1 2805 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch).

² C. Supp.-1 1200-16 (Pet'rs Ex. 17).

³ Throughout this brief, the appellants are referred to as the "Petitioners."

⁴ C. Supp.-1 62.

⁵ C. Supp.-1 457-59.

renewal and modification of Permit No. 35-06.⁶ On June 12, 2020, the EMC issued a final order “modifying” the report of the Hearing Officer “by adopting [ADEM’s] Proposed Order which in turn adopts the alternate Findings of Fact and Conclusions of Law that the City of Dothan proposed” and approving ADEM’s renewal and modification of Permit No. 35-06.⁷ By operation of Ala. Code 1975 § 22-22A-7(c)(6), the EMC’s order constitutes the final action of ADEM.

Petitioners filed a timely notice of appeal in the Montgomery County Circuit Court on July 10, 2020.⁸ On February 2, 2021, the Court affirmed the EMC’s order.⁹ This appeal ensued.

STATEMENT OF THE ISSUES

- I. Whether ADEM’s modification of Permit No. 35-06 is affected by an erroneous interpretation of Ala. Code 1975 § 22-27-48(b)?
- II. Whether ADEM’s modification of Permit No. 35-06 is in excess of its statutory authority under Ala. Code 1975 § 22-27-48(b)?

⁶ C. Supp.-1 4691-718.

⁷ C. 15-37; C. Supp.-1 5208-30.

⁸ C. 13-38.

⁹ C. 372-73.

- III. Whether ADEM's modification of Permit No. 35-06 is in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because the City of Dothan's 2018 application does not demonstrate compliance with Ala. Admin. Code r. 335-13-5-.02(1)(b) (documentation of local governing body (host government) approval)?
- IV. Whether ADEM's modification of Permit No. 35-06 is in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because the City of Dothan's 2018 application does not demonstrate compliance with Ala. Admin. Code r. 335-13-4-.18(3)(h)1. (alternate liner design performance standards)?
- V. Whether ADEM's modification of Permit No. 35-06 is based on clearly erroneous findings of fact regarding the proposed alternate liner design?
- VI. Whether ADEM's renewal and modification of Permit No. 35-06 is affected by an erroneous interpretation of Ala. Admin. Code r. 335-3-1-.08 (prohibition of air pollution) and 40 C.F.R. § 52.50 (prohibition of air pollution)?
- VII. Whether ADEM's renewal and modification of Permit No. 35-06 is in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and

335-13-5-.04(3) because the City of Dothan's 2018 application does not demonstrate compliance with Ala. Admin. Code rs. 335-13-4-.01(3) (any other applicable State rules) and 335-13-4-.22(3)(a) (EPA-approved State Implementation Plan) respecting odors?

VIII. Whether ADEM's renewal and modification of Permit No. 35-06 is based on clearly erroneous findings of fact regarding odors?

IX. Whether ADEM's renewal and modification of Permit No. 35-06 is affected by an erroneous interpretation of Ala. Admin. Code r. 335-13-4-.22(2)(d) (prevention of disease vectors)?

X. Whether ADEM's renewal and modification of Permit No. 35-06 is in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because the City of Dothan's 2018 application does not demonstrate compliance with Ala. Admin. Code r. 335-13-4-.22(2)(d) (prevention of disease vectors)?

STATEMENT OF THE FACTS

I. Local Governing Body (Host Government) Approval

On October 21, 2013, ADEM issued a renewal of Solid Waste Disposal Facility Permit No. 35-06 for the City of Dothan Sanitary

Landfill. Therein, the acreage of the permitted facility was identified as 78 acres and the acreage of the permitted municipal solid waste landfill unit within that facility was identified as 55 acres. No construction and demolition landfill unit was authorized in the permit.¹⁰

On April 1, 2014, the City engaged CDG Engineers and Associates, Inc. to perform professional services for the design and permitting of an expansion to the City of Dothan Sanitary Landfill.¹¹

On August 2, 2014, the City of Dothan published in the Dothan Eagle a “Notice of Public Hearing to Accept Comment Concerning Approval of a Modification to the City of Dothan Landfill.” The notice stated that “[p]ublic comment is being accepted in relation to the facility’s request for local approval to expand the facility boundary.”¹² The notice

¹⁰ C. Supp.-1 773-89 (Pet’rs Ex. 3); C. Supp.-1 1791-92 (Test. Stephen Scott Story, Chief of ADEM’s Solid Waste Engineering Section). See C. 21 & C. Supp.-1 5214 (EMC Order) (finding to same effect).

¹¹ C. Supp.-1 919 (Pet’rs Ex. 18); C. Supp.-1 924 (Pet’rs Ex. 19); C. Supp.-1 617 (Test. Mike Schmitz, City of Dothan’s Mayor). See C. 21 & C. Supp.-1 5214 (EMC Order) (finding to same effect). See also C. Supp.-1 2702-03 (Test. Ernest Stokes, City of Dothan’s Senior Civil Engineer) (preliminary work on ADEM permit application may have begun but the final permit application was not likely to have been completed).

¹² C. Supp.-1 1850 (ADEM Ex. 2); C. Supp.-1 809 & 1159 (Pet’rs Ex. 11A). See C. 21 & C. Supp.-1 5214 (EMC Order) (finding to same effect).

did not identify or describe, by size, location, or otherwise, any proposed expansion of the existing municipal solid waste landfill unit or any proposed new construction and demolition landfill unit. The notice also did not identify or describe the location of the proposed expanded facility boundary.¹³ On September 2, 2014, the City of Dothan held a public hearing “to discuss the City of Dothan’s Landfill Expansion.”¹⁴ The hearing record shows that the City’s consulting engineer said that “the permitting plans should be completed by the end of 2014” and shows that the City’s engineer “estimated [that] the plans would be submitted to the Alabama Department of Environmental Management (ADEM) in January, 2015.”¹⁵

¹³ C. Supp.-1 1850 (ADEM Ex. 2); C. Supp.-1 809 & 1159 (Pet’rs Ex. 11A).

¹⁴ C. Supp.-1 1851-52 (ADEM Ex. 2); C. Supp.-1 810-11 & 1160-61 (Pet’rs Ex. 11A). The hearing record shows that two members of the Board of Commissioners of the City of Dothan, the City Manager of the City of Dothan, several professional employees of the City of Dothan, and several representatives of the City’s consulting engineering firm (CDG Engineers and Associates) were present. The hearing record does not show that any members of the public attended or spoke at the hearing.

¹⁵ C. Supp.-1 1851 (ADEM Ex. 2); C. Supp.-1 810 & 1160 (Pet’rs Ex. 11A). See C. 22 & C. Supp.-1 5215 (EMC Order) (finding to same effect).

On September 16, 2014, the Board of Commissioners of the City of Dothan adopted Resolution No. 2014-246 approving “the proposed expansion of the facility boundary of the Dothan Landfill located at 1290 Burkett Road to approximately 536 acres.”¹⁶ Resolution No. 2014-246 does not identify, describe, or approve any proposed expansion of the existing municipal solid waste landfill unit or any proposed new construction and demolition landfill unit. It also does not identify or describe the location of the proposed expanded facility boundary.¹⁷ On September 16, 2014, the proposed expansion of the City of Dothan Sanitary Landfill was still in the preliminary design phase.¹⁸ As of September 16, 2014, the City’s consulting engineers had not presented to the City of Dothan a proposed application to be submitted to ADEM for

¹⁶ C. Supp.-1 1853 (ADEM Ex. 2); C. Supp.-1 812 & 1162 (Pet’rs Ex. 11A); C. Supp.-1 1795 (Test. Stephen Scott Story, Chief of ADEM’s Solid Waste Engineering Section); C. Supp.-1 618 (Test. Mike Schmitz, City of Dothan’s Mayor); C. Supp.-1 2698 (Test. Jerry Corbin, City of Dothan’s Public Works Director). See C. 22 & C. Supp.-1 5215 (EMC Order) (finding to same effect).

¹⁷ C. Supp.-1 1853 (ADEM Ex. 2); C. Supp.-1 711 & 2845 (Test. Eric Sanderson, Chief of ADEM’s Solid Waste Branch); C. Supp.-1 1795 (Test. Stephen Scott Story, Chief of ADEM’s Solid Waste Engineering Section).

¹⁸ C. Supp.-1 946. See C. Supp.-1 2699 (Test. Jerry Corbin, City of Dothan’s Public Works Director). See C. 22 & C. Supp.-1 5215 (EMC Order) (finding to same effect).

expansion of the City of Dothan Sanitary Landfill.¹⁹ On September 16, 2014, there was no application for modification of Permit No. 35-06 pending before ADEM.²⁰

On April 18, 2018, the City of Dothan submitted an application (ADEM Form 439) to ADEM for renewal of Solid Waste Disposal Facility Permit No. 35-06.²¹ During the Summer of 2018, the City of Dothan submitted to ADEM an application for modification of Permit No. 35-06. This application included ADEM Form 439 submitted to ADEM on May 5, 2018;²² “Operations Manual for Dothan Landfill” (revised July 2018)

¹⁹ C. Supp.-1 618 (Test. Mike Schmitz, City of Dothan’s Mayor); C. Supp.-1 2699 (Test. Jerry Corbin, City of Dothan’s Public Works Director). The Board of Commissioners of the City of Dothan was advised by the City Manager that the final design of the proposed expansion of the City of Dothan Sanitary Landfill would be voted on at a later date. C. Supp.-1 946 (Pet’rs Ex. 23). See C. 22 & C. Supp.-1 5215 (EMC Order) (finding to same effect).

²⁰ C. Supp.-1 710-11 (Test. Eric Sanderson, Chief of ADEM’s Solid Waste Branch); C. Supp.-1 1795 (Test. Stephen Scott Story, Chief of ADEM’s Solid Waste Engineering Section).

²¹ C. Supp.-1 2805 (Test. Eric Sanderson, Chief of ADEM’s Solid Waste Branch). See C. 24 & C. Supp.-1 5217 (EMC Order) (finding to same effect).

²² C. Supp.-1 1155-57 (Pet’rs Ex. 9).

submitted to ADEM on or about July 18, 2018;²³ and “Major Modification Plans for the Dothan Landfill” (July 2018) submitted to ADEM on July 18, 2018.²⁴ The application for permit modification sought authorization to expand the size of the permitted facility from 78 acres to 522.19 acres, to expand the size of the permitted existing municipal solid waste landfill unit from 55 acres to 69.9 acres, and to add a new permitted 15.0-acre construction and demolition landfill unit.²⁵ The City of Dothan’s 2018 application included Resolution No. 2014-246 adopted by the Board of

²³ C. Supp.-1 1837-2454 (ADEM Ex. 2). C. Supp.-1 702-03 (Test. Eric Sanderson, Chief of ADEM’s Solid Waste Branch).

²⁴ C. Supp.-2 25-38 (Pet’rs Ex. 12) (Pet’rs Ex. 12 is an oversized exhibit. The original can be transmitted to this Court by the Circuit Clerk upon this Court’s direction); C. Supp.-1 813-25 & 1176-88 (Pet’rs Ex. 12A); C. Supp.-1 702 (Test. Eric Sanderson, Chief of ADEM’s Solid Waste Branch).

²⁵ C. Supp.-1 1155-57 (Pet’rs Ex. 9); C. Supp.-1 1837 (ADEM Ex. 2); C. Supp.-1 700, 702-03, 2805 (Test. Eric Sanderson, Chief of ADEM’s Solid Waste Branch); C. Supp.-1 1793 (Test. Stephen Scott Story, Chief of ADEM’s Solid Waste Engineering Section). See C. Supp.-1 775 (Pet’rs Ex. P-3) (identifying previous permitted facility acreage and previous municipal solid waste landfill unit acreage); C. 24 & C. Supp.-1 5217 (EMC Order) (finding to same effect). The proposed expansion will provide approximately 2,650,000 cubic yards of additional disposal capacity at the municipal solid waste landfill unit, extending the life of the City of Dothan Sanitary Landfill for approximately 20 years. C. Supp.-1 3315 (ADEM Ex. 3A).

Commissioners of the City of Dothan on September 16, 2014.²⁶ Resolution No. 2014-246 does not approve the City's 2018 application to ADEM for modification of Permit No. 35-06.²⁷ Resolution No. 2014-246 does not approve expansion of the landfill facility boundary from 76 acres to 522.19 acres, expansion of the municipal solid waste landfill unit from 55 acres to 69.9 acres, or construction of a new 15.0-acre construction and demolition landfill unit.²⁸ The City of Dothan's 2018 application for modification of Permit No. 35-06 does not include documentation demonstrating that the Board of Commissioners of the City of Dothan approved the 2018 application to ADEM for modification of Permit No. 35-06.²⁹

²⁶ C. Supp.-1 1853 (ADEM Ex. 2); C. Supp.-1 812 (Pet'rs Ex. 11A). See C. Supp.-1 702 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch); C. Supp.-1 1794 (Test. Stephen Scott Story, Chief of ADEM's Solid Waste Engineering Section).

²⁷ C. Supp.-1 1853 (ADEM Ex. 2); C. Supp.-1 812 (Pet'rs Ex. 11A); C. Supp.-1 2844-45 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch); C. Supp.-1 1796 (Test. Stephen Scott Story, Chief of ADEM's Solid Waste Engineering Section); C. Supp.-1 2704 (Test. Ernest Stokes, City of Dothan's Senior Civil Engineer).

²⁸ C. Supp.-1 1853 (ADEM Ex. 2); C. Supp.-1 812 (Pet'rs Ex. 11A).

²⁹ C. Supp.-1 1837-2454 (ADEM Ex. 2).

On November 23, 2018, ADEM published a notice in the Dothan Eagle requesting comments on the proposed renewal and modification of Permit No. 35-06.³⁰ The notice stated that “On September 16, 2014, by Resolution, the City of Dothan granted approval to expand the facility boundary for the City of Dothan Sanitary Landfill.” ADEM received comments on December 28, 2018 claiming that Resolution No. 2014-246 did not approve the City’s 2018 permit application to ADEM.³¹ On January 24, 2019, ADEM published notice in the Dothan Eagle of a public hearing on the proposed renewal and modification of Permit No. 35-06.³² The notice stated that “On September 16, 2014, by Resolution, the City of Dothan granted approval to expand the facility boundary for the City of Dothan Sanitary Landfill.” ADEM received comments at the public

³⁰ C. Supp.-1 3560 (Pet’rs Ex. 77); C. Supp.-1 1782-83 (Test. Eric Sanderson, Chief of ADEM’s Solid Waste Branch). See C. Supp.-1 3561-611 (notice to landowners).

³¹ C. Supp.-1 827-28 (Pet’rs Ex. 14).

³² C. Supp.-1 3612 (Pet’rs Ex. 77); C. Supp.-1 1783-84 (Test. Eric Sanderson, Chief of ADEM’s Solid Waste Branch). See C. Supp.-1 834 (Pet’rs Ex. P-15) (hearing transcript reference to notice of public hearing).

hearing claiming that Resolution No. 2014-246 did not approve the City's 2018 permit application to ADEM.³³

On May 6, 2019, ADEM issued a "Final Determination" on the application for renewal and modification of Permit No. 35-06³⁴ which states that "On September 16, 2014, by Resolution, the City of Dothan granted approval to expand the facility boundary for the City of Dothan Sanitary Landfill." The renewal and modification of Permit No. 35-06 expanded the size of the permitted facility from 78 acres to 522.19 acres, expanded the size of the existing permitted municipal solid waste landfill unit from 55 acres to 69.9 acres, and added a new permitted 15.0-acre construction and demolition landfill unit.³⁵ ADEM also issued a response to comments which said "The acreage in the permit application is less than the amount approved [in Resolution 2014-246] and is thus included

³³ C. Supp.-1 848-49 (Pet'rs Ex. 15).

³⁴ C. Supp.-1 1201 (Pet'rs Ex. 17).

³⁵ C. Supp.-1 1200-02 (Pet'rs Ex. 17); C. Supp.-1 773-75 (Pet'rs Ex. 3); C. Supp.-1 703 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch).

in the approval. The difference, then, does not invalidate the local approval granted by the local host government.”³⁶

ADEM’s Chief of the Solid Waste Branch testified:

Q. * * * Now, the rule [335-13-5-.02] references a Code of Alabama section. Do you know what that section says?

A. Yes. I believe that section details the host government approval requirements.

* * *

Q. And the second sentence of section B says: The department may not consider an application for a modified permit for a facility unless such application has received approval pursuant to this section by the affected local governing body. Did the local governing body in this case approve an application that was submitted to the department?

A. The application that was submitted to the department is not required to be approved by the local host government.³⁷

This witness continued:

A. [C]ertain new facilities and certain modifications require the local host government to approve the said modification. And the applicant will submit a separate application to the local host government with the information needed describing six factors that are required by the statute, and then the local host government makes the determination

³⁶ C. Supp.-1 1189 (Pet’rs Ex. 16).

³⁷ C. Supp.-1 710 (Test. Eric Sanderson, Chief of ADEM’s Solid Waste Branch).

if the expansion or new facility is warranted. And upon receiving that approval from the local host government, our regulations require, if local approval is required, that demonstration of that approval is included in our application forms. And so I think the confusion that exists with some of the plaintiffs is, does the application that is submitted to ADEM need to specifically be approved by the local host government, and it does not.³⁸

The witness continued:

Q. All right. Now, you testified yesterday that host government approval of ADEM's application -- or the application to ADEM is not required. The Department's rules do not require host government approval of ADEM's application, correct?

A. Correct.

Q. And do you take the same position with regard to Alabama Code 22-27-48?

A. Yes.

Q. Okay. Now, you're familiar with the host government approval in this case which is Exhibit P-11A?

A. Yes.

* * *

Q. Does that exhibit demonstrate that the 2018 application for modification of Permit 35-06 received approval by the Board of Commissioners of the City of Dothan?

³⁸ C. Supp.-1 1743-44 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch).

A. The application for the modification included documentation of host government approval of that project as required by our regulations.

Q. Okay. Let me ask the question again, and I would like you to answer this question. Does Exhibit P-11A demonstrate that the 2018 application for modification of Permit 35-06 received approval by the Board of Commissioners of the City of Dothan?

A. Could I please see P-11A?

Q. Sure.

HEARING OFFICER: That's the resolution, isn't it?

MR. LUDDER: Right.

A. Would you please ask the question again?

Q. Yeah. Does Exhibit P-11A demonstrate that the 2018 application for modification of Permit 35-06 received approval by the Board of Commissioners of the City of Dothan?

A. This does not specifically mention the 2018 application.

Q. All right. So that does not approve the 2018 application, correct?

MR. SASSER: Can I -- excuse me. May I just nitpick an objection, but if he will rephrase his questions as the 2018 application that was submitted to ADEM, I will pass on that.

BY MR. LUDDER:

Q. That's certainly what I meant to ask. Is that what you understood me to be asking?

A. The 2018 application?

Q. When I said, the 2018 application, I was talking about the application to ADEM.

A. Yes.

Q. Is that what you understood?

A. Yes. The 2018 application to ADEM contains the acreage and whatnot in this approval, but this approval does not reference the approval of the 2018 application.

Q. All right. And so is the answer to that question that I posed, is it yes?

* * *

A. I think the way you're asking the question, it's not a yes or no question, because I believe that the contents of the host government approval, the 500 -- approximately 539 acres or whatever it is was requested for in the 2018 application, the host approval documents that -- and so, yes, I believe the host government approval that was submitted was in accordance with our regulations, but if you're asking was the 2018 application specifically was -- approved in this local host approval, no, it wasn't. But the acreage was.

Q. That's all I wanted to know.

A. Okay.

Q. That's all I was trying to get.

Q. Now, what the resolution in P-11A did approve was expansion of the facility boundary, correct?

A. Yes.³⁹

On June 12, 2020, the EMC issued an Order modifying the Report of Hearing Officer⁴⁰ and approving ADEM's renewal and modification of Permit No. 35-06.⁴¹ Therein, the EMC made the following finding of fact:

On September 16, 2014, the Board of Commissioners of the City adopted Resolution No. 2014-246 approving "the proposed expansion of the facility boundary of the Dothan Landfill located at 1290 Burkett Road to approximately 536 acres."⁴²

Therein, the EMC made the following conclusions of law:

3. Ala. Admin. Code rs. 335-13-5-.03(2)(b) and 335-13-5-.04(3)(b) provide that a permit may be issued only if the application demonstrates compliance with Ala. Admin. Code div. 335-13.⁴³

³⁹ C. Supp.-1 2844-45 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch).

⁴⁰ The Hearing Officer concluded that "ADEM's interpretation of Ala. Code 1975 § 22-27-48(b) is erroneous." C. Supp.-1 4711 (Report of Hearing Officer).

⁴¹ C. 15-37 & C. Supp.-1 5208-30 (EMC Order).

⁴² C. 22 & C. Supp.-1 5215 (EMC Order).

⁴³ C. 31 & C. Supp.-1 5224 (EMC Order). See C. 33 & C. Supp.-1 5226 (EMC Order) (repeating same conclusion of law).

5. While Ala. Code 1975 § 22-27-48 requires host government approval before the Department can consider an application for a modified permit, it does not require that an applicant submit to the local governing body the technical information that is required by the Department. Rather, § 22-27-48(b) provides that the local governing body must provide approval “pursuant to this section.”⁴⁴

8. The City’s application to ADEM for modification of Solid Waste Disposal Facility Permit No. 35-06 and the September 16, 2014 host government approval satisfied the requirements of Ala. Admin. Code r. 335-13-5-.02 and Ala. Code 1975 § 22-27-48(b). Accordingly, the modification of Solid Waste Disposal Facility Permit No. 35-06 on May 6, 2019 was issued in compliance with Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3).⁴⁵

II. Alternate Liner System Design

The City of Dothan’s 2018 application for modification of Permit No. 35-06 shows that an alternate liner system design is proposed to be used at the proposed expansion of the municipal solid waste landfill unit.⁴⁶

⁴⁴ C. 31-32 & C. Supp.-1 5224-25 (EMC Order).

⁴⁵ C. 33 & C. Supp.-1 5226 (EMC Order).

⁴⁶ C. Supp.-1 2270-72 (ADEM Ex. 2); C. Supp.-2 29 (Pet’rs Ex. 12) (Pet’rs Ex. 12 is an oversized exhibit. The original can be transmitted to this Court by the Circuit Clerk upon this Court’s direction); C. Supp.-1 817 & 1180 (Pet’rs Ex. 12A); C. Supp.-1 2791-92 (Test. Ralph Daniel Wells, Chief Operating Officer and Registered Professional Engineer with CDG Engineers & Associates). See C. 27 & C. Supp.-1 5220 (EMC Order) (finding to same effect).

The City of Dothan's 2018 application for modification of Permit No. 35-06 includes the results of the Hydrological Evaluation of Landfill Performance (HELP) model.⁴⁷ ADEM officials relied on these results to demonstrate that the City's proposed alternate liner system design will ensure that the concentration values listed in Table 1 of Ala. Admin. Code r. 335-13-4-.18 will not be exceeded in the first saturated zone.⁴⁸

The HELP model is designed to calculate the amount of leachate generation and the maximum anticipated depth of leachate head over a particular liner system given certain inputs into the model for the liner system design and other factors (including localized temperature, precipitation, evapotranspiration, and runoff).⁴⁹ The HELP model is only capable of calculating the predicted volume of liquid leachate that passes

⁴⁷ C. Supp.-1 2279-99 (ADEM Ex. 2); C. Supp.-1 2792 (Test. Ralph Daniel Wells, Chief Operating Officer and Registered Professional Engineer with CDG Engineers & Associates).

⁴⁸ C. Supp.-1 1777 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch); C. Supp.-1 2525-2527 (Test. Jared Kelly, ADEM Solid Waste Permit Engineer).

⁴⁹ C. Supp.-1 2269, 2281-84 (ADEM Ex. 2); C. Supp.-1 2789 (Test. Ralph Daniel Wells, Chief Operating Officer and Registered Professional Engineer with CDG Engineers & Associates); C. Supp.-1 2730 (Test. Sarah Sightler, Dothan Landfill Project Engineer, CDG Engineers & Associates).

through the liner system.⁵⁰ The HELP model is not capable of calculating the predicted concentrations of contaminants that pass through the liner system or migrate into the first saturated zone.⁵¹

The senior project engineer for the design of the expansion of the City of Dothan Sanitary Landfill testified:

Q. Okay. Does the permit application include any estimates or predictions of contaminants passing into the environment below the liner?

A. The permit application includes a predicted percolation and leakage through the alternative liner. In our experience, by providing a liner design that passes less leakage, then we are as protective as a descriptive [sic: prescriptive] liner design.

Q. Less leakage meaning less volume of fluid?

A. Yes.

⁵⁰ C. Supp.-1 2799 (Test. Ralph Daniel Wells, Chief Operating Officer and Registered Professional Engineer with CDG Engineers & Associates); C. Supp.-1 2730 (Test. Sarah Sightler, Dothan Landfill Project Engineer, CDG Engineers & Associates); C. Supp.-1 2526 (Test. Jared Kelly, ADEM Solid Waste Permit Engineer).

⁵¹ C. Supp.-1 1777 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch); C. Supp.-1 2526-27 (Test. Jared Kelly, ADEM Solid Waste Permit Engineer); C. Supp.-1 2730 (Test. Sarah Sightler, Dothan Landfill Project Engineer, CDG Engineers & Associates); C. Supp.-1 2799 (Test. Ralph Daniel Wells, Chief Operating Officer and Registered Professional Engineer with CDG Engineers & Associates).

Q. So you're measuring performance just by comparison -- or comparing the leakage rate of the alternative liner system with the leakage rate of the prescribed liner system?

A. Yes.

Q. But that doesn't address chemical contaminants, does it?

A. It doesn't, but to make that -- to make the comparison, you have to have an assumed chemical concentration that is prescribed to both alternatives, and so if one leaks less than the other, then it's passing less contaminants.

Q. But you don't know that it's achieving the performance level prescribed by the rules, do you? That you have to demonstrate that in the groundwater the chemical concentrations can't exceed a certain amount?

A. Well, in my experience, if the prescriptive liner design passes a certain amount through it through percolation or leakage, and the alternative liner passes less, then it is as protective to the environment.

Q. Have you ever heard of any models that can predict chemical concentration of fate and transports in the subsurface from a landfill?

A. I am aware of that model, yes.

Q. Did you use any of those type models?

A. I did not.

Q. Those models would have predicted the chemical concentrations in the subsurface?

A. Yes. I believe you have to start with an assumed leachate concentration of those contaminants.

Q. And you can make some assumptions about the chemical composition of leachate, can't you?

A. Yes. Again, those assumptions would -- would correlate to both alternatives being proposed.⁵²

The City's consulting engineers did nothing to demonstrate that the contaminant concentrations that may leak through the bottom alternate liner system and migrate into the first saturated zone will not exceed the concentration values listed in rule 335-13-4-.18, Table 1.⁵³

The narrative portion of the City's 2018 application specifies that the alternate liner system will include a 60 mil thick High Density Polyethylene (HDPE) flexible membrane liner (FML).⁵⁴ However, the City

⁵² C. Supp.-1 2800 (Test. Ralph Daniel Wells, Chief Operating Officer and Registered Professional Engineer with CDG Engineers & Associates).

⁵³ C. Supp.-1 2730 (Test. Sarah Sightler, Dothan Landfill Project Engineer, CDG Engineers & Associates).

⁵⁴ C. Supp.-2 29 (Pet'rs Ex. 12) (Pet'rs Ex. 12 is an oversized exhibit. The original can be transmitted to this Court by the Circuit Clerk upon this Court's direction); C. Supp.-1 817 & 1180 (Pet'rs Ex. 12A); C. Supp.-1 2270-71 (ADEM Ex. 2). See C. Supp.-1 2792 (Test. Ralph Daniel Wells, Chief Operating Officer and Registered Professional Engineer with CDG Engineers & Associates) (same). Solid Waste Disposal Facility Permit No. 35-06 issued on May 6, 2019 also requires a 60 mil High Density Polyethylene (HDPE) flexible membrane liner (FML). C. Supp.-1 1210
(continued...)

of Dothan’s 2018 application shows that the input value used in the HELP model for the thickness of the High Density Polyethylene (HDPE) flexible membrane liner (FML) was 0.04 inches⁵⁵ – the equivalent of 40 mil.⁵⁶ Thus, the HELP model results included in the City’s 2018 application do not accurately reflect the leachate leakage rate of the alternate liner system as proposed by the City, much less estimate the predicted concentrations of contaminants that pass through the liner system and migrate into the first saturated zone.

The City of Dothan’s 2018 application for renewal and modification of Permit No. 35-06 does not include a demonstration that the proposed alternate liner system design ensures that the contaminant concentration values listed in Table 1 of Ala. Admin. Code r. 335-13-4-.18 will not be exceeded in the first saturated zone.⁵⁷

⁵⁴(...continued)
(Pet’rs Ex. 17).

⁵⁵ C. Supp.-1 2280, 2287, 2293-94 (ADEM Ex. 2).

⁵⁶ See <https://www.convertunits.com/from/inches/to/mil> (visited May 21, 2021).

⁵⁷ C. Supp.-1 1837-2454 (ADEM Ex. 2); C. Supp.-1 2730 (Test. Sarah Sightler, Dothan Landfill Project Engineer, CDG Engineers & Associates).

The City of Dothan’s 2018 application for modification of Permit No. 35-06 does not include a HELP Model calculation of the volume of leachate that would pass through the default “composite liner” system design specified in Ala. Admin. Code r. 335-13-4-.03(26) if it was used at the City’s municipal solid waste landfill unit expansion.⁵⁸ The City of Dothan’s 2018 application does not include a demonstration that utilization of the default “composite liner” system design specified in Ala. Admin. Code r. 335-13-1-.03(26) at the City’s municipal solid waste landfill unit expansion would ensure that the contaminant concentration values listed in Table 1 of Ala. Admin. Code r. 335-13-4-.18 will not be exceeded in the first saturated zone.⁵⁹

On June 12, 2020, the EMC issued an Order modifying the Report of Hearing Officer and approving ADEM’s renewal and modification of Permit No. 35-06.⁶⁰ The EMC made the following findings of fact:

The City submitted a copy of the results of the Hydrological Evaluation of Landfill Performance (HELP) model, developed by the US Army Engineer Waterways Experiment Station for the US EPA. The HELP model,

⁵⁸ C. Supp.-1 1837-2454 (ADEM Ex. 2).

⁵⁹ C. Supp.-1 1837-2454 (ADEM Ex. 2).

⁶⁰ C. 15-37 & C. Supp.-1 5208-30 (EMC Order).

demonstrates that the leakage rate for the alternate liner design was less than that for the regulation design.⁶¹

The liner design described in the regulations would meet the standards for groundwater protection in the rules. Thus, a lower leakage rate would demonstrate that the proposed alternate design would be at least as protective as the described design regarding the concentration values in Table I of ADEM 335-13-4-.18.⁶²

The EMC made the following conclusions of law:

3. Ala. Admin. Code rs. 335-13-5-.03(2)(b) and 335-13-5-.04(3)(b) provide that a permit may be issued only if the application demonstrates compliance with Ala. Admin. Code div. 335-13.⁶³

* * *

27. The Petitioners failed to prove that the alternate liner design violates the Department's regulations.⁶⁴

III. Odors

The Administrator of the U.S. Environmental Protection Agency approved a State Implementation Plan for Alabama pursuant to Section 110 of the Clean Air Act, 42 U.S.C. § 7410, as amended. The approved

⁶¹ C. 27 & C. Supp.-1 5220 (EMC Order).

⁶² C. 27 & C. Supp.-1 5220 (EMC Order).

⁶³ C. 31 & C. Supp.-1 5224 (EMC Order). See C. 33 & C. Supp.-1 5226 (EMC Order) (repeating same conclusion of law).

⁶⁴ C. 36 & C. Supp.-1 5229 (EMC Order).

SIP for Alabama incorporates Ala. Admin. Code r. 335-3-1-.08 (Prohibition of Air Pollution), 335-3-1-.02(1)(e) (definition of Air Pollution), 335-3-1-.02(1)(d) (definition of Air Contaminant), and 335-3-1-.02(1)(ss) (definition of Odor).⁶⁵

The City of Dothan's 2018 application for renewal and modification of Permit No. 35-06 includes the following reference to cover material and odor:

7.2 COVER MATERIAL

At the conclusion of each working day, the Landfill Operator shall cover the general working face of the landfill with a minimum of 6-inches of compacted earth cover or an approved alternate daily cover material.

* * * The earthen cover material will be placed and compacted to a minimum depth of 6-inches to control disease, vectors, fire, odors, blowing litter, and scavenging.

* * * ⁶⁶

⁶⁵ C. Supp.-1 2643-44 (Test. Ronald W. Gore, Chief of ADEM's Air Division); C. Supp.-1 3026-38 (Pet's Ex. 56). See 40 C.F.R. § 52.50(b)(2) and (c) (EPA approved State Implementation Plan for Alabama includes 335-3-1-.08 and 335-3-1-.02). There is no ambient air quality standard for odor set under Ala. Admin. Code r. 335-3-1-.03(1). C. Supp.-1 2643 (Test. Ronald W. Gore, Chief of ADEM's Air Division).

⁶⁶ C. Supp.-1 2332 (ADEM Ex. 2); C. Supp.-1 2455 (Pet's Ex. 11T).

The City of Dothan's 2018 application for renewal and modification of Permit No. 35-06 identifies no other measures designed expressly to control, minimize, or prevent unpleasant odors.⁶⁷

ADEM's Chief of the Solid Waste Branch testified concerning the ability of landfill cover to eliminate unpleasant odors:

A. [Landfill cover is] expected to be able to control odors if applied properly, yes. Not eliminate, but control.

Q. Not eliminate, but control?

A. Yes.

Q. Okay. Do you expect the cover to eliminate unpleasant odors?

⁶⁷ C. Supp.-1 1155-57 (Pet'rs Ex. 9); C. Supp.-1 1837-2454 (ADEM Ex. 2); C. Supp.-2 25-38 (Pet'rs Ex. 12); C. Supp.-1 813-25 & 1176-88 (Pet'rs Ex. 12A). Although the City's application does not identify any measures expressly designed to control, minimize, or prevent the production of unpleasant odors at the landfill other than the application of six inches of daily cover of exposed waste at the working face, ADEM officials assert that a 100 foot buffer zone described in the application and required by Ala. Admin. Code r. 335-13-4-.12(2)(f), also serves to reduce or minimize the intensity of odors traveling beyond the landfill property. C. Supp.-1 2498 (Test. Stephen Scott Story, Chief of ADEM's Solid Waste Engineering Section); C. Supp.-1 2645, 2647 (Test. Ronald W. Gore, Chief of ADEM's Air Division); C. Supp.-1 2810 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch). See C. Supp.-1 1191 (Pet'rs Ex. 16) ("An additional measure to minimize odor . . . from the landfill is the permit requirement . . . and the proposed permit application, for a 100 foot buffer . . .").

A. It's required to control. I don't think -- it's case by case. I mean, it may at times. I mean, sometimes they cover. It depends.

Q. Well, you have heard the –

A. But it's controlling -- yes, it's controlling of odors.

Q. It's controlling, but you don't know whether it controls to the extent necessary to prevent unpleasant odors?

A. Correct.⁶⁸

The witness testified that methods of controlling landfill odors other than six inches of soil cover are available: soil cover greater than the minimum six inches; a spray foam that hardens (Posi-Shell); increasing the frequency of cover application; and reducing the size of the working face.⁶⁹

The same witness testified:

Q. And are you aware that Rule 335-3-1-.08 contains a prohibition against air pollution?

A. Yes.

Q. And are you aware that a contaminant includes odor?

⁶⁸ C. Supp.-1 735 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch). See C. Supp.-1 2645 (Test. Ronald W. Gore, Chief of ADEM's Air Division) (the combination of buffer requirements and daily cover serve to minimize odors but not to eliminate odors).

⁶⁹ C. Supp.-1 1765-66 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch).

A. Yes.

Q. Under that rule?

A. Yes.

Q. And that odor is defined as a smell that is unpleasant to persons?

A. Yes.

Q. So do you equate -- well, let me -- Rule 335-3-1-.08 says, No person shall permit or cause air pollution. Are you equating that statement with minimize? In other words, are you interpreting that statement to say, No person shall -- that person shall minimize air pollution?

A. I interpret it as the cover requirements minimize odor but do not eliminate it. Now, I believe that our state regulations and Subtitle D, if the facility is complying with our permit and regulations, they're in compliance with all of the air regulations, and we followed up with the Air Division, and they agreed with that conclusion, and I prefer that they answer questions about air quality standards, odor emissions, and whatnot as far as the emissions standpoint.

Q. Okay. Your division is responsible for ensuring that landfills are in compliance with state law, right?

A. Correct. And Air Division has informed me that the methods that the landfill utilizes and that is required in our permit should be in compliance with their regulations and laws and whatnot.

Q. All right. But you as the representative of the Solid Waste Branch do not mean to say that shall not permit or cause air pollution is the same as minimize?

A. I'd say the cover requirements will not -- or would not be expected to eliminate odors. We expect it to minimize it, and in conversations with the Air Division, they believe our regulations and permit are protective of any requirements that they have.

Q. Okay. So you're saying the cover requirements will minimize odors --

A. Control. Minimize and control odors as the regulations say. And when I say, control, it's minimize odors, not eliminate.

Q. Okay. So you have a specific rule that says you have to cover waste to control odors, right?

A. Yes.

Q. And that rule is intended to minimize odors, correct?

A. Well, to control. And I look at it as minimize odors, yes.

Q. Okay. But then there's another rule that says all state laws have to be complied with?

A. Correct.

Q. And you're essentially saying that the Air Division is responsible for that and for interpreting their own rules?

A. Yes. They are responsible for interpreting their rules. They have looked at or are aware of our rules, our permit, and they are comfortable with saying that if the permit and

regulations are complied to, they expect their regulations to be complied with.⁷⁰

The Chief of ADEM's Air Division testified that "long term, we had agreements with the Land Division that when it comes to odors, the land division's regulations satisfy Air Division requirements for odors in the early stages of a landfill's life, and in the late stages of a landfill's life, there are further odor regulations that are administered by the Air Division."⁷¹

The only reference in the City of Dothan's 2018 application for renewal and modification of Permit No. 35-06 to a buffer zone is as follows:

4.7 BUFFER ZONES

A minimum 100-ft buffer zone has been established around the boundary of the landfill property and wetlands as required by ADEM Administrative Code R. 335-13-4-.12(2)(f). No disposal will occur within the buffer area. Additionally, the facility will maintain a 100-ft buffer from the stream in the C/D Disposal Area.⁷²

⁷⁰ C. Supp.-1 2846-47 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch).

⁷¹ C. Supp.-1 2644-45 (Test. Ronald W. Gore, Chief of ADEM's Air Division).

⁷² C. Supp.-1 2268 (ADEM Ex. 2); C. Supp.-1 1166 (Pet'rs Ex. 11H).

This reference does not demonstrate that a 100 foot buffer zone will be effective in controlling, minimizing, or eliminating unpleasant odors.

ADEM's Chief of the Air Division testified:

Q. How do you know that 100 foot is enough to eliminate unpleasant smells?

A. I don't know that it's too much or enough.⁷³

Seven witnesses living near the City of Dothan Sanitary Landfill testified that during the seven year period following renewal of Permit No. 35-06 on October 21, 2013, they repeatedly experienced unpleasant smells and aromas ("odors") that migrated beyond the landfill property boundary and caused them to suffer significant physical effects and significant interference with the enjoyment of life and property.⁷⁴ Moreover, over the years, ADEM has received many complaints of unpleasant odors emanating from the City of Dothan Sanitary Landfill⁷⁵ despite then

⁷³ C. Supp.-1 2648 (Test. Ronald W. Gore, Chief of ADEM's Air Division).

⁷⁴ C. Supp.-1 574, 576, 578 (Test. David F. Del Vecchio); C. Supp.-1 624-25 (Test. Peggy Del Vecchio); C. Supp.-1 592-93, 596, 599 (Test. Tara Novack); C. Supp.-1 631-32 (Test. William Novack); C. Supp.-1 601-02 (Test. Michael Del Vecchio); C. Supp.-1 673-75, 677 (Test. Bobby Lewis); C. Supp.-1 548-51, 554, 563 (Test. Anthony Keith).

⁷⁵ C. Supp.-1 1539 (Pet'rs Ex. 65); C. Supp.-1 1010 (Pet'rs Ex. 108;
(continued...))

existing requirements for six inches of daily cover of waste at the working face and a 100 foot buffer zone.⁷⁶

On June 12, 2020, the EMC issued an order modifying the Report of Hearing Officer and approving ADEM's renewal and modification of Permit No. 35-06.⁷⁷ The EMC made the following findings of fact:

The Department requires work practices to minimize odors at landfills. These work practices include cover requirements and buffer zones.⁷⁸

⁷⁵(...continued)

C. Supp.-1 1568 (Pet'rs Ex. 111); C. Supp.-1 1539 (Pet'rs Ex. 55); C. Supp.-1 829-30 (Pet'rs Ex.14); C. Supp.-1 1566 (Pet'rs Ex. 110); C. Supp.-1 844-46, 852, 858-60, 864, 881, 885, 896 (Pet'rs Ex. 15); C. Supp.-1 1190-1191 (Pet'rs Ex. 16); C. Supp.-1 1811 (Test. Stephen Scott Story, Chief of ADEM's Solid Waste Engineering Section); C. Supp.-1 2516 (Test. Jared Kelly, ADEM Solid Waste Permit Engineer).

⁷⁶ C. Supp.-1 781, 783 (Pet'rs Ex. 3) (2013 permit, Section II, ¶ A., requires compliance with minimum 100 foot buffer zone requirement in Ala. Admin. Code r. 335-13-4-.12(2)(f); 2013 permit, Section III, H., requires compliance with minimum of six inches of daily cover required in Ala. Admin. Code r. 335-13-4-.22(1)(a)1.). See C. Supp.-1 1811 (Test. Stephen Scott Story, Chief of ADEM's Solid Waste Engineering Section) (requirement of six inches of daily cover has existed since 2013); C. Supp.-1 2800 (Test. Ralph Daniel Wells, Chief Operating Officer and Registered Professional Engineer with CDG Engineers & Associates) (controls for odor were in existence when the existing landfill was operating).

⁷⁷ C. 15-37 & C. Supp.-1 5208-30 (EMC Order).

⁷⁸ C. 28 & C. Supp.-1 5221 (EMC Order).

The permit requires six inches of compacted earth cover at the conclusion of each working day for the municipal waste. The permit requires the same cover material for the construction/ demolition but at the conclusion of each week.⁷⁹

The permit also requires a 100-foot buffer zone around the disposal area. This method of cover along with buffer zones are common permit conditions throughout the state and the landfill industry. There was no evidence that the Department has encountered a case where those work practices were not sufficient to control odors.⁸⁰

* * *

The evidence does not establish that the conditions of the permit themselves – its work practices and technology based standards – are insufficient to control odor from existing in such extent and duration as would or tend to be injurious to human health or welfare, animal or plant life, or property, or would interfere with the enjoyment of life or property.⁸¹

The EMC made the following conclusions of law:

3. Ala. Admin. Code rs. 335-13-5-.03(2)(b) and 335-13-5-.04(3)(b) provide that a permit may be issued only if the application demonstrates compliance with Ala. Admin. Code div. 335-13.⁸²

* * *

⁷⁹ C. 28 & C. Supp.-1 5221 (EMC Order).

⁸⁰ C. 28 & C. Supp.-1 5221 (EMC Order).

⁸¹ C. 29 & C. Supp.-1 5222 (EMC Order).

⁸² C. 31 & C. Supp.-1 5224 (EMC Order). See C. 33 & C. Supp.-1 5226 (EMC Order) (repeating same conclusion of law).

22. The permit conditions, specifically its work practices and technology-based standards, comply with applicable Alabama's regulations and the Alabama State implementation Plan as it concerns includes odor and fugitive dust.⁸³

IV. Disease Vectors

The City of Dothan's 2018 application for renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 contains the following references to disease vectors⁸⁴:

6.10 VECTOR CONTROL

Vector control at the landfill shall be the responsibility of the Landfill Operator. Daily cover shall be used in the municipal solid waste disposal area to prevent the transmission of disease by vectors. Six inches of earthen cover will be used to cover the open face daily. Wastes that could encourage vector breeding shall not be left uncovered at the site. Areas where stagnate water accumulates will be regraded to encourage runoff.⁸⁵

7.2 COVER MATERIAL

At the conclusion of each working day, the Landfill Operator shall cover the general working face of the landfill with a

⁸³ C. 35 & C. Supp.-1 5228 (EMC Order).

⁸⁴ A disease vector is any insect, bird, or animal that has contact with the landfill and then has the potential to migrate outside the landfill and transmit disease. C. Supp.-1 1767 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch); C. Supp.-1 1032 (Pet's Ex. 1); Ala. Admin. Code r. 335-13-1-.03(38).

⁸⁵ C. Supp.-1 2328 (ADEM Ex. 2).

minimum of 6-inches of compacted earth cover or an approved alternate daily cover material.

* * * The earthen cover material will be placed and compacted to a minimum depth of 6-inches to control disease, vectors, fire, odors, blowing litter, and scavenging.

* * *⁸⁶

8.2 ROUTINE MAINTENANCE

* * *

7. Measures shall be taken to prevent the breeding or accumulation of disease vectors. If determined necessary by the Department or the State Health Department, additional disease vector control measures shall be conducted.⁸⁷

The City of Dothan's 2018 application for renewal and modification of Permit No. 35-06 identifies no other measures designed expressly to control, minimize or prevent the breeding or accumulation of disease vectors at the landfill.⁸⁸

⁸⁶ C. Supp.-1 2332 (ADEM Ex. 2).

⁸⁷ C. Supp.-1 2343 (ADEM Ex. 2).

⁸⁸ C. Supp.-1 1155-57 (Pet's Ex. 9); C. Supp.-1 1837-2454 (ADEM Ex. 2); C. Supp.-2 25-38 (Pet's Ex. 12); C. Supp.-1 813-25 & 1176-88 (Pet's Ex. 12A). Although the City's application does not identify any measures expressly designed to control, minimize, or prevent the breeding or accumulation of disease vectors at the landfill other than the application of six inches of daily cover of exposed waste at the working face and elimination of ponding, ADEM officials assert that a 100 foot
(continued...)

ADEM's Chief of the Solid Waste Branch testified concerning the interpretation of the language "prevent the breeding or accumulation of disease vectors" in Ala. Admin. Code r. 335-13-4-.22(2)(d):

A. Well, the rules don't say you have to prevent. It says control. * * *

* * *

Q. Paragraph D says: Measures shall be taken to prevent the breeding or accumulation of disease vectors. Doesn't say control in that paragraph, does it?

A. No, it doesn't. But if you read it in context: Measure -- if determined necessary by the department or the state health department, additional disease vector control measures shall be conducted.

Q. Those are two separate sentences. It's not a comma separating the two sentences, is it?

A. I think it's in connection of both together. "If determined, measures shall be taken." That's how I read it.

Q. Well, it says: Measures shall be taken. And then it says: Additional measures shall be conducted if determined.

⁸⁸(...continued)

buffer zone described in the application and required by Ala. Admin. Code r. 335-13-4-.12(2)(f) also serves to reduce or minimize disease vectors traveling beyond the landfill property. C. Supp.-1 1191 (Pet'rs Ex. 16) ("An additional measure to minimize . . . vector issues from the landfill is the permit requirement . . . and the proposed permit application, for a 100 foot buffer . . ."); C. Supp.-1 2482 (Test. Stephen Scott Story, Chief of ADEM's Solid Waste Engineering Section); C. Supp.-1 2811, 2849 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch).

A. Measures shall be taken to prevent the breeding or accumulation of disease vectors if determined necessary.

Q. Isn't the first sentence a command to –

A. You are correct. You are correct.

Q. -- the facility that they take measures to prevent the breeding and accumulation of disease vectors, right?

A. I was mistaken.

Q. And then an additional control measure might be required if determined necessary by the department?

A. Correct. But I still go back to the regulation. It's to control. And if the controlling -- the vectors we still note or we noted it did not prevent the breeding and accumulation of disease vectors, then we could take additional measures. It's confusing. Cover is intended to control disease vectors. If we see that they're not being controlled appropriately, we can require additional measures.⁸⁹

Later, the same witness testified:

Q. Okay. Now, would you just quickly list the measures that are required to be used for the control of disease vectors?

A. Disease vectors? Cover and buffer are the two primary measures.

Q. Okay. Do you expect that those measures will achieve the prevention of the breeding or accumulation of disease vectors?

⁸⁹ C. Supp.-1 739-40 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch).

A. Yes.

Q. And what do you mean by prevention when you answered it that way? You mean, minimize?

A. Well, I think we're talking about two different things. One, you have your normal operating and whatnot, and they cover the material as required, and that should minimize the attraction of vectors and whatnot. But you have another issue with the routine maintenance or measures that they take, say, If there's a storm that occurs and puddles of standing water occur at the landfill, that the landfill is required to take care of those puddles and whatnot, because standing water will attract vectors. And so in that sense, you remove those puddles, and it will -- should prevent mosquitoes from congregating in that area.

Q. Okay. Is the use of cover going to prevent disease vectors?

A. No, in that case I think it's -- prevent -- I think it's minimize them. It should, yes.

Q. And would that be true as well for the buffer zone? That would minimize the disease vectors to some extent?

A. Yes.

Q. But might not necessarily prevent the disease vectors; isn't that right?

A. Exactly.⁹⁰

⁹⁰ C. Supp.-1 2849 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch). See C. Supp.-1 2811 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch) (cover is what minimizes the opportunity for disease vectors); C. Supp.-1 2798 (Test. Ralph Daniel Wells, Sr. Project (continued...))

The same witness also testified:

Q. Okay. Are you aware that the Environmental Protection Agency has said that where additional controls on disease vectors is necessary, some of the options are deeper cover? More frequent cover? Working face reduction, the use of repellents, insecticides, rodenticides, predatory and reproductive controls? Are those all possible means of controlling disease vectors?

A. Yes.

Q. None of those have been required at this facility, right?

A. No.⁹¹

Several witnesses testified that during the seven year period following renewal of Permit No. 35-06 on October 21, 2013, they repeatedly observed disease vectors that accumulated at the City of Dothan Sanitary Landfill and migrated to their properties, particularly buzzards that deposit feces on their property, and flies.⁹² Moreover,

⁹⁰(...continued)
Mgr., CDG Eng'rs & Assoc.) (cover of solid waste "minimizes" disease vectors).

⁹¹ C. Supp.-1 1767 (Test. Eric Sanderson, Chief of ADEM's Solid Waste Branch). See also C. Supp.-1 2811 (Test. Ralph Daniel Wells, Sr. Project Mgr., CDG Eng'rs & Assoc.) (daily cover of solid waste "minimizes" the opportunity for disease vectors).

⁹² C. Supp.-1 549, 554-55, 563 (Test. Anthony Keith); C. Supp.-1
(continued...)

ADEM has received many complaints of disease vectors accumulating at the City of Dothan Landfill and migrating to properties near the landfill⁹³ despite then existing requirements for six inches of daily cover of waste at the landfill working face and a 100 foot buffer zone.⁹⁴

On June 12, 2020, the EMC issued an order modifying the Report of Hearing Officer and approving ADEM's renewal and modification of Permit No. 35-06.⁹⁵ The EMC made the following findings of fact:

⁹²(...continued)
571-72, 574, 580 (Test. David F. Del Vecchio); C. Supp.-1 625-26 (Test. Peggy Del Vecchio); C. Supp.-1 632, 634 (Test. William Novack); C. Supp.-1 603-05, 608, 615 (Test. Michael Del Vecchio); C. Supp.-1 675-77, 695-96 (Test. Bobby Lewis).

⁹³ C. Supp.-1 1539 (Pet'rs Ex. 65); C. Supp.-1 1010 (Pet'rs Ex. 108); C. Supp.-1 1568 (Pet'rs Ex. 111); C. Supp.-1 1539 (Pet'rs Ex. 55); C. Supp.-1 830 (Pet'rs Ex.14); C. Supp.-1 1566 (Pet'rs Ex. 110); C. Supp.-1 857, 860-62, 881-83, 885, 892 (Pet'rs Ex. 15); C. Supp.-1 1190-1191 (Pet'rs Ex. 16); C. Supp.-1 2520-21 (Test. Jared Kelly, ADEM Solid Waste Permit Engineer).

⁹⁴ C. Supp.-1 781, 783 (Pet'rs Ex. 3) (2013 permit, Section II, ¶ A. and Section III, ¶ Q. require compliance with the disease vector prevention requirement in Ala. Admin. Code r. 335-13-4-.22(2)(d). C. Supp.-1 1811 (Test. Stephen Scott Story, Chief of ADEM's Solid Waste Engineering Section) (requirement of six inches of daily cover has existed since 2013); C. Supp.-1 2800 (Test. Ralph Daniel Wells, Sr. Project Mgr., CDG Eng'rs & Assoc.) (same controls for disease vectors were in existence when the existing landfill was operating).

⁹⁵ C. 15-37 & C. Supp.-1 5208-30 (EMC Order).

The permit contains conditions that address disease vectors: cover requirements, requirements that wastes that could encourage vector breeding shall not be left uncovered at the site, and requirements to regrade areas where stagnant water accumulates.⁹⁶

The EMC made the following conclusions of law:

3. Ala. Admin. Code rs. 335-13-5-.03(2)(b) and 335-13-5-.04(3)(b) provide that a permit may be issued only if the application demonstrates compliance with Ala. Admin. Code div. 335-13.⁹⁷

* * *

24. The Permit contains measures to prevent the breeding and accumulation of disease vectors as required by ADEM Admin. Code r. 335-13-4-.22(2)(d).⁹⁸

STANDARD OF REVIEW

“[T]his court reviews the judgment of a circuit court reviewing a decision of an administrative agency ‘without any presumption of its correctness, since that court was in no better position to review the order of the [agency] than we are.’” GASP v. Jefferson Cty. Bd. of Health, 285 So. 3d 225, 227 (Ala. Civ. App. 2018) (quoting State Health Planning &

⁹⁶ C. 30 & C. Supp.-1 5223 (EMC Order).

⁹⁷ C. 31 & C. Supp.-1 5224 (EMC Order). See C. 33 & C. Supp.-1 5226 (EMC Order) (repeating same conclusion of law).

⁹⁸ C. 36 & C. Supp.-1 5229 (EMC Order).

Res. Dev. Admin. v. Rivendell of Ala., Inc., 469 So. 2d 613, 614 (Ala. Civ. App. 1985) (citing Vann Express, Inc. v. Bee Line Express, Inc., 347 So. 2d 1353 (Ala. 1977)). The scope of judicial review of an order of the EMC approving an administrative action of ADEM is provided in Ala. Code 1975 § 41-22-20(k). Affinity Hosp., LLC v. Brookwood Health Servs., 143 So. 3d 208, 212 (Ala. Civ. App. 2013); Gipson v. Ala. Dep't of Env'tl. Mgmt., 297 So. 3d 448, 457-58 (Ala. Civ. App. 2019).

There is no presumption of correctness afforded to the EMC's legal conclusions or its application of the law to the facts. Ala. Dep't of Env'tl. Mgmt. v. Legal Env'tl. Assistance Found., Inc., 973 So. 2d 369, 376 (Ala. Civ. App. 2007). Accord, Bice v. Taylor, 157 So. 3d 161, 167 (Ala. Civ. App. 2014). See May v. Azar, 302 So. 3d 222, 236 (Ala. Civ. App. 2019) (judicial review of an agency's conclusions of law and its application of the law to the facts are de novo).

A finding of fact is clearly erroneous if it is not supported by any reliable and probative evidence that a reasonable man might accept as adequate to support a conclusion. Ala. Code 1975 § 41-22-20(k)(6); State Health Planning & Dev. Agency v. AMI Brookwood Med. Ctr., Div. of Brookwood Health Servs., Inc., 564 So. 2d 54, 63 (Ala. Civ. App. 1989),

rev'd on other grounds sub nom., Ex parte Shelby Med. Ctr., Inc., 564 So. 2d 63 (Ala. 1990).

The Court may affirm the decision of the EMC only if the administrative action and the stated basis for the action are correct. Ala. Dep't of Env'tl. Mgmt. v. Ala. Rivers Alliance, Inc., 14 So. 3d 853, 867 (Ala. Civ. App. 2007) (citing Ex parte Beverly Enters.-Ala., Inc., 812 So. 2d 1189, 1195 (Ala. 2001)). Accord, Glass v. City of Dothan Personnel Bd., 910 So. 2d 128, 130 (Ala. Civ. App. 2004).

SUMMARY OF THE ARGUMENT

The EMC's approval of ADEM's May 6, 2019 renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 is affected by erroneous interpretations of Ala. Code 1975 § 22-27-48(b) (local governing body (host government) approval of ADEM application), Ala. Admin. Code r. 335-3-1-.08 (prohibition of air pollution including "odors"), 40 C.F.R. § 52.50 (prohibition of air pollution including "odors") and Ala. Admin. Code r. 335-13-4-.22(2)(d) (prevention of disease vectors).

The EMC's approval of ADEM's May 6, 2019 modification of Solid Waste Disposal Facility Permit No. 35-06 is in excess of the statutory

authority of the EMC under Ala. Code 1975 § 22-27-48(b) (local governing body (host government) approval of ADEM application).

The EMC's approval of ADEM's May 6, 2019 renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 is in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because the City of Dothan's 2018 application does not demonstrate compliance with Ala. Admin. Code rs. 335-13-5-.02(1)(b) (documentation of local governing body (host government) approval of ADEM application), 335-13-4-.18(3)(h)1. (alternate liner design performance standards), 335-13-4-.01(3) (prohibition of "odors" at 335-3-1-.08), 335-13-4-.22(3)(a) (prohibition of "odors" at 40 C.F.R. §52.50), and 335-13-4-.22(2)(d) (prevention of disease vectors).

The EMC's approval of ADEM's May 6, 2019 renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 is based on clearly erroneous findings of fact regarding the proposed alternate liner design and "odors."

ARGUMENT

I. **ADEM’s modification of Permit No. 35-06 is affected by an erroneous interpretation of Ala. Code 1975 § 22-27-48(b).**

Ala. Code 1975 § 22-27-48(b) states:

The department may not consider an application for a new facility unless the application has received approval pursuant to Section 22-27-48.1 by the affected local governing body. The department may not consider an *application for a modified permit* for a facility unless *such application* has received approval pursuant to this section by the affected local governing body.

(Emphasis added).⁹⁹

In City of Brundidge v. Alabama Department of Environmental Management, 218 So. 3d 798 (Ala. Civ. App. 2016), the Court was called upon to interpret the phrase “[s]uch approval or disapproval of services or activities” in Ala. Code 1975 § 22-27-48(a). The Court explained that “Such is properly used as an adjective when reference has previously been made to a category of persons or things [S]uch is a DEICTIC TERM that must refer to a clear antecedent. Bryan A. Garner, Garner’s

⁹⁹ “[D]epartment is defined as “[t]he Alabama Department of Environmental Management.” Ala. Code 1975 §§ 22-27-43 and 22-27-2(6).

Dictionary of Legal Usage 859 (3d ed. 2011).” Id. at 812. Accord, Gafford v. Kirby, 512 So. 2d 1356, 1361 (Ala. 1987).

The words “such application” in Ala. Code 1975 § 22-27-48(b) plainly and unambiguously refer to the antecedent phrase “application for a modified permit” that may be submitted to ADEM for consideration. See Fitzjarrald v. Huntsville, 597 So. 2d 1378, 1379 (Ala. Civ. App. 1992) (“ADEM may not even consider a permit application unless it has already been approved by the local government unit.”). Thus, with limited exceptions specified in Ala. Code 1975 § 22-27-48(d), ADEM may not consider an application for modification of a solid waste disposal facility permit unless that application has received prior approval by the affected local governing body. Given the plain and unambiguous language of the statute, there is no room for judicial construction. See Ala. Bd. of Exam’rs of Landscape Architects v. Bostick, 211 So. 3d 825, 834 (Ala. 2016) (“[W]here the language of the statute . . . is plain, this Court will not blindly follow an administrative agency’s interpretation, but will interpret the statute to mean exactly what it says”); Ex parte Smith, No. 1180834, 2020 WL 5268052, * ___, 2020 Ala. LEXIS 122, *9 (Ala. Sep. 4, 2020) (“When the language of a statute is plain and unambiguous, as in this

case, courts must enforce the statute as written by giving the words of the statute their ordinary plain meaning.”).

The EMC and ADEM incorrectly interpret the words “such application” in Ala. Code 1975 § 22-27-48(b) as referring to an application submitted to a local governing body for approval of a disposal site pursuant to Ala. Code 1975 § 22-27-48(c) rather than an application to ADEM for a permit modification. While subsections 22-27-48(b) and -48(c) are to be construed in pari materia, each is entitled to equal weight. Craft v. McCoy, 312 So. 3d 32, 37 (Ala. 2020). “There is a presumption that every word, sentence, or provision [of a statute] . . . has some force and effect . . . and . . . that no superfluous words or provisions were used.” Black Bear Sols., Inc. v. State Dep't of Educ., No. 2190826, 2021 Ala. Civ. App. LEXIS 4, at *15, 2021 WL 138828, at *__ (Ala. Civ. App. Jan. 15, 2021). The Court may explain the language of a statute, but it may not detract from or add to the language. Craft v. McCoy, 312 So. 3d at 37. It is clear that §§ 22-27-48(b) and -48(c) refer to two different “applications” – the former directed to ADEM for a permit modification and the latter directed to the local governing body for approval of a disposal site. The interpretation urged by ADEM, the EMC and City would detract from the

explicit language in § 22-27-48(b) that requires local government approval of the application to ADEM for a permit modification.

Thus, the EMC's conclusion that Ala. Code 1975 § 22-27-48(b) does not require host government approval of the City's 2018 application to ADEM for modification of Permit No. 35-06 is in error. Accordingly, the EMC's approval of ADEM's modification of Permit No. 35-06 is affected by an error of law.

II. ADEM's modification of Permit No. 35-06 is in excess of its statutory authority under Ala. Code 1975 § 22-27-48(b).

For the reasons discussed above, Ala. Code 1975 § 22-27-48(b) prohibits ADEM consideration of an application for modification of a solid waste disposal facility permit unless the local governing body has approved such permit. Resolution No. 2014-246, adopted by the Board of Commissioners on September 16, 2014, did not approve the City's 2018 application for modification of Permit No. 35-06. Accordingly, the EMC's approval of ADEM's modification of Permit No. 35-06 is in excess of the statutory authority of the EMC under Ala. Code 1975 § 22-27-48(b).

III. ADEM’s modification of Permit No. 35-06 is in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because the City of Dothan’s 2018 application does not demonstrate compliance with Ala. Admin. Code r. 335-13-5-.02(1)(b) (documentation of host government approval).

If an application fails to demonstrate compliance with Ala. Admin. Code r. 335-13-5-.02(1)(b), ADEM is precluded from issuing a permit and the EMC is precluded from approving such a permit. Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3).¹⁰⁰ Ala. Admin. Code r. 335-13-5-.02 provides inter alia:

Permit Application. Existing and proposed landfill units shall obtain permits to construct and/or operate in accordance with the following:

(1) Application Requirements. Landfill units proposed after the effective date of this Division shall submit the following in order to request a permit:

* * *

(b) Documentation of host government approval, as provided in the Code of Alabama 1975, § 22-27-48 and 48.1;

* * *

¹⁰⁰ See C. 31 & C. Supp.-1 5224 (EMC Order) (“Ala. Admin. Code rs. 335-13-5-.03(2)(b) and 335-13-5-.04(3)(b) provide that a permit may be issued only if the application demonstrates compliance with Ala. Admin. Code div. 335-13.”).

The City's 2018 application for modification of Permit No. 35-06 fails to include documentation demonstrating host government approval of the City's 2018 application to ADEM for modification of Permit No. 35-06 as required by Ala. Code 1975, § 22-27-48(b). Accordingly, the EMC's approval of ADEM's modification of Permit No. 35-06 is in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because the City of Dothan's 2018 application to ADEM does not include documentation demonstrating compliance with Ala. Admin. Code r. 335-13-5-.02(1)(b).

IV. ADEM's modification of Permit No. 35-06 is in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because the City of Dothan's 2018 application does not demonstrate compliance with Ala. Admin. Code r. 335-13-4-.18(3)(h)1. (alternate liner design performance standards).

If an application fails to demonstrate compliance with Ala. Admin. Code 335-13-4-.18(3)(h)1., ADEM is precluded from issuing a permit and the EMC is precluded from approving such a permit. Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3).¹⁰¹ Ala. Admin. Code r. 335-13-4-.18(3)(h) provides:

¹⁰¹ See C. 31 & C. Supp.-1 5224 (EMC Order) ("Ala. Admin. Code rs. 335-13-5-.03(2)(b) and 335-13-5-.04(3)(b) provide that a permit may be issued only if the application demonstrates compliance with Ala. Admin. Code div. 335-13.").

An alternate liner design may be approved by the Department provided that:

1. The owner or operator demonstrates that the alternate design ensures the concentration values listed in Table 1 of this rule will not be exceeded in the first saturated zone at the relevant point of compliance, as specified by the Department under 335-13-4-.27(2)(a)3.

The City's 2018 application for modification of Permit No. 35-06 fails to demonstrate that the proposed alternate liner design will ensure that the concentration values list in Table 1 of Ala. Admin. Code r. 335-13-4-.18 will not be exceeded in the first saturated zone. The HELP model included in the 2018 application does not predict chemical concentrations in the landfill leachate or in the first saturation zone. Indeed, the City's consulting engineering firm did nothing to estimate the predicted chemical concentrations in the first saturation zone. Moreover, the HELP model relied upon by ADEM and the City to demonstrate compliance with r. 335-13-4-.18(3)(h) used an erroneous input value for the thickness of the High Density Polyethylene (HDPE) flexible membrane liner (FML) that invalidates the model results.

Accordingly, the EMC's approval of ADEM's modification of Permit No. 35-06 is in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and

335-13-5-.04(3) because the City of Dothan's 2018 application does not demonstrate compliance with Ala. Admin. Code r. 335-13-4-.18(3)(h).¹⁰²

V. ADEM's modification of Permit No. 35-06 is based on clearly erroneous findings of fact regarding the proposed alternate liner design.

The EMC found that the HELP model results included in the 2018 application demonstrate that the leakage rate for the alternate liner design is less than that for the default liner design described in Ala. Admin. Code r. 335-13-1-.03(26) and is at least as protective of the concentration values in Table 1 of r. 335-13-4-.18 as the default liner design.¹⁰³ There is no evidence in the record that demonstrates the leakage rate of the default liner design. Accordingly, the EMC's findings are clearly erroneous because they are not supported by any reliable and

¹⁰² The EMC concluded that "[t]he Petitioners failed to prove that the alternate liner design violates the Department's regulations." C. 36 & C. Supp.-1 5229. This conclusion misapprehends the Petitioners' alleged error and burden of proof regarding the alternate liner design. Petitioners alleged that the City's 2018 application to ADEM fails to demonstrate that the alternate liner design ensures the concentration values listed in Table 1 of r. 335-13-4-.18 will not be exceeded in the first saturated zone as is required by r. 335-13-4-.18(3)(h). C. 53-54 (Pet's Request for Hearing); C. 488 (Prehearing Order). The EMC made no conclusion with regard to Petitioners' allegation.

¹⁰³ C. 27 & C. Supp.-1 5220 (EMC Order).

probative evidence that a reasonable man might accept as adequate to support a conclusion.

The EMC also found that the default liner design described in Ala. Admin. Code r. 335-13-1-.03(26) would meet the standards for groundwater protection described in Table 1 of Ala. Code r. 335-13-4-.18 and that the lower leakage rate of the alternate liner design would be at least as protective.¹⁰⁴ There is no evidence in the record that demonstrates the leakage rate of the default liner design and no evidence in the record that demonstrates that the default liner design would not exceed the chemical concentration values in Table 1 in the first saturation zone. Accordingly, the EMC's findings are clearly erroneous because they are not supported by any reliable and probative evidence that a reasonable man might accept as adequate to support a conclusion.

¹⁰⁴ C. 27 & C. Supp.-1 5220 (EMC Order).

VI. ADEM’s renewal and modification of Permit No. 35-06 is affected by an erroneous interpretation of Ala. Admin. Code r. 335-3-1-.08 (prohibition of air pollution) and 40 C.F.R. § 52.50 (prohibition of air pollution).

Ala. Admin. Code r. 335-13-4-.01(3) requires that solid waste disposal facilities comply with any other applicable State rules. Ala. Admin Code r. 335-3-1-.08 provides:

Prohibition of Air Pollution. No person shall permit or cause air pollution, as defined in rule 335-3-1-.02(1)(e) of this chapter by the discharge of any air contaminant for which no ambient air quality standards have been set under rule 335-3-1-.03(1).

“Air pollution” is defined as “the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as . . . would interfere with the enjoyment of life or property . . .” Ala. Admin. Code r. 335-3-1-.02(1)(e). An “air contaminant” is defined as including “any odor.” Ala. Admin. Code r. 335-3-1-.02(1)(d). An “odor” is defined as

smells or aromas which are unpleasant to persons or which tend to lessen human food and water intake, interfere with sleep, upset appetite, produce irritation of the upper respiratory tract, or cause symptoms or nausea, or which by their inherent chemical or physical nature or method or processing are, or may be, detrimental or dangerous to health. Odor and smell are used interchangeably herein.

Ala. Admin. Code r. 335-3-1-.02(1)(ss).

Ala. Admin Code r. 335-13-4-.22(3)(a) requires that owners or operators of municipal solid waste landfills must ensure that such landfills do not violate any applicable requirements developed under a State Implementation Plan (SIP) approved by the Administrator of the U.S. Environmental Protection Agency pursuant to Section 110 of the Clean Air Act, 42 U.S.C. § 7410. The Administrator has approved a SIP for Alabama that incorporates by reference Ala. Admin. Code rs. 335-3-1-.08 (Prohibition of Air Pollution) and 335-3-1-.02 (Definitions). 40 C.F.R. § 52.50.

“The language used in an administrative regulation should be given its natural, plain, ordinary, and commonly understood meaning, just as language in a statute.” Hamilton v. Ala. Dep’t of Postsecondary Educ., 50 So. 3d 439, 445 (Ala. Civ. App. 2009). Accord, Fraternal Order of Police, Lodge No. 64 v. Personnel Bd. of Jefferson Cty., 103 So. 2d 17, 25 (Ala. 2012). The plain language of Ala. Admin. Code r. 335-3-1-.08 **prohibits** a person from permitting or causing the presence of smells or aromas in the outdoor atmosphere in such quantities and duration as are unpleasant to persons or which tend to have harmful effects and interfere with the enjoyment of life or property.

The EMC interpreted r. 335-3-1-.08, not as prohibition, but as an objective that need not be attained provided that odors are “controlled” or “minimized” by implementing work practices or technologies (e.g., periodic cover of solid waste with six inches soil and a 100-foot buffer zone).

The interpretation of an agency regulation by the promulgating agency carries controlling weight unless it is plainly erroneous or inconsistent with the regulation. Fraternal Order of Police, Lodge No. 64 v. Personnel Bd. of Jefferson Cty., 103 So. 3d 17, 25 (Ala. 2012); Brunson Constr. & Env'tl. Servs., Inc. v. City of Prichard, 664 So. 2d 885, 890 (Ala. 1995). The EMC’s interpretation of r. 335-3-1-.08 is inconsistent with the plain language of the rule because it substitutes ad hoc permit conditions requiring implementation of work practices and technologies to “control” or “minimize” odors for the plain and unambiguous prohibition of r. 335-3-1-.08. Accordingly, the EMC’s approval of ADEM’s modification of Permit No. 35-06 is affected by an erroneous interpretation of Ala. Admin. Code r. 335-3-1-.08.

VII. ADEM’s renewal and modification of Permit No. 35-06 is in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because the City of Dothan’s 2018 application does not demonstrate compliance with Ala. Admin. Code rs. 335-13-4-.01(3) (any other applicable State rules) and 335-13-4-.22(3)(a) (EPA-approved State Implementation Plan) respecting odors.

If an application fails to demonstrate compliance with Ala. Admin. Code rs. 335-13-4-.01(3) (any other applicable State rules) or 335-13-4-.22(3)(a) (EPA-approved SIP), ADEM is precluded from issuing a permit and the EMC is precluded from approving such a permit. Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3).¹⁰⁵ The City’s 2018 application for renewal and modification of Permit No. 35-06 indicates that the City will “control” odors by applying periodic cover of solid waste with six inches of soil. The application also describes a 100-foot buffer zone, but does not indicate that it will have any effect on “controlling,” “minimizing,” or preventing odors. Periodic cover of solid waste and a 100 foot buffer zone have been implemented at the landfill for at least seven years. During that time, Petitioners have repeatedly suffered exposure

¹⁰⁵ See C. 31 & C. Supp.-1 5224 (EMC Order) (“Ala. Admin. Code rs. 335-13-5-.03(2)(b) and 335-13-5-.04(3)(b) provide that a permit may be issued only if the application demonstrates compliance with Ala. Admin. Code div. 335-13.”).

to prohibited “odors” from the landfill, i.e., “odors” in such quantities and duration as interfere with their enjoyment of life or property. The City’s 2018 application fails to demonstrate that periodic cover of solid waste and a 100 foot buffer zone are sufficient to comply with the prohibition against the discharge of “odors” into the air in such quantities and duration as interfere with their enjoyment of life or property in Ala. Admin. Code r. 335-3-1-.08. Thus, the City’s 2018 application fails to demonstrate compliance with Ala. Admin. Code rs. 335-13-4-.01(3) and 335-13-4-.22(3)(a). Accordingly, the EMC’s approval of ADEM’s renewal and modification of Permit No. 35-06 is in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3).

VIII. ADEM’s renewal and modification of Permit No. 35-06 is based on clearly erroneous findings of fact regarding odors.

The EMC made the following finding of facts:

The permit also requires a 100-foot buffer zone around the disposal area. * * * There was no evidence that the Department has encountered a case where those work practices were not sufficient to control odors.¹⁰⁶

¹⁰⁶ C. 28 & C. Supp.-1 5221 (EMC Order).

The evidence does not establish that the conditions of the permit themselves – its work practices and technology based standards – are insufficient to control odor from existing in such extent and duration as would or tend to be injurious to human health or welfare, animal or plant life, or property, or would interfere with the enjoyment of life or property.¹⁰⁷

There is substantial evidence in the record that the work practices prescribed by Permit No. 35-06 (i.e., periodic cover of solid waste with six inches of soil and a 100-foot buffer zone) do not control odors sufficiently to comply with Ala. Admin. Code r. 335-3-1-.08. These work practices have been implemented at the landfill to “control” odors for at least seven years. During that time, Petitioners have repeatedly suffered exposure to “odors” from the landfill in such quantities and duration as interfere with their enjoyment of life or property. See supra note 74 and accompanying text. Accordingly, the EMC’s findings are clearly erroneous because they are not supported by any reliable and probative evidence that a reasonable man might accept as adequate to support a conclusion.

¹⁰⁷ C. 29 & C. Supp.-1 5222 (EMC Order).

IX. ADEM’s renewal and modification of Permit No. 35-06 is affected by an erroneous interpretation of Ala. Admin. Code r. 335-13-4-.22(2)(d) (prevention of disease vectors).

Ala. Admin. Code r. 335-13-4-.22(2)(d) requires that landfill operators take “[m]easures . . . to *prevent* the breeding or accumulation of disease vectors.” (Emphasis added). “The language used in an administrative regulation should be given its natural, plain, ordinary, and commonly understood meaning, just as language in a statute.” Hamilton v. Ala. Dep’t of Postsecondary Educ., 50 So. 3d 439, 445 (Ala. Civ. App. 2009). Accord, Fraternal Order of Police, Lodge No. 64 v. Personnel Bd. of Jefferson Cty., 103 So. 2d 17, 25 (Ala. 2012). The courts regularly look to dictionary definitions to ascertain the plain meaning of words. In the context of rule 335-13-4-.22(2)(d), the word “prevent” is a transitive verb meaning “to keep from happening or existing,” Merriam-Webster.com Dictionary, Merriam-Webster Inc., <https://www.merriam-webster.com> (visited May 20, 2021); “[t]o keep from happening; avert,” American Heritage Dictionary of the English Language, Fifth Edition, <https://ahdictionary.com> (visited May 20, 2021).¹⁰⁸ These definitions do

¹⁰⁸ E.g., Fowler v. United States, 563 U.S. 668, 675 (2011) (“the (continued...)”)

not suggest exceptions. Thus, Ala. Admin. Code r. 335-13-4-.22(2)(d) commands that the City of Dothan take measures to “prevent” (i.e., keep from happening) the breeding and accumulation of disease vectors at the landfill.

¹⁰⁸(...continued)

dictionary defines ‘prevent’ as ‘to render (an *intended, possible, or likely* action or event) impractical or impossible by anticipatory action”) (citing OED Online (Mar. 2011), <http://www.oed.com.ezproxy.lib.utah.edu/view/Entry/151073?rskey=QWN6QB&result=2&isAdvanced=false> (visited May 23, 2011)); Scotts Co. v. United Indus. Corp., 315 F.3d 264, 279 (4th Cir. 2002) (“As previously pointed out, the primary and most common meaning of ‘prevent’ is ‘to keep from happening.’ American Heritage College Dictionary 1085 (3d ed. 1997)”; Modine Mfg. Co. v. Borg-Warner, Inc., No. 12-CV-815-JPS, 2013 U.S. Dist. LEXIS 148269, at *27, 2013 WL 5651381, at *___ (E.D. Wis. Oct. 15, 2013) (“‘Prevent’ is commonly understood to mean to foreclose the occurrence of something. * * * The dictionary definition of the term is in keeping with that understanding: it provides that ‘prevent’ means: ‘1. [t]o keep from happening; avert; 2. [t]o keep (a person or thing) from doing something; impede.’ American Heritage Dictionary. Thus, the Court finds that the word ‘prevent’ means to entirely foreclose”); API v. Cooper, 681 F. Supp. 2d 635, 650 (E.D. N.C. 2010) (“To ‘prevent’ unmistakably means ‘to deprive of power . . . of acting’ or ‘to keep from happening.’ See Webster’s Third New International Dictionary 1798 (2002)”; Garmin Ltd. v. TomTom, Inc., 468 F. Supp. 2d 988, 1017 (W.D. Wis. 2006) (“‘Prevent’ means ‘to keep from happening.’ American Heritage Dictionary 1139 (4th ed. 2000); Random House Webster’s College Dictionary 1046 (1999); Merriam-Webster online; Merriam-Webster’s Collegiate Dictionary 924 (10th ed. 1997) (TomTom comes up with one definition in American Heritage that ‘prevent’ means ‘[t]o present an obstacle,’ but it overlooks the dictionary’s definition of this use as ‘archaic,’ not a current understanding of the term.) * * *”).

The interpretation of an agency regulation by the promulgating agency carries controlling weight unless it is plainly erroneous or inconsistent with the regulation. Fraternal Order of Police, Lodge No. 64 v. Personnel Bd. of Jefferson Cty., 103 So. 3d 17, 25 (Ala. 2012); Brunson Constr. & Envtl. Servs., Inc. v. City of Prichard, 664 So. 2d 885, 890 (Ala. 1995). The EMC interpreted r. 335-13-4-.22(2)(d), not as requiring that the breeding or accumulation of disease vectors be prevented, but as requiring that the breeding and accumulation of disease vectors be “minimized.” This interpretation is contrary to the plain meaning of the term “prevent.” Thus, the EMC’s interpretation of r. 335-13-4-.22(2)(d) is inconsistent with the plain language of the rule and is not controlling. Accordingly, the EMC’s approval of ADEM’s renewal and modification of Permit No. 35-06 is affected by the EMC’s erroneous interpretation of Ala. Admin. Code r. 335-13-4-.22(2)(d).

X. ADEM’s renewal and modification of Permit No. 35-06 is in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because the City of Dothan’s 2018 application does not demonstrate compliance with Ala. Admin. Code r. 335-13-4-.22(2)(d) (prevention of disease vectors).

If an application fails to demonstrate compliance with Ala. Admin. Code r. 335-13-4-.22(2)(d) (prevention of disease vectors), ADEM is

precluded from issuing a permit and the EMC is precluded from approving such a permit. Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3).¹⁰⁹

The City's 2018 application for renewal and modification of Permit No. 35-06 indicates that the City will "control" disease vectors by applying periodic cover of solid waste with six inches of soil. The application also describes a 100-foot buffer zone, but does not indicate that it will have any effect on "controlling," "minimizing," or preventing the breeding or accumulation of disease vectors. These work practices have been implemented at the landfill for at least seven years. During that time, Petitioners have repeatedly suffered exposures to disease vectors from the landfill. See supra note 92 and accompanying text. Thus, the City's 2018 application does not demonstrate that disease vectors will be **prevented** as required by Ala. Admin. Code r. 335-13-4-.22(2)(d). Accordingly, the EMC's approval of ADEM's renewal and modification of Permit No. 35-06 is in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3).

¹⁰⁹ See C. 31 & C. Supp.-1 5224 (EMC Order) ("Ala. Admin. Code rs. 335-13-5-.03(2)(b) and 335-13-5-.04(3)(b) provide that a permit may be issued only if the application demonstrates compliance with Ala. Admin. Code div. 335-13.").

CONCLUSION

For all of the foregoing reasons, the judgment of the Circuit Court should be reversed and the cause remanded with instructions to reverse the EMC's approval of ADEM's renewal and modification of Solid Waste Disposal Facility Permit No. 35-06.

Respectfully submitted,

s/ David A. Ludder

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ADDENDA

Implementation of plans.

(a) In addition to any regulatory bodies, the governing body of a county or municipality has a responsibility for and the authority to assure the proper management of solid wastes generated within its jurisdiction in accord with its solid waste management plan. A governing body may assign territories and approve or disapprove disposal sites in its jurisdiction in accord with the plan approved for its jurisdiction. Such approval or disapproval of services or activities described in the local plan shall be in addition to any other approvals required from other regulatory authorities and shall be made prior to any other approvals necessary for the provision of such services, the development of a proposed facility or the modification of permits for existing facilities.

(b) The department may not consider an application for a new facility unless the application has received approval pursuant to Section 22-27-48.1 by the affected local governing body. The department may not consider an application for a modified permit for a facility unless such application has received approval pursuant to this section by the affected local governing body.

(c) In determining whether to recommend approval of the proposed issuance of or modification of a new or existing solid waste management site, the governing body shall consider each of the following criteria:

(1) The consistency of the proposal with the jurisdiction's solid waste management need as identified in its plan.

(2) The relationship of the proposal to local planned or existing development or the absence thereof, to major transportation arteries and to existing state primary and secondary roads.

(3) The location of a proposed facility in relationship to existing industries in the state that generate large volumes of solid waste, or the relationship to the areas projected for development of industries that will generate solid waste.

(4) Costs and availability of public services, facilities and improvements required to support a proposed facility and protect public health, safety, and the environment.

(5) The impact of a proposed facility on public safety and provisions made to minimize the impact on public health and safety.

(6) The social and economic impacts of a proposed facility on the affected community, including changes in property values, and social or community perception.

(d) The application of the plan for local approval shall be accompanied by an application fee payable to the local governing body in an amount equal to 20 percent of the application or permit fee required by the department, but local approval shall not apply to simple renewals of a permit which is to be otherwise unchanged. Further, there shall be no requirement for local review and approval of permit modifications for the limited purposes of changing liner and leachate collection design, changes in waste streams from within the facility's designated service area, changes in sequence of fill, changes to incorporate new technology, and changes intended to bring a facility into compliance with statutes and regulations. A renewed application for local approval submitted within 18 months of an application being denied or rejected by the local governing body shall be accompanied by an application fee payable to the local governing body in an amount equal to 50 percent of the application or permit fee required by the department.

(e) Any decision by the local governing body of a proposed modification of a permit for an existing solid waste management site or the proposal to contract for any services described in the solid waste management plan, shall be made in a public meeting only after public notice of such application or proposal and an opportunity for public comment is provided.

(f) In providing public notice of any proposed modification, the local government shall at a minimum hold at least one public hearing thereon, notice of the time and place of which shall be given by one publication in a newspaper of general circulation in the municipality and in the official gazette, if any, of the jurisdiction. Furthermore, the notice shall be given at least 30 days but not more than 45 days prior to the proposed date of the hearing. Each notice published in compliance with this section shall contain at a minimum a description of the proposed action to be considered, its relevance to and consistency with the local solid waste management plan, and shall identify a contact person from whom interested persons can obtain additional information and can review copies of both the local plan and the proposal to be considered. All pertinent documents shall be available for inspection during normal business hours at a location readily accessible to the public. Within 90 days of receiving a proposal, the local governing body shall either approve or deny the modification setting forth the reasons therefor. The failure of the local governing body to act on the proposal within 90 days of receiving the modification shall constitute approval by the local governing body.

(g) Any decision by the local governing body to approve or disapprove the siting of a new solid waste management facility shall be made in accordance with Section 27-22-48.1.

(h) This section shall not apply to industrial facilities receiving wastes generated on site only or by the permittee.

(i) This section as amended by Act 2017-366 shall not apply to an application received by a local governing body prior to May 25, 2017, for a modification of an existing permitted solid waste management facility, or for a proposed new solid waste management facility.

(Acts 1989, No. 89-824, p. 1638, §9; Act 2006-534, p. 1227, §1; Act 2017-366, §§1, 3.)

335-3-1-.02 Definitions.

(1) Meaning of Terms. As used in these rules and regulations, terms shall have the meanings ascribed in this Rule.

(a) "Act" shall mean the Alabama Air Pollution Control Act of 1971, Act No. 769, Regular Session, 1971.

(b) "Adjudication" shall mean decisions, orders, decrees, determinations, or rulings by the Commission or its authorized Hearing officers and is specifically limited to decisions in regard to citations, Sections 17(e) and (f) of the Act, and variances, Section 12 of the Act.

(c) "Adjudication Hearing" shall mean a hearing held before the Commission or its authorized Hearing Officer, pursuant to the issuance of a citation(s), Section 17(e) and (f) of the Act, and variances, Section 12 of the Act, for the purpose of establishing a record and a set of recommendations to provide the basis for an adjudication by the Commission of a contested case.

(d) "Air Contaminant" shall mean any solid, liquid, or gaseous matter, any odor, or any combination thereof, from whatever source.

(e) "Air Pollution" shall mean the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life, or property, or would interfere with the enjoyment of life or property throughout the State and in such territories of the State as shall be affected thereby.

(f) "Air Pollution Emergency" shall mean a situation in which meteorological conditions and/or contaminant levels in the ambient air reach or exceed the levels which may cause imminent and substantial endangerment to health.

(g) "Air Quality Control Region" shall mean jurisdictional areas designated in 40 CFR 81.

(h) "Capture System" shall mean the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.

- (i) "Chairman" shall mean the Chairman or, in his absence, the Vice Chairman of the Commission.
- (j) "Citation" shall mean a notice sent by the Commission or its authorized agent (to suspected violators of the Act) pursuant to Section 17(e).
- (k) "Coating" shall mean a protective, decorative, or functional film applied in a thin layer to a surface substrate.
- (l) "Coating Applicator" shall mean an apparatus used to apply a surface coating.
- (m) "Coating Line" shall mean one or more apparatus or operations which may include any number or combination of coating applicators, flash-off areas, and ovens wherein a surface coating is applied, dried, and/or cured.
- (n) "Commenced" shall mean that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a binding agreement or contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.
- (o) "Commission" shall mean the "Environmental Management Commission".
- (p) "Construction" shall mean fabrication, erection, or installation of an affected facility.
- (q) "Continuous Vapor Control System" shall mean a vapor control system that treats vapors displaced from tanks during filling on a demand basis without intermediate accumulation.
- (r) "Control Device" shall mean any device which has the function of controlling the emissions from a process, fuel-burning, or refuse-burning device and thus reduces the creation of or the emission of air contaminants into the atmosphere, or both.
- (s) "Control Regulation" shall mean a legally enforceable emission control strategy.

(t) "Control Strategy" shall mean a collection of various emission standards selected for the different categories of sources.

(u) "County Classification" shall mean the designation Class 1 County or Class 2 County. All facilities, plants, or other installations shall be subject to the restrictions on air pollution emissions specific to the county classification of the county in which they are located.

1. A "Class 2 County" shall mean a county in which:

(i) More than 50 percent of the county population resides in a non-urban place, as defined by the U.S. Department of Commerce Census Bureau for 1970.

(ii) No secondary National Ambient Air Quality Standards are being exceeded, based on 1971 air quality measurements.

2. A "Class 1 County" shall mean a county in which the conditions of either subparagraph 1.(i) or 1.(ii) above or both are not met.

(v) "Day" shall mean a twenty-four (24) hour period beginning at midnight.

(w) "Department" shall mean the Alabama Department of Environmental Management.

(x) "Director" shall mean the Director of the Department of Environmental Management.

(y) "Effluent Water Separator" shall mean any tank, box, sump, or other container in which any volatile organic compound floating on or entrained or contained in water entering such tank, box, sump, or other container is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

(z) "Emission" shall mean a release into the outdoor atmosphere of air contaminants.

(aa) "Employee" shall mean any employee of the Commission or Division.

(bb) "Existing Source" shall mean any source in operation or on which construction has commenced on the date of initial adoption of an applicable rule or regulation; except that any existing source which has undergone modification after the date of initial adoption of an applicable rule or regulation, shall be reclassified and considered a new source.

(cc) "Federal Act" shall mean the Clean Air Act (42 U.S.C. 1857 et seq.) as last amended, and as may hereafter be amended.

(dd) "Flash-Off Area" shall mean the space between the application area and the oven.

(ee) "Fuel-Burning Equipment" shall mean any equipment, device, or contrivance and all appurtenances thereto, including ducts, breechings, fuel-feeding equipment, ash removal equipment, combustion controls, stacks, and chimney, used primarily, but not exclusively, to burn any fuel for the purpose of indirect heating in which the material being heated is not contracted by and adds no substance to the products of combustion.

(ff) "Fugitive Dust" shall mean solid air-borne particulate matter emitted from any source other than a flue or stack.

(gg) "Gasoline" shall mean a petroleum distillate having a Reid vapor pressure of 27.6 KPA (4 psia) or greater and used as a fuel for internal combustion engines.

(hh) "Heat Available" shall mean the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks.

(ii) "Hydrocarbons" shall mean any organic compound of carbon and hydrogen only.

(jj) "Incinerator" shall mean any equipment, device, or contrivance and all appurtenances thereof used for the destruction (by burning) of solid, semi-solid, liquid, or gaseous combustible wastes.

(kk) "Intermediate Vapor Control System" shall mean a vapor control system that employs an intermediate vapor holder to accumulate vapors displaced from tanks during filling. The

control device treats the accumulated vapors only during automatically controlled cycles.

(ll) "Loading Rack" shall mean an aggregation or combination of gasoline loading equipment arranged so that all loading outlets in the combination can be connected to a tank truck or trailer parked in a specified loading space.

(mm) "Maximum Process Weight Per Hour" shall mean the equipment manufacturer's or designer's guaranteed maximum (whichever is greater) process weight per hour.

(nn) "Model Year" shall mean the annual production period of new motor vehicles designated by the calendar year in which such period ends, provided that if the manufacturer does not so designate vehicles manufactured by him, the model year with respect to such vehicle shall mean the twelve-month period beginning January 1 of the year specified herein.

(oo) "Modification" shall mean any physical change in, or change in the method of operation of, an affected source which increases the amount of any air contaminant (to which a rule or regulation applies) emitted by such source or which results in the emission of any air contaminant (to which a rule or regulation applies) not previously emitted, except that:

1. Routine maintenance, repair, and replacement shall not be considered physical changes, and

2. The following shall not be considered a change in the method of operation:

(i) An increase in the production rate;

(ii) An increase in hours of operation;

(iii) Use of an alternative fuel or raw material.

(pp) "Motor Vehicle" shall mean every self-propelled device in or upon or by which any person or property is, or may be, transported or drawn upon a public highway.

(qq) "New Source" shall mean any source built or installed on or after the date of initial adoption of an applicable rule or regulation, and any source existing at said stated time which later undergoes modification. Any source moved to another premise involving a change of location after

the date of initial adoption of an applicable rule or regulation shall be considered a new source. This definition of new source is not applicable to ADEM Admin. Code Rules 335-3-10-.01(3) and 335-3-11-.01(3).

(rr) "Objector" shall mean any person who objects to the granting of a variance pursuant to Section 12(d) of the Act.

(ss) "Odor" shall mean smells or aromas which are unpleasant to persons or which tend to lessen human food and water intake, interfere with sleep, upset appetite, produce irritation of the upper respiratory tract, or cause symptoms or nausea, or which by their inherent chemical or physical nature or method or processing are, or may be, detrimental or dangerous to health. Odor and smell are used interchangeably herein.

(tt) "Opacity" shall mean the degree to which emissions reduce the transmission of light and obscure the view of the background.

(uu) "Open Burning" shall mean the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack, duct, or chimney.

(vv) "Operating Time" shall mean the number of hours per year that a source conducts operations.

(ww) "Organic Material" shall mean a chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

(xx) "Oven" shall mean a chamber within which heat is used to bake, cure, polymerize, and/or dry a surface coating.

(yy) "Owner or Operator" shall mean any person who owns, leases, operates, controls, or supervises an affected facility, article, machine, equipment, other contrivance, or source.

(zz) "Particulate Matter" shall mean finely divided material, except uncombined water, which is a liquid or solid at the conditions of the applicable test method.

(aaa) "Party" shall mean the petitioner(s) for variance under Section 12 of the Act, the person(s) objecting to the grant of a variance petition under Section 12 of the Act, the

alleged violator in the case of a citation issued pursuant to Section 17(e) of the Act, and the State.

(bbb) "Petitioner" shall mean any person who petitions the Commission pursuant to Section 12 of the Act and in accordance with Rule 335-3-1-.09 of the Rules and Regulations.

(ccc) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR 50, Appendix J, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(ddd) "PM₁₀ Emission" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR.

(eee) "Prime Coat" shall mean the first film of coating applied in a multiple coat operation.

(fff) "Priority Classification" shall mean Air Quality Control Region Pollutant Priority Classifications set forth in 40 CFR 52.

(ggg) "Process" shall mean any action, operation, or treatment of materials, including handling and storage thereof, which may cause discharge of an air contaminant or contaminants into the atmosphere, but excluding fuel burning and refuse burning.

(hhh) "Process Weight" shall mean the total weight in pounds of all materials introduced into any specific process which may cause any discharge into the atmosphere.

(iii) "Process Weight Per Hour" shall mean the total weight of all materials introduced into any specific process that may cause any discharge of particulate matter. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. For a cyclical or batch operation, the process weight per hour will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment is idle. For a continuous operation, the

process weight per hour will be derived by dividing the process weight for a typical period of time by that time period.

(jjj) "Refuse" shall mean matter consisting of garbage, rubbish, ashes, street debris, dead animals, abandoned vehicles, industrial wastes, demolition wastes, construction wastes, special wastes, or sewage treatment residue.

(kkk) "Reid Vapor Organic Pressure" shall mean a vapor pressure specification for volatile crude oil and volatile nonviscous petroleum liquids except liquid petroleum gases as determined by American Society for Testing and Materials. The pressure approximates the absolute vapor pressure of the liquid.

(lll) "Shutdown" shall mean the cessation of operation of affected source or emission control equipment.

(mmm) "Six-Minute Average" shall be determined by calculating the arithmetic mean of twenty-four (24) consecutive opacity observations, taken at intervals of fifteen (15) seconds.

(nnn) "Smoke" shall mean gas-borne particles resulting from incomplete combustion consisting predominantly, but not exclusively, of carbon, ashes, or other combustible materials.

(ooo) "Soiling Index" shall mean a measure of the soiling properties of total suspended particulates in air determined by drawing a measured volume of air through a known area of Whatman No. 4 filter paper for a measured period of time, expressed as COHs/1,000 linear feet.

(ppp) "Solvent" shall mean organic materials which are liquid at standard conditions and which are used as solvers, viscosity reducers, or cleaning agents.

(qqq) "Source" shall mean any building, structure, facility, installation, article, machine, equipment, device, or other contrivance which emits or may emit any air contaminant. Any activity which utilizes abrasives or chemicals for cleaning or any other purpose (such as cleaning the exterior of buildings) which emits air contaminants shall be considered a source.

(rrr) "Stack or Ducts" shall mean any flue, duct, or other contrivance arranged to conduct emissions to the open air.

(sss) "Standard Conditions" shall mean a temperature of 20° C (68° F) and pressure of 760 millimeters of mercury (29.92 inches of mercury).

(ttt) "Startup" shall mean the setting in operation of an affected source for any purpose.

(uuu) "State" shall mean the State of Alabama, the Environmental Management Commission, and the Commission's representatives.

(vvv) "Storage Tank Capacity" shall mean the tank manufacturer's design capacity. Storage tank and storage vessel shall be equivalent in meaning.

(www) "Submerged Fill Pipe" shall mean any fill pipe, the discharge opening of which is entirely submerged when the liquid level is six (6) inches above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean any fill pipe, of which the top of the discharge opening is not over 18 inches from the bottom of the tank.

(xxx) "Topcoat" shall mean the final film of coating applied in a multiple coat operation.

(yyy) "Total Reduced Sulfur (TRS)" shall mean hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides present.

(zzz) "Total suspended particulate" means particulate matter as measured by the method described in 40 CFR 50, Appendix B.

(aaaa) "Transfer Efficiency (TE)" shall mean the efficiency of a surface coating application system to deposit coating solids on a substrate. The transfer efficiency of an application system is determined by dividing the volume of coating solids deposited on a substrate by the total volume of coating solids used.

(bbbb) "True Vapor Pressure" shall mean the equilibrium partial pressure exerted by a stored petroleum liquid at the temperature equal to the highest calendar-month average of the liquid storage temperature as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from External Floating Roof Tanks," 1962, Second Edition, February 1980.

(cccc) "Uncombined Water" shall mean any water droplets or water vapor condensate that does not contain any other solid or liquid particulate matter attached to the water droplets.

(dddd) "Vapor Collection System" shall mean a vapor transport system which uses direct displacement by the liquid loaded to force vapors from the tank into a vapor control system.

(eeee) "Vapor Recovery System" shall mean a system that prevents release to the atmosphere of at least 90 percent by weight of organic compounds in the vapor displaced from a tank during the transfer of gasoline.

(ffff) "Violator" shall mean any person who is issued a citation by the Commission or its authorized agent pursuant to Section 17(e) and (f) of the Act.

(gggg) "Volatile Organic Compounds (VOC)" shall mean any compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compound **other than the following:**

1. Methane;
2. Ethane;
3. Methyl Chloroform (1,1,1 Trichloroethane);
4. Methylene Chloride (Dichloromethane);
5. CFC-11 (Trichlorofluoromethane);
6. CFC-12 (Dichlorodifluoromethane);
7. HCFC-22 (Chlorodifluoromethane);
8. HFC-23 (Trifluoromethane);
9. CFC-114 (1,2-dichloro 1,1,2,2-Tetrafluoroethane);
10. CFC-115 (Chloropentafluoroethane);
11. HCFC-123 (1,1,1-Trifluoro-2,2-dichloroethane);

12. HCFC-124 (2-Chloro-1,1,1,2-tetrafluoroethane);
13. HFC-125 (Pentafluoroethane);
14. HFC-134 (1,1,2,2-Tetrafluoroethane);
15. HFC-134a (1,1,1,2-Tetrafluoroethane);
16. HCFC-141b (1,1-Dichloro-1-fluoroethane);
17. HCFC-142b (1-Chloro-1,1-difluoroethane);
18. HFC-143a (1,1,1-Trifluoroethane);
19. HFC-152a (1,1-Difluoroethane);
20. CFC-113 (1,1,2-Trichloro-1,2,2-Trifluoroethane);
21. Parachlorobenzotrifluoride (PCBTF);
22. Cyclic, branched, or linear completely methylated siloxanes;
23. Acetone;
24. Perchloroethylene (tetrachloroethylene);
25. HCFC-225ca (3,3-dichloro-1,1,1,2,2-pentafluoropropane);
26. HCFC-225cb (1,3-dichloro-1,1,2,2,3-pentafluoropropane);
27. HFC 43-10mee (1,1,1,2,3,4,4,5,5,5-decafluoropentane);
28. HFC-32 (Difluoromethane);
29. HFC-161 (Ethylfluoride);
30. HFC-236fa (1,1,1,3,3,3-Hexafluoropropane);
31. HFC-245ca (1,1,2,2,3-Pentafluoropropane);
32. HFC-245ea (1,1,2,3,3-Pentafluoropropane);

33. HFC-245eb (1,1,1,2,3-Pentafluoropropane);
34. HFC-245fa (1,1,1,3,3-Pentafluoropropane);
35. HFC-236ea (1,1,1,2,3,3-Hexafluoropropane);
36. HFC-365mfc (1,1,1,3,3-Pentafluorobutane);
37. HCFC-31 (Chlorofluoromethane);
38. HCFC-123a (1,2-Dichloro-1,1,2-trifluoroethane);
39. HCFC-151a (1-Chloro-1-fluoroethane);
40. $C_4F_9OCH_3$ (1,1,1,2,2,3,3,4,4-Nonafluoro-4-methoxybutane);
41. $(CF_3)_2CFCH_2OCH_3$ (2-(Difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane);
42. $C_4F_9OC_2H_5$ (1-Ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane);
43. $(CF_3)_2CFCH_2OC_2H_5$ (2-(Ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane);
44. Methyl Acetate; and
45. HFE-7000 $n-C_3F_7OCH_3$, (1,1,1,2,2,3,3,-heptafluoro-3-methoxy-propane
46. HFE-7500 (3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane)
47. HFC-227ea (1,1,1,2,3,3,3-heptafluoropropane)
48. methyl formate ($HCOOCH_3$)
49. HFE-7300 1,1,1,2,2,3,4,5,5,5,-decafluoro-3-methoxy-4-tri-fluoromethylpentane;
50. propylene carbonate;
51. dimethyl carbonate;
52. trans-1,3,3,3-tetrafluoropropene;

53. HFE-134 ($\text{HCF}_2\text{OCF}_2\text{H}$);
54. HFE-236cal2 ($\text{HCF}_2\text{OCF}_2\text{OCF}_2\text{H}$);
55. HFE-338pcc13 ($\text{HCF}_2\text{OCF}_2\text{CF}_2\text{OCF}_2\text{H}$);
56. H-Galden 104x or H-Galden ZT130 (or 150 or 180) ($\text{HCF}_2\text{OCF}_2\text{OCF}_2\text{CF}_2\text{OCF}_2\text{H}$);
57. *trans* 1-chloro-3,3,3-trifluoroprop-1-ene (SolsticeTM 1233zd(E));
58. HFO-1234yf (2,3,3,3-tetrafluoropropene);
59. 2-amino-2-methyl-1-propanol;
60. *t*-butyl acetate;
61. 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane;
62. *cis*- 1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z; and
63. Perfluorocarbon compounds which fall into these classes:
 - (i) Cyclic, branched, or linear, completely fluorinated alkanes;
 - (ii) Cyclic, branched, or linear, completely fluorinated ethers with no saturations;
 - (iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no saturations, and
 - (iv) sulfur containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine.
- (2) The heretofore mentioned excluded organic compounds have been determined to have negligible photochemical reactivity by the EPA Administrator. For purposes of determining compliance with emission limits under Chapter 335-3-6, VOC shall be measured by the approved test methods contained in Chapter 335-3-6. Where such a method also inadvertently measures the heretofore mentioned negligibly photochemical reactive organic compounds with the reactive

organic compounds, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emission limit using EPA-approved test methods and procedures.

Authors: James W. Cooper, John E. Daniel

Statutory Authority: Code of Ala. 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8.

History: Effective Date: January 18, 1972. **Amended:**

Effective Date: September 24, 1974, November 27, 1978, April 3, 1979, June 5, 1979, July 26, 1979, June 16, 1988, September 21, 1989, November 1, 1990, October 24, 1991.

Amended: Filed October 19, 1995; effective November 23, 1995.

Amended: Filed December 1, 1995; effective January 5, 1996.

Amended: Filed October 17, 1996; effective November 21, 1996.

Amended: Filed August 21, 1997; effective September 25, 1997.

Amended: Filed February 20, 1998; effective March 27, 1998.

Amended: Filed October 15, 1998; effective November 19, 1998.

Amended: Filed August 3, 2000; effective September 7, 2000.

Amended: Filed November 7, 2005; effective December 12, 2005.

Amended: Filed December 18, 2008; effective January 22, 2008.

Amended: Filed February 23, 2010; effective March 30, 2010.

Amended: Filed April 23, 2013; effective May 28, 2013.

Amended: Filed August 20, 2013; effective September 24, 2013.

Amended: Filed October 20, 2015; effective November 24, 2015.

Amended: Filed April 25, 2017; effective June 9, 2017.

Amended: Published February 28, 2020; effective April 13, 2020.

maintenance, the intent to shut down such equipment shall be reported to the Director at least twenty-four (24) hours prior to the planned shutdown, unless such shutdown is accompanied by the shutdown of the source which such equipment is intended to control. Such prior notice shall include, but is not limited to the following:

(a) Identification of the specific facility to be taken out of service as well as its location and permit number;

(b) The expected length of time that the air pollution control equipment will be out of service;

(c) The nature and quantity of emissions of air contaminants likely to occur during the shutdown period;

(d) Measures such as the use of off-shift labor and equipment that will be taken to minimize the length of the shutdown period;

(e) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

(2) Malfunction; Reporting. In the event that any emission source, air pollution control equipment, or related facility fails or breaks down in such a manner as to cause the emission of air contaminants in violation of these rules and regulations, the person responsible for such source, equipment, or facility shall notify the Director within twenty-four (24) hours of such failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The Director shall be notified when the condition causing the failure or breakdown has been corrected and such source, equipment, or facility is again in operation.

Authors: James W. Cooper, John E. Daniel

Statutory Authority: Code of Ala. 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8.

History: Effective Date: January 18, 1972. **Amended:**

335-3-1-.08 Prohibition Of Air Pollution. No person shall permit or cause air pollution, as defined in Rule 335-3-1-.02(1)(e) of this Chapter by the discharge of any air contaminant for which no ambient air quality standards have been set under Rule 335-3-1-.03(1).

Authors: James W. Cooper, John E. Daniel

Statutory Authority: Code of Ala. 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8.

History: Effective Date: January 18, 1972. **Amended:** Filed October 17, 1996; effective November 21, 1996. **Amended:** Filed August 3, 2000; effective September 7, 2000.

335-3-1-.09 Variances.

(1) Petition Procedures.

(a) Any person subject to any rule or regulation, requirement or order, may petition the Commission for a variance from the application thereof as prescribed by the Act. A petition for a variance must state the following:

1. The name, address, and telephone number of the petitioner, or other person authorized to receive service of notices.

2. Whether the petitioner is an individual, partnership, corporation or other entity, and names and addresses of the partners, if a partnership, and names and addresses of the officers, if a corporation, and names and addresses of the persons in control, if other entity.

3. The type of business or activity involved in the application and the street address at which it is conducted.

4. A brief description of the article, machine, equipment, or other contrivance, if any, involved in the petition.

5. The signature of the petitioner or that of some person on his behalf, and, where the person signing is not the petitioner, the authority to sign.

6. The rule or regulations, requirement or order from which a variance is requested.

7. The facts showing why compliance with such rule or regulation, requirement or order would impose serious hardship on the petitioner or on any other person or persons without equal or greater benefits to the public.

Appendix I	Constituents For Detection Monitoring
Appendix II	List Of Hazardous Inorganic And Organic Constituents

335-13-4-.01 Landfill Unit Siting Standards. New or existing landfill units shall comply with the following standards in order to prevent adverse effects on health or the environment. As part of the application, the owner/operator must submit documentation addressing to the satisfaction of the Department the following siting standards.

(1) Location Standards.

(a) A facility located in a floodplain shall not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste, so as to pose a hazard to human health and the environment.

(b) A facility shall be located in consideration of the following:

1. A facility shall not jeopardize the continued existence of endangered or threatened species protected under the Endangered Species Act of 1973.

2. The facility shall not result in the destruction or adverse modification of critical habitats protected under the Endangered Species Act of 1973.

(c) A MSWLF unit shall not be sited within 10,000 feet of any airport runway end. Owners or operators proposing to renew existing or site new MSWLF units located within a five-mile radius of any airport runway must notify the affected airport and the Federal Aviation Administration (FAA).

(d) Zones of active faults, seismic impact zones, and unstable areas shall be avoided in locating facilities and practices unless a site specific evaluation as described below, demonstrates minimum potential for adverse effects upon waters of the State.

1. Site specific evaluations for geology and hydrology shall comply with 335-13-4-.11 through 335-13-4-.14.

2. Site specific evaluation shall include minimum design parameters necessary to protect the waters of the State

and human health to include minimum requirements of 335-13-4-.15 through 335-13-4-.24.

3. Landfill units shall not be located within 200 feet of a fault that has had displacement within the Holocene epoch unless the owner or operator demonstrates to the Department that an alternative setback distance of less than 200 feet will not result in damage to the structural integrity of the facility and will be protective of human health and the environment.

4. Landfill units shall not be located in seismic impact zones, unless the owner or operator demonstrates to the Department that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

5. Landfill units shall not be located in an unstable area unless engineering measures have been incorporated in the design of the facility to ensure that the integrity of the structural components of the facility will not be disrupted. The following factors, at a minimum, must be considered when determining whether an area is unstable:

(i) On-site or local soil and subsurface conditions that may result in significant differential settling;

(ii) On-site or local geologic or geomorphologic features; and

(iii) On-site or local human-made features or events (both surface and subsurface).

(e) Landfill units shall not be located on a site that is archaeologically or historically sensitive as determined by the Alabama Historical Commission. Written certification must be provided from the State Historic Preservation Officer.

(2) Water Quality Standards. A facility shall be located so as to not adversely impact water quality by complying with the following:

(a) A facility shall not cause a discharge of pollutants into waters of the State, including wetlands, that is in violation of the requirements of the National Pollutant Discharge Elimination System (NPDES), Alabama Water Pollution Control Act, Code of Ala. 1975, §§22-22-1 to 22-22-14 and/or section 404 of the Clean Water Act, as amended.

(b) A facility shall not cause non-point source pollution of waters of the State, including wetlands, that violates any requirements of an area wide and statewide water quality management plan that has been approved under the Alabama Water Pollution Control Act.

(c) Landfill units including buffer zones shall not be permissible in wetlands, beaches or dunes.

(d) Landfill units shall not be permissible in any location where the disposal of solid waste would significantly degrade wetlands, beaches or dunes.

(e) Landfill units shall be located outside the boundaries of the coastal area, unless no other reasonable alternative is available. If a site within the coastal area is proposed for development as a landfill unit, it shall be demonstrated to the satisfaction of the Department that siting, design, construction, and operation will ensure that present levels of coastal plants and animals will be maintained.

(3) Other Requirements. Solid Waste Disposal Facilities must comply with any other applicable State or Federal rules, laws, regulations or other requirements.

Authors: Russell A. Kelly, S. Scott Story

Statutory Authority: Code of Ala. 1975, §§22-27-3, 22-27-7.

History: November 18, 1981; **Amended:** July 21, 1988; **Amended:** Filed September 28, 1993; effective November 2, 1993. **Amended:** June 21, 1996; effective July 26, 1996. **Amended:** April 24, 2018; effective June 8, 2018.

335-13-4-.02 [Reserved]

335-13-4-.03 [Reserved]

335-13-4-.04 [Reserved)

335-13-4-.05 [Reserved]

335-13-4-.06 [Reserved)

335-13-4-.07 [Reserved]

Statutory Authority: Code of Ala. 1975, §§22-27-3, 22-27-7.

History: November 18, 1981; **Amended:** July 21, 1988. **Amended:** Filed September 28, 1993; effective November 2, 1993. **Amended:** Filed June 21, 1996; effective July 26, 1996.

335-13-4-.18 Liners and Leachate Collection.

(1) Liners. Where natural hydrogeologic conditions may be determined by the Department to be insufficient to minimize the impact of leachate on waters, the use of an appropriate liner(s) shall be used as approved by the Department. New MSWLF units and lateral expansions, at a minimum, shall be constructed with a composite liner, as defined in 335-13-1-.03, or an alternate design as specified in 335-13-4-.18(3)(h). Multiple liners, including composite liners, may be required if determined necessary by the Department.

(2) Leachate Collection System. A leachate collection system shall be required that is designed and constructed to maintain less than a 30 cm depth of leachate over the liner.

(3) Specifications. The composite liner(s) shall comply with the following minimum standards:

(a) The permeability shall be 1×10^{-7} cm/sec or less for soil liners.

(b) The synthetic liner(s) shall be resistant to physical and chemical attack by leachate.

(c) The liner system shall be capable of maintaining integrity for the design life which must be determined on a site specific basis.

(d) The minimum allowable thickness of each layer of the composite liner shall be:

1. 40 mil for the flexible membrane liner component unless flexible membrane liner (FML) consists of high density polyethylene (HDPE) which requires 60 mil, and

2. Two feet, measured after compaction, for the natural soil liner component meeting the permeability requirements of 335-13-4-.18(3)(a).

(e) The installation of synthetic liners shall be as recommended by the manufacturer providing that:

1. The installation recommendations of the manufacturer to be used are provided to the Department for review.

2. The Department finds that the recommended installation procedures are consistent with the intent of the Act and this chapter.

3. The installation of the liner shall be under the supervision of an engineer who shall certify to the Department that the liner was installed and maintained in accordance with this Division, QA/QC plans, and approved design plans.

(f) The design and installation of soil liners and the properties of soils used in a soil liner shall meet the following minimum requirements:

1. Design of soil liner(s) shall be by a qualified soils engineer, or geotechnical engineer.

2. The soil liner must be compacted in lifts of 4 to 6 inches within 4 percent of optimum moisture content (or as approved by the Department) to a field density which correlates with a laboratory permeability of 1×10^{-7} cm/sec or less.

3. The installation of soil liner(s) shall be under the supervision of a soils engineer, geotechnical engineer or geologist who shall certify to the Department that the liner(s) was installed and maintained in accordance with this Division, QA/QC plans, and approved design plans.

4. The soils used in soil liners shall meet the minimum following criteria:

(i) Free of oversize particles, such as rocks, roots, limbs and other foreign substances which would alter the design integrity of the liner;

(ii) Classified under the Unified Soil Classification System as CL, CH or SC (ASTM Standard D2 487-69);

(iii) Allow greater than 30 percent passage through a No. 200 sieve (ASTM Test D-1140);

(iv) Have a liquid limit equal to or greater than 30 units (ASTM Test D-423); and

(v) Have a plasticity greater than or equal to 15 units (ASTM Test D-424).

(g) For a composite liner system, the synthetic liner shall be installed in direct contact with the soil liner.

(h) An alternate liner design may be approved by the Department provided that:

1. The owner or operator demonstrates that the alternate design ensures the concentration values listed in Table 1 of this rule will not be exceeded in the first saturated zone at the relevant point of compliance, as specified by the Department under 335-13-4-.27(2)(a)3.

2. When approving a design that complies with subparagraph (a) of this paragraph, the Department shall consider at least the following factors:

(i) The hydrogeologic characteristics of the facility and surrounding land;

(ii) The climatic factors of the area; and

(iii) The volume and physical and chemical characteristics of the leachate.

TABLE 1

Chemical	MCL (mg/1)
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon tetrachloride	0.005
Chromium (hexavalent)	0.05
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4
Lindane	0.004
Lead	0.015
Mercury	0.002
Methoxychlor	0.1
Nitrate	10
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichloromethane	0.2

Chemical	MCL (mg/1)
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl Chloride	0.002

Authors: Russell A. Kelly, S. Scott Story

Statutory Authority: Code of Ala. 1975, §§22-27-3, 22-27-7.

History: November 18, 1981; **Amended:** July 21, 1988. **Amended:** Filed September 28, 1993; effective November 2, 1993. **Amended:** Filed June 21, 1996; effective July 26, 1996. **Amended:** Filed April 24, 2018; effective June 8, 2018.

335-13-4-.19 Access. The owner or operator of the facility must control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment.

Author: Russell A. Kelly

Statutory Authority: Code of Ala. 1975, §§22-27-3, 22-27-7.

History: November 18, 1981; **Amended:** July 21, 1988. **Amended:** Filed September 28, 1993; effective November 2, 1993.

335-13-4-.20 Closure And Post-Closure.

(1) Submittal. The owner or operator must submit a closure/post-closure plan to the Department and place in the operating record, no later than the effective date of these regulations or by the initial receipt of waste, whichever is later.

(2) Closure. The requirements for closure of existing and proposed landfill units shall include the following unless otherwise noted.

(a) The owner or operator must prepare a written closure plan that describes the steps necessary to close all existing and proposed landfill units at any point during their active life in accordance with the cover design requirements in 335-13-4-.20(2)(b). The owner or operator must submit the closure plan as part of the permit application to the Department. The closure plan, at a minimum, must include the following information:

1. A description of the final cover, designed in accordance with 335-13-4-.20(2)(b) and the methods and procedures to be used to install the cover;

Authors: Russell A. Kelly, S. Scott Story, Heather M. Jones
Statutory Authority: Code of Ala. 1975, §§22-22A-5, 22-27-3, 22-27-4, 22-27-7, 22-27-47, 22-27-48.

History: November 18, 1981; **Amended:** March 31, 1988 (Emergency Regulations); July 21, 1988; October 2, 1990. **Amended:** Filed September 28, 1993; effective November 2, 1993. **Amended:** Filed June 21, 1996; effective July 26, 1996. **Amended:** Filed April 24, 2018; effective June 8, 2018. **Amended:** Filed June 25, 2019; effective July 9, 2019.

335-13-4-.22 Specific Requirements For Municipal Solid Waste

Landfills. The following requirements in conjunction with 335-13-4-.21 shall be for operating and maintaining an acceptable MSWLF:

(1) Daily Operation.

(a) All waste shall be covered as follows:

1. A minimum of six inches of compacted earth or other alternative cover material that includes but is not limited to foams, geosynthetic or waste products, and is approved by the Department shall be added at the conclusion of each day's operation or as otherwise approved by the Department to control disease vectors, fires, odors, blowing litter, and scavenging.

2. In the event that erosion develops on previously covered disposal areas, or when covered waste otherwise becomes exposed, cover must be re-applied to comply with the minimum cover requirements of subparagraph (1)(a)1. of this section.

3. Final closure shall be carried out in accordance with rule 335-13-4-.20 of this Division.

(b) All waste shall be confined to as small an area as possible and spread to a depth not exceeding two feet prior to compaction, and such compaction shall be accomplished on a face slope not to exceed 4 to 1 (25%) or as otherwise approved by the Department.

(c) All waste shall be thoroughly compacted with adequate landfill equipment before the daily cover is applied. A completed daily cell shall not exceed eight feet in vertical thickness measured perpendicular to the slope of the preceding cell.

(d) The site shall be operated in accordance with approved plans and permits.

(e) Adequate personnel shall be provided to ensure continued and smooth operation of the facility.

(f) Adequate equipment shall be provided to ensure continued operation in accordance with permit and regulations.

(g) Provisions shall be made for disposal activities in adverse weather conditions.

(h) The site shall be adequately secured using artificial barriers, natural barriers, or both to prevent entry of unauthorized vehicular traffic.

(i) A sign outlining instructions for use of the site shall be posted at the entrance and shall include: name of facility, name of permittee and/or operating agency or person, days and hours of operation, disposal fees, and types of waste accepted if the site is available to the general public or commercial haulers.

1. Name of facility,
2. Name of permittee and/or operating agency or person,
3. Days and hours of operation,
4. Disposal fees, and
5. Types of waste accepted if the site is available to the general public or commercial haulers.

(j) Special provisions shall be made for handling large dead animals or highly putrescible waste. Immediately covering the waste with a minimum of 12 inches of cover in a designated area of the facility shall be included in these provisions.

(k) Bulk or noncontainerized liquid waste, or containers capable of holding liquids, shall not be accepted at a landfill unit unless:

1. The liquid is household waste other than septic waste;
2. The liquid is leachate or gas condensate derived from the MSWLF unit, and the MSWLF unit is designed with a

minimum composite liner and leachate collection system or approved equivalent liner and leachate collection system; or

3. The containers:

(i) Are similar in size to that normally found in household waste;

(ii) Are designed to hold liquids for use other than storage; or

(iii) Contain household wastes.

(l) Empty containers larger in size than normally found in household waste must be rendered unsuitable for holding liquids prior to disposal in the landfill unit unless otherwise approved by the Department.

(m) MSWLF units containing sewage sludge and failing to satisfy the criteria in this Division violate Sections 309 and 405(e) of the Clean Water Act.

(2) Routine Maintenance.

(a) Scavenging shall be prohibited and salvaging operations shall be controlled.

(b) Litter shall be controlled within the permitted facility.

(c) An all-weather access road shall be provided to the dumping face.

(d) Measures shall be taken to prevent the breeding or accumulation of disease vectors. If determined necessary by the Department or the State Health Department, additional disease vector control measures shall be conducted.

(e) Environmental monitoring and treatment structures shall be clearly marked and identified, protected and maintained in good repair and shall be easily accessible.

(f) Completed sites or portions of sites shall be properly closed as provided by this Division and approved facility plans.

(g) Records shall be maintained on the daily volume of waste received at MSWLFs. A quarterly report utilizing a format approved by the Department which summarizes the daily volumes

shall be submitted to the Department and maintained on file in the operating record of the facility by the permittee.

(3) Additional Requirements.

(a) Owners or operators of all MSWLFs must ensure that the units do not violate any applicable requirements developed under a State Implementation Plan (SIP) approved or promulgated by the Administrator pursuant to Section 110 of the Clean Air Act, as amended.

(b) Notwithstanding this rule, additional requirements for operating and maintaining a MSWLF may be imposed by the Department, as deemed necessary, to comply with the Act and this Division.

Authors: Russell A. Kelly, S. Scott Story, Heather M. Jones
Statutory Authority: Code of Ala. 1975, §§22-27-3, 22-27-4, 22-27-7.

History: November 18, 1981; **Amended:** July 21, 1988; October 2, 1990. **Amended:** Filed September 28, 1993; effective November 2, 1993. **Amended:** Filed June 21, 1996; effective July 26, 1996. **Amended:** Filed April 24, 2018; effective June 8, 2018. **Amended:** Filed June 25, 2019; effective July 9, 2019.

335-13-4-.23 Specific Requirements For Inert Construction/ Demolition Landfills And Industrial Landfills. The following requirements in conjunction with 335-13-4-.21 shall be for operating and maintaining an acceptable C/DLF or ILF:

(1) Operation.

(a) All waste shall be covered as follows:

1. A minimum of six inches of compacted earth or other alternative cover material that includes but is not limited to foams, geosynthetic or waste products, and is approved by the Department shall be added at the conclusion of each week's operation or as otherwise specified by the Department to control disease vectors, fires, odors, blown litter and scavenging.

2. In the event that erosion develops on previously covered disposal areas, or when covered waste otherwise becomes exposed, cover must be re-applied to comply with the minimum cover requirements of subparagraph (1)(a)1. of this section.

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

CHAPTER 335-13-5
 PROCEDURES FOR OBTAINING PERMITS

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335-13-5-.01 Disposal Permits. All solid waste shall be disposed of in a landfill unit permitted by the Department. Rules 335-13-5-.02 through 335-13-5-.07 establish the minimum requirements and procedures for obtaining a solid waste disposal facility permit for existing and proposed facilities.

Author: Russell A. Kelly

Statutory Authority: Code of Ala. 1975, §§22-22A-5, 22-27-3, 22-27-5, 22-27-7.

History: Effective: November 18, 1981; **Amended:** July 21, 1988. **Amended:** Filed September 28, 1993; effective November 2, 1993.

335-13-5-.02 Permit Application. Existing and proposed landfill units shall obtain permits to construct and/or operate in accordance with the following:

(1) Application Requirements. Landfill units proposed after the effective date of this Division shall submit the following in order to request a permit:

(a) A completed form designated by the Department;

(b) Documentation of host government approval, as provided in the Code of Ala. 1975, §22-27-48 and 48.1;

(c) Facility design plans and operational procedures in accordance with Permit Application Procedures for Solid Waste Disposal Facilities as prepared by the Department; and

(d) Technical data and reports to comply with 335-13-4-.01, 335-13-4-.11 through 335-13-4-.24 and this Division,

(e) All technical reports, plans and specifications, plats, geological and hydrological reports required by this Division, prepared under the following:

1. Plans, specifications, operational procedures, letters of final construction certification and other technical data, except as provided in 335-13-5-.02(1)(e)2. and 3. for the construction and operation of a facility shall be prepared by an engineer. The seal or signature and registration number of the design engineer shall be affixed to the plans, specifications and reports.

2. Reports, letters of certification and other documents and technical data concerning the siting standards of 335-13-4-.01 shall be prepared by a person with technical expertise in the field of concern.

3. Legal property descriptions and survey plats shall be by a land surveyor with the seal or signature and registration number of the land surveyor affixed.

(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 landfill unit's permit application.

(g) In addition to the requirements listed in (a) through (f) above the Department may waive certain requirements of (c) and (d) for those landfill units that will receive for disposal only construction and demolition type waste. A permit application for a C/DLF will be submitted on a form developed by the Department which shall specify the minimum requirements for a complete application. The C/DLF permit application shall also include statements signed by an engineer and a representative of the facility owner/operator certifying that the information being submitted is accurate and correct. The submittal of false or inaccurate information shall result in the C/DLF permit application being suspended or denied.

(h) CCR Landfills. In addition to the requirements listed in (a) through (f) above, a permit application for an existing CCR landfill shall also include the following:

1. Technical data and reports documenting compliance with the unstable area requirements in 335-13-15-.03(5).

2. A run-on and run-off control system plan developed in accordance with 335-13-15-.05(2)(c), which should include existing and proposed surface drainage patterns and control structures designed to handle run-on and run-off.

3. A detailed description of the groundwater monitoring and analysis program developed in accordance with 335-13-15-.06.

4. Procedures for complying with recordkeeping and notification as required under 335-13-15-.08.

5. Procedures for updating all plans and assessments periodically as required by ADEM Admin. Code 335-13-15.

6. Any additional information that may be required by the Department.

(i) New CCR Landfills and any lateral expansion of a CCR Landfill. In addition to the requirements listed in (a) through (f) and (h) above, applications for new CCR landfills and any lateral expansion of a CCR landfill shall include the following in order to request a permit:

(I) Technical data and reports documenting compliance with the following location requirements:

I. Five-foot separation of the base of the CCR unit above the uppermost aquifer as specified in 335-13-15-.03(1).

II. Wetland and endangered species requirements under 335-13-15-.03(2).

III. Fault area requirements under 335-13-15-.03(3).

IV. Seismic impact zones under 335-13-15-.03(4).

2. Design of the liner and leachate collection and removal system as required by 335-13-15-.04(1).

(2) Permit Duration. Solid waste disposal permits obtained in compliance with this Division shall be valid for the design life of the facility or as otherwise determined by the Department, but no longer than a period of ten years. Permits, however, are subject to revocation under 335-13-5-.05 of this Division.

(3) Filing Deadline. Request for extension, renewal, or a new permit for any landfill unit shall be filed with the Department by the operating agency at least 180 days prior to the expiration date for existing permits or the proposed construction date for new facilities.

(4) Modifications. Prior to any change in the permitted service area, increasing the volume of waste received or changing the design or operating procedure as described in 335-13-5-.06(1) and (2) and the current permit, the permittee shall request a modification of the permit as described in 335-13-5-.06(3). A request for modification described in 335-13-5-.06(1) and (2) must be filed with the Department at least 90 days prior to the anticipated change and shall receive approval from the Department prior to the implementation of the proposed change.

(5) Effect of non-compliance.

(a) As determined by the Director, substantial non-compliance with Department regulations or permits at any facility owned or operated by the applicant, including any facility for which the pending permit application is requested, will be grounds for denial of the application, or alternatively, for suspension of further consideration of the application until such non-compliance is corrected.

(b) In addition to the foregoing, the Director may deny a permit application if:

1. The Director determines that a permit could not be issued that would result in compliance with applicable solid waste standards; or

2. The applicant could not comply with the permit as issued.

Authors: Russell A. Kelly, Eric L. Sanderson, S. Scott Story, Heather M. Jones

Statutory Authority: Code of Ala. 1975, §§22-27-3, 22-27-5, 22-27-7, 22-27-48 and 48.1.

History: Effective: November 18, 1981; **Amended:** March 31, 1988. (Emergency Regulations); July 21, 1988; October 2, 1990. **Amended:** Filed September 28, 1993; effective November 2, 1993. **Amended:** Filed June 21, 1996; effective July 26, 1996. **Amended:** Filed April 24, 2018; effective June 8, 2018. **Amended:** Filed June 25, 2019; effective August 9, 2019. **Amended:** Published December 31, 2020; effective February 14, 2021.

335-13-5-.03 Public Notice.

(1) Notice Requirements.

(a) The Department may provide notice and an opportunity for a public hearing on any landfill unit permit if determined necessary to meet the requirements of this Division.

(b) The following procedures shall be observed:

1. The Department shall notify interested and potentially interested persons of the proposed landfill unit by publishing a notice in a newspaper of general circulation in the area.

(i) The notice shall be given not less than 35 days prior to the proposed issuance of a permit.

(ii) The notice shall contain the specific type and nature of the landfill units, the type of waste to be disposed, the person or agency requesting the permit, and the descriptive location of the landfill units, address and telephone number of the Department, and that interested persons may request a public hearing on the proposed landfill units.

2. The Department shall send by certified mail, a written copy of the public notice to landowners adjacent to the subject landfill unit at the address as indicated on county tax records. The list and addresses of adjacent lawn owners, as provided in the permit application, shall be verified and/or updated 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

Statutory Authority: Code of Ala. 1975, §§22-27-3, 22-27-5, 22-27-7, 22-27-48 and 48.1.

History: Effective: November 18, 1981; **Amended:** March 31, 1988. (Emergency Regulations); July 21, 1988; October 2, 1990. **Amended:** Filed September 28, 1993; effective November 2, 1993. **Amended:** Filed June 21, 1996; effective July 26, 1996. **Amended:** Filed April 24, 2018; effective June 8, 2018. **Amended:** Filed June 25, 2019; effective August 9, 2019. **Amended:** Published December 31, 2020; effective February 14, 2021.

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returned certified mail item, that is refused or otherwise undeliverable.

(2) Departmental Action. The Department shall take one of the following actions after the hearing:

(a) Deny the permit, stating in writing the reasons for denial and informing the person requesting the permit of appeal procedures in chapter 335-2-1;

(b) Issue the permit if the application complies with this Division; or

(c) Require additional information, elements of design for the facility, and specify procedures for inclusion into the permit prior to issuance of the permit.

Authors: Russell A. Kelly, S. Scott Story

Statutory Authority: Code of Ala. 1975, §§22-22A-5, 22-27-7.

History: Effective November 18, 1981. **Amended:** July 21, 1988.

Amended: Filed September 28, 1993; effective November 2, 1993.

Amended: Filed June 21, 1996, effective July 26, 1996.

Amended: Filed April 24, 2018; effective June 8, 2018.

Amended: Filed June 25, 2019; effective August 9, 2019.

335-13-5-.04 Public Hearing.

(1) Authorization. The Department shall authorize a public hearing upon receipt of significant number of technical requests as provided in 335-13-5-.04(2).

(2) Procedures.

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

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.

returned certified mail item, that is refused or otherwise undeliverable.

(2) Departmental Action. The Department shall take one of the following actions after the hearing:

(a) Deny the permit, stating in writing the reasons for denial and informing the person requesting the permit of appeal procedures in chapter 335-2-1;

(b) Issue the permit if the application complies with this Division; or

(c) Require additional information, elements of design for the facility, and specify procedures for inclusion into the permit prior to issuance of the permit.

Authors: Russell A. Kelly, S. Scott Story

Statutory Authority: Code of Ala. 1975, §§22-22A-5, 22-27-7.

History: Effective November 18, 1981. **Amended:** July 21, 1988.

Amended: Filed September 28, 1993; effective November 2, 1993.

Amended: Filed June 21, 1996, effective July 26, 1996.

Amended: Filed April 24, 2018; effective June 8, 2018.

Amended: Filed June 25, 2019; effective August 9, 2019.

335-13-5-.04 Public Hearing.

(1) Authorization. The Department shall authorize a public hearing upon receipt of significant number of technical requests as provided in 335-13-5-.04(2).

(2) Procedures.

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

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 hearings in the manner set forth in 335-13-5-.03(1), and also to the persons requesting the hearing in 335-13-5-.04(2). The notice given not less than 35 days prior to the time of the public hearing shall include:

1. A summary of the proposed permit.
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. The Department shall take one of the following actions after the hearing:

(a) Deny the permit, stating in writing the reasons for denial and inform the person requesting the permit of appeal procedures in 335-13-1-.07;

(b) Issue the permit if the application complies with this Division; or

(c) Require additional information, elements of design for the facility, and specify procedures for inclusion into the permit prior to issuance of the permit.

Authors: Russell A. Kelly, S. Scott Story

Statutory Authority: Code of Ala. 1975, §§22-22A-5, 22-27-7.

History: Effective: November 18, 1981; **Amended:** July 21, 1988. **Amended:** Filed September 28, 1993; effective November 2, 1993. **Amended:** Filed June 21, 1996; effective July 26, 1996. **Amended:** Filed April 24, 2018; effective June 8, 2018.

97.612(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year: Missouri and New York.

(3) For each of the following States, the Administrator has approved a SIP revision under paragraph (f) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (b), (d), and (e) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): Indiana, Kentucky, and Missouri.

(m) The following States have SIP revisions approved by the Administrator under paragraph (g), (h), or (i) of this section:

(1) For each of the following States, the Administrator has approved a SIP revision under paragraph (g) of this section as replacing the CSAPR SO₂ Group 2 allowance allocation provisions in §97.711(a) of this chapter with regard to the State and the control period in 2016: Alabama and Nebraska.

(2) For each of the following States, the Administrator has approved a SIP revision under paragraph (h) of this section as replacing the CSAPR SO₂ Group 2 allowance allocation provisions in §§97.711(a) and (b)(1) and 97.712(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year: [none].

(3) For each of the following States, the Administrator has approved a SIP revision under paragraph (i) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (c)(1), (g), and (h) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): Alabama, Georgia, and South Carolina.

[76 FR 48357, Aug. 8, 2011, as amended at 77 FR 10334, Feb. 21, 2012; 79 FR 71671, Dec. 3, 2014; 81 FR 74586 and 74591, Oct. 26, 2016; 82 FR 45496, Sept. 29, 2017; 82 FR 47934, 47939, Oct. 13, 2017; 82 FR 57366, Dec. 5, 2017; 83 FR 64476, Dec. 17, 2018; 84 FR 66318, Dec. 4, 2019; 85 FR 7452, Feb. 10, 2020]

Subpart B—Alabama

§ 52.50 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State implementation plan for Alabama under section 110 of the Clean Air Act, 42 U.S.C. 7401, and 40 CFR part 51 to meet national ambient air quality standards.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to October 1, 2017, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the FEDERAL REGISTER. Entries in paragraphs (c) and (d) of this section with EPA approval dates after October 1, 2017, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of the dates referenced in paragraph (b)(1).

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street SW, Atlanta, GA 30303. To obtain the material, please call (404) 562-9022. You may inspect the material with an EPA approval date prior to October 1, 2017, for Alabama at the National Archives and Records Administration. For information on the availability of this material at NARA go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(c) EPA Approved Alabama Regulations.

EPA-APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter No. 335-1-1 Organization				
Section 335-1-1-.03 ...	Organization and Duties of the Commission.	12/8/2017	7/6/2018, 83 FR 31454	
Section 335-1-1-.04 ...	Organization of the Department ..	12/8/2017	7/6/2018, 83 FR 31454	
Chapter No. 335-3-1 General Provision				
Section 335-3-1-.01 ...	Purpose	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-1-.02 ...	Definitions	5/19/2017	10/13/2017, 82 FR 47631	
Section 335-3-1-.03 ...	Ambient Air Quality Standards ...	10/13/1998	3/1/1999, 64 FR 9918	
Section 335-3-1-.04 ...	Monitoring, Records, and Reporting.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-1-.05 ...	Sampling and Testing Methods ...	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-1-.06 ...	Compliance Schedule	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-1-.07 ...	Maintenance and Malfunctioning of Equipment; Reporting.	10/15/1989	3/19/1990, 55 FR 10062	
Section 335-3-1-.08 ...	Prohibition of Air Pollution	8/10/2000	12/8/2000, 65 FR 76938	
Section 335-3-1-.09 ...	Variances	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-1-.10 ...	Circumvention	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-1-.11 ...	Severability	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-1-.12 ...	Bubble Provision	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-1-.13 ...	Credible Evidence	4/13/1999	11/3/1999, 64 FR 59633	
Section 335-3-1-.14 ...	Emissions Reporting Requirements Relating to Budgets for NO _x Emissions.	4/6/2001	7/16/2001, 66 FR 36921	
Section 335-3-1-.15 ...	Emissions Inventory Reporting Requirements.	4/3/2003	4/24/2003, 68 FR 20077	
Chapter No. 335-3-2 Air Pollution Emergency				
Section 335-3-2-.01 ...	Air Pollution Emergency	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-2-.02 ...	Episode Criteria	8/10/2000	12/8/2000, 65 FR 76940	
Section 335-3-2-.03 ...	Special Episode Criteria	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-2-.04 ...	Emission Reduction Plans	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-2-.05 ...	Two Contaminant Episode	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-2-.06 ...	General Episodes	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-2-.07 ...	Local Episodes	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-2-.08 ...	Other Sources	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-2-.09 ...	Other Authority Not Affected	6/22/1989	3/19/1990, 55 FR 10062	
Chapter No. 335-3-3 Control of Open Burning and Incineration				
Section 335-3-3-.01 ...	Open Burning	1/22/2008	9/15/2008, 73 FR 53134	
Section 335-3-3-.02 ...	Incinerators	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-3-.03 ...	Incineration of Wood, Peanut, and Cotton Ginning Waste.	8/10/2000	12/8/2000, 65 FR 76938	
Chapter No. 335-3-4 Control of Particulate Emissions				
Section 335-3-4-.01 ...	Visible Emissions	9/30/2008	10/15/2008, 73 FR 60957	
Section 335-3-4-.02 ...	Fugitive Dust and Fugitive Emissions.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-4-.03 ...	Fuel Burning Equipment	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-4-.04 ...	Process Industries—General	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-4-.05 ...	Small Foundry Cupola	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-4-.06 ...	Cotton Gins	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-4-.07 ...	Kraft Pulp Mills	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-4-.08 ...	Wood Waste Boilers	6/9/2017	10/13/2017, 82 FR 47631	
Section 335-3-4-.09 ...	Coke Ovens	8/10/2000	12/8/2000, 65 FR 76940	
Section 335-3-4-.10 ...	Primary Aluminum Plants	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-4-.11 ...	Cement Plants	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-4-.12 ...	Xylene Oxidation Process	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-4-.13 ...	Sintering Plants	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-4-.14 ...	Grain Elevators	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-4-.15 ...	Secondary Lead Smelters	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-4-.17 ...	Steel Mills Located in Etowah County.	10/15/1996	6/6/1997, 62 FR 30991	

Environmental Protection Agency

§ 52.50

EPA-APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter No. 335-3-5 Control of Sulfur Compound Emissions				
Section 335-3-5-.01 ...	Fuel Combustions	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-5-.02 ...	Sulfuric Acid Plants	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-5-.03 ...	Petroleum Production	8/10/2000	12/8/2000, 65 FR 76938	
Section 335-3-5-.04 ...	Kraft Pulp Mills	8/10/2000	12/8/2000, 65 FR 76938	
Section 335-3-5-.05 ...	Process Industries—General	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-5-.06 ...	State Clean Air Interstate Rule (CAIR) SO ₂ Trading Program General Provisions.	4/3/2007	10/1/2007, 72 FR 55659	
Section 335-3-5-.06 ...	TR SO ₂ Trading Program—Purpose and Definitions.	11/24/2015	8/31/2016, 81 FR 59869	Both sections of 335-3-5-.06 are included in the approved SIP.
Section 335-3-5-.07 ...	CAIR Designated Representative for CAIR SO ₂ Sources.	4/3/2007	10/1/2007, 72 FR 55659	
Section 335-3-5-.07 ...	TR SO ₂ Trading Program—Applicability.	11/24/2015	8/31/2016, 81 FR 59869	Both sections of 335-3-5-.07 are included in the approved SIP.
Section 335-3-5-.08 ...	Permits	4/3/2007	10/1/2007, 72 FR 55659	
Section 335-3-5-.08 ...	TR SO ₂ Trading Program—Retired Unit Exemption.	11/24/2015	8/31/2016, 81 FR 59869	Both sections of 335-3-5-.08 are included in the approved SIP.
Section 335-3-5-.09 ...	TR SO ₂ Trading Program—Standard Requirements.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.10 ...	TR SO ₂ Trading Program—computation of Time.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.11 ...	CAIR SO ₂ Allowance Tracking System.	4/3/2007	10/1/2007, 72 FR 55659	
Section 335-3-5-.11 ...	Administrative Appeal Procedures.	11/24/2015	8/31/2016, 81 FR 59869	Both sections of 335-3-5-.11 are included in the approved SIP.
Section 335-3-5-.12 ...	CAIR SO ₂ Allowance Transfers ..	4/3/2007	10/1/2007, 72 FR 55659	
Section 335-3-5-.12 ...	SO ₂ Trading Budgets and Variability Limits.	11/24/2015	8/31/2016, 81 FR 59869	Both sections of 335-3-5-.12 are included in the approved SIP.
Section 335-3-5-.13 ...	Monitoring and Reporting	4/3/2007	10/1/2007, 72 FR 55659	
Section 335-3-5-.13 ...	TR SO ₂ Allowance Allocations	12/7/2018	3/12/2020, 85 FR 14418	Both sections of 335-3-5-.13 are included in the approved SIP.
Section 335-3-5-.14 ...	CAIR SO ₂ Opt-in Units	4/3/2007	10/1/2007, 72 FR 55659	
Section 335-3-5-.14 ...	Authorization of Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869	Both sections of 335-3-5-.14 are included in the approved SIP.
Section 335-3-5-.15 ...	Responsibilities of Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.16 ...	Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.17 ...	Certificate of Representation	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.18 ...	Objections Concerning Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.19 ...	Delegation by Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.21 ...	Establishment of Compliance Accounts, Assurance Accounts, and General Accounts.	11/24/2015	8/31/2016, 81 FR 59869	

EPA-APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 335-3-5-.22 ...	Recordation of TR SO ₂ Allowance Allocations and Auction Results.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.23 ...	Submission of TR SO ₂ Allowance Transfers.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.24 ...	Recordation of TR SO ₂ Allowance Transfers.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.25 ...	Compliance with TR SO ₂ Emissions Limitation.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.26 ...	Compliance with TR SO ₂ Assurance Provisions.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.27 ...	Banking	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.28 ...	Account Error	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.29 ...	Administrator's Action on Submissions.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.31 ...	General Monitoring, Record-keeping, and Reporting Requirements.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.32 ...	Initial Monitoring System Certification and Recertification Procedures.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.33 ...	Monitoring System Out-of-Control Periods.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.34 ...	Notifications Concerning Monitoring.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.35 ...	Recordkeeping and Reporting	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-5-.36 ...	Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements.	11/24/2015	8/31/2016, 81 FR 59869	

Chapter No. 335-3-6 Control of Organic Emissions

Section 335-3-6-.01 ...	Applicability	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.02 ...	VOC Water Separation	4/15/1987	9/27/1993, 58 FR 50262	
Section 335-3-6-.03 ...	Loading and Storage of VOC	4/15/1987	9/27/1993, 58 FR 50262	
Section 335-3-6-.04 ...	Fixed-Roof Petroleum Liquid Storage Vessels.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.05 ...	Bulk Gasoline Plants	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.06 ...	Bulk Gasoline Terminals	8/10/2000	12/8/2000, 65 FR 76938	
Section 335-3-6-.07 ...	Gasoline Dispensing Facilities—Stage I.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.08 ...	Petroleum Refinery Sources	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-6-.09 ...	Pumps and Compressors	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-6-.10 ...	Ethylene Producing Plants	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-6-.11 ...	Surface Coating	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.12 ...	Solvent Metal Cleaning	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.13 ...	Cutback Asphalt	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.14 ...	Petition for Alternative Controls ...	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-6-.15 ...	Compliance Schedules	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.16 ...	Test Methods and Procedures ...	8/10/2000	12/8/2000, 65 FR 76938	
Section 335-3-6-.17 ...	Manufacture of Pneumatic Tires	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.18 ...	Manufacture of Synthesized Pharmaceutical Products.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.20 ...	Leaks from Gasoline Tank Trucks and Vapor Collection Systems.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.21 ...	Leaks from Petroleum Refinery Equipment.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.22 ...	Graphic Arts	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.23 ...	Petroleum Liquid Storage in External Floating Roof Tanks.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.24 ...	Applicability	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.25 ...	VOC Water Separation	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-6-.26 ...	Loading and Storage of VOC	4/15/1987	9/27/1993, 58 FR 50262	
Section 335-3-6-.27 ...	Fixed-Roof Petroleum Liquid Storage Vessels.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.28 ...	Bulk Gasoline Plants	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.29 ...	Gasoline Terminals	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.30 ...	Gasoline Dispensing Facilities Stage 1.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.31 ...	Petroleum Refinery Sources	4/15/1987	9/27/1993, 58 FR 50262	

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Section 335-3-6-.32 ...	Surface Coating	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.33 ...	Solvent Metal Cleaning	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.34 ...	Cutback Asphalt	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.35 ...	Petition for Alternative Controls ...	4/15/1987	9/27/1993, 58 FR 50262	
Section 335-3-6-.36 ...	Compliances Schedules	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.37 ...	Test Methods and Procedures	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.38 ...	Manufacture of Pneumatic Tires	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-6-.39 ...	Manufacture of Synthesized Pharmaceutical Products.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.41 ...	Leaks from Gasoline Tank Trucks and Vapor Collection Systems.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.42 ...	Leaks from Petroleum Refinery Equipment.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.43 ...	Graphic Arts	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.44 ...	Petroleum Liquid Storage in Ex- ternal Floating Roof Tanks.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.45 ...	Large Petroleum Dry Cleaners	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.46 ...	Aerospace Assembly and Com- ponent and Component Coat- ings Operation.	6/22/1989	6/6/1997, 62 FR 30991	
Section 335-3-6-.47 ...	Leaks from Coke by-Product Re- covery Plant Equipment.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.48 ...	Emissions from Coke by-Product Recovery Plant Coke Oven Gas Bleeder.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.49 ...	Manufacture of Laminated Countertops.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.50 ...	Paint Manufacture	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-6-.53 ...	List of EPA Approved and Equiv- alent Test Methods and Proce- dures for the Purpose of Deter- mining VOC Emissions.	10/15/1996	6/6/1997, 62 FR 30991	
Chapter No. 335-3-7 Carbon Monoxide Emissions				
Section 335-3-7-.01 ...	Metals Productions	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-7-.02 ...	Petroleum Processes	6/22/1989	3/19/1990, 55 FR 10062	
Chapter No. 335-3-8 Control of Nitrogen Oxides Emissions				
Section 335-3-8-.01 ...	Standards for Portland Cement Kilns.	4/6/2001	7/17/2001, 66 FR 36919	
Section 335-3-8-.02 ...	Nitric Acid Manufacturing	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-8-.03 ...	NO _x Emissions from Electric Util- ity Generating Units.	10/24/2000	11/7/2001, 66 FR 56223	
Section 335-3-8-.04 ...	Standards for Stationary Recipro- cating Internal Combustion En- gines.	3/22/2005	12/28/2005, 70 FR 76694	
Section 335-3-8-.05 ...	NO _x Budget Trading Program	4/3/2007	10/1/2007, 72 FR 55659	
Section 335-3-8-.06 ...	Authorized Account Representa- tive for NO _x Budget Sources.	4/6/2001	7/16/2001, 66 FR 36919	
Section 335-3-8-.07 ...	Permits	4/6/2001	7/16/2001, 66 FR 36919	
Section 335-3-8-.07 ...	TR NO _x Annual Trading Pro- gram—Purpose and Definitions.	11/24/2015	8/31/2016, 81 FR 59869	Both sections of 335-3-8-.07 are included in the ap- proved SIP.
Section 335-3-8-.08 ...	Compliance Certification	4/6/2001	7/16/2001, 66 FR 36919	
Section 335-3-8-.08 ...	TR NO _x Annual Trading Pro- gram—Applicability.	11/24/2015	8/31/2016, 81 FR 59869	Both sections of 335-3-8-.08 are included in the ap- proved SIP.
Section 335-3-8-.09 ...	NO _x Allowance Allocations	4/6/2001	7/16/2001, 66 FR 36919	
Section 335-3-8-.09 ...	TR NO _x Annual Trading Pro- gram—Retired Unit Exemption.	11/24/2015	8/31/2016, 81 FR 59869	Both sections of 335-3-8-.09 are included in the ap- proved SIP.
Section 335-3-8-.10 ...	NO _x Allowance Tracking System	4/3/2007	10/1/2007, 72 FR 55659	
Section 335-3-8-.10 ...	TR NO _x Annual Trading Pro- gram—Standard Requirements.	11/24/2015	8/31/2016, 81 FR 59869	Both sections of 335-3-8-.10 are included in the ap- proved SIP.

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Section 335-3-8-.11 ... Section 335-3-8-.11 ...	NO _x Allowance Transfers TR NO _x Annual Trading Program—Computation of Time.	4/6/2001 11/24/2015	7/16/2001, 66 FR 36919 8/31/2016, 81 FR 59869	Both sections of 335-3-8-.11 are included in the approved SIP.
Section 335-3-8-.12 ... Section 335-3-8-.12 ...	Monitoring and Reporting Administrative Appeal Procedures.	4/6/2001 11/24/2015	7/16/2001, 66 FR 36919 8/31/2016, 81 FR 59869	Both sections of 335-3-8-.12 are included in the approved SIP.
Section 335-3-8-.13 ... Section 335-3-8-.13 ...	Individual Unit Opt-ins NO _x Annual Trading Budgets and Variability Limits.	4/6/2001 11/24/2015	7/16/2001, 66 FR 36919 8/31/2016, 81 FR 59869	Both sections of 335-3-8-.13 are included in the approved SIP.
Section 335-3-8-.14 ... Section 335-3-8-.14 ...	New Combustion Sources TR NO _x Annual Allowance Allocations.	4/6/2001 12/7/2018	7/16/2001, 66 FR 36919 3/12/2020, 85 FR 14418	Both sections of 335-3-8-.14 are included in the approved SIP.
Section 335-3-8-.16 ... Section 335-3-8-.16 ...	CAIR NO _x Annual Budget Trading Program. Authorization of Designated Representative and Alternate Designated Representative.	4/3/2007 11/24/2015	10/1/2007, 72 FR 55659 8/31/2016, 81 FR 59869	Both sections of 335-3-8-.16 are included in the approved SIP.
Section 335-3-8-.17 ... Section 335-3-8-.17 ...	CAIR Designated Representative for CAIR NO _x Sources. Responsibilities of Designated Representative and Alternate Designated Representative.	4/3/2007 11/24/2015	10/1/2007, 72 FR 55659 8/31/2016, 81 FR 59869	Both sections of 335-3-8-.17 are included in the approved SIP.
Section 335-3-8-.18 ... Section 335-3-8-.18 ...	CAIR Permits Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source.	4/3/2007 11/24/2015	10/1/2007, 72 FR 55659 8/31/2016, 81 FR 59869	Both sections of 335-3-8-.18 are included in the approved SIP.
Section 335-3-8-.19 ... Section 335-3-8-.20 ... Section 335-3-8-.20 ...	Certificate of Representation CAIR NO _x Allowance Allocations Objections Concerning Designated Representative and Alternate Designated Representative.	11/24/2015 4/3/2007 11/24/2015	8/31/2016, 81 FR 59869 10/1/2007, 72 FR 55659 8/31/2016, 81 FR 59869	Both sections of 335-3-8-.20 are included in the approved SIP.
Section 335-3-8-.21 ... Section 335-3-8-.21 ...	CAIR NO _x Allowance Tracking System. Delegation by Designated Representative and Alternate Designated Representative.	4/3/2007 11/24/2015	10/1/2007, 72 FR 55659 8/31/2016, 81 FR 59869	Both sections of 335-3-8-.21 are included in the approved SIP.
Section 335-3-8-.23 ... Section 335-3-8-.23 ...	CAIR Monitoring and Reporting .. Establishment of Compliance Accounts, Assurance Accounts, and General Accounts.	4/3/2007 11/24/2015	10/1/2007, 72 FR 55659 8/31/2016, 81 FR 59869	Both sections of 335-3-8-.23 are included in the approved SIP.
Section 335-3-8-.24 ... Section 335-3-8-.24 ...	CAIR NO _x Opt-in Units Recordation of TR NO _x Annual Allowance Allocations and Auction Results.	4/3/2007 11/24/2015	10/1/2007, 72 FR 55659 8/31/2016, 81 FR 59869	Both sections of 335-3-8-.24 are included in the approved SIP.
Section 335-3-8-.25 ... Section 335-3-8-.25 ...	CAIR NO _x Ozone Season Trading Program. Submission of TR NO _x Annual Allowance Transfers.	4/3/2007 11/24/2015	10/1/2007, 72 FR 55659 8/31/2016, 81 FR 59869	Both sections of 335-3-8-.25 are included in the approved SIP.
Section 335-3-8-.26 ...	CAIR Designated Representative for CAIR NO _x Ozone Season Sources.	4/3/2007	10/1/2007, 72 FR 55659	

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Section 335-3-8-.26 ...	Recordation of TR NO _x Annual Allowance Transfers.	11/24/2015	8/31/2016, 81 FR 59869	Both sections of 335-3-8-.26 are included in the approved SIP.
Section 335-3-8-.27 ...	CAIR NO _x Ozone Season Permits.	4/3/2007	10/1/2007, 72 FR 55659	
Section 335-3-8-.27 ...	Compliance with TR NO _x Annual Emissions Limitation.	11/24/2015	8/31/2016, 81 FR 59869	Both sections of 335-3-8-.27 are included in the approved SIP.
Section 335-3-8-.28 ...	Compliance with TR NO _x Annual Assurance Provisions.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-8-.29 ...	CAIR NO _x Ozone Season Allowance Allocations.	4/3/2007	10/1/2007, 72 FR 55659	Both sections of 335-3-8-.29 are included in the approved SIP.
Section 335-3-8-.29 ...	Banking	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-8-.30 ...	CAIR NO _x Ozone Season Allowance Tracking System.	4/3/2007	10/1/2007, 72 FR 55659	Both sections of 335-3-8-.30 are included in the approved SIP.
Section 335-3-8-.30 ...	Account Error	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-8-.31 ...	Administrator's Action on Submissions.	11/24/2015	8/31/2016, 81 FR 59869	Both sections of 335-3-8-.33 are included in the approved SIP.
Section 335-3-8-.32 ...	CAIR NO _x Ozone Season Monitoring and Reporting.	4/3/2007	10/1/2007, 72 FR 55659	
Section 335-3-8-.33 ...	CAIR NO _x Ozone Season Opt-in Units.	4/3/2007	10/1/2007, 72 FR 55659	Both sections of 335-3-8-.33 are included in the approved SIP.
Section 335-3-8-.33 ...	General Monitoring, Recordkeeping, and Reporting Requirements.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-8-.34 ...	Initial Monitoring System Certification and Recertification Procedures.	11/24/2015	8/31/2016, 81 FR 59869	Both sections of 335-3-8-.33 are included in the approved SIP.
Section 335-3-8-.35 ...	Monitoring System Out-of-Control Periods.	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-8-.36 ...	Notifications Concerning Monitoring.	11/24/2015	8/31/2016, 81 FR 59869	Both sections of 335-3-8-.33 are included in the approved SIP.
Section 335-3-8-.37 ...	Recordkeeping and Reporting	11/24/2015	8/31/2016, 81 FR 59869	
Section 335-3-8-.38 ...	Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements.	11/24/2015	8/31/2016, 81 FR 59869	Both sections of 335-3-8-.33 are included in the approved SIP.
Section 335-3-8-.39 ...	TR NO _x Ozone Season Group 2 Trading Program—Purpose and Definitions.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335-3-8-.40 ...	TR NO _x Ozone Season Group 2 Trading Program—Applicability.	10/5/2018	3/12/2020, 85 FR 14418	Both sections of 335-3-8-.33 are included in the approved SIP.
Section 335-3-8-.41 ...	TR NO _x Ozone Season Group 2 Trading Program—Retired Unit Exemption.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335-3-8-.42 ...	TR NO _x Ozone Season Group 2 Trading Program—Standard Requirements.	6/9/2017	10/6/2017, 82 FR 46674	Both sections of 335-3-8-.33 are included in the approved SIP.
Section 335-3-8-.43 ...	TR NO _x Ozone Season Group 2 Trading Program—Computation of Time.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335-3-8-.44 ...	Administrative Appeal Procedures.	11/24/2015	10/6/2017, 82 FR 46674	Both sections of 335-3-8-.33 are included in the approved SIP.
Section 335-3-8-.45 ...	NO _x Ozone Season Group 2 Trading Budgets and Variability Limits.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335-3-8-.46 ...	TR NO _x Ozone Season Group 2 Allowance Allocations.	12/7/2018	3/12/2020, 85 FR 14418	Both sections of 335-3-8-.33 are included in the approved SIP.
Section 335-3-8-.48 ...	Authorization of Designated Representative and Alternate Designated Representative.	6/9/2017	10/6/2017, 82 FR 46674	

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Section 335–3–8–.49 ...	Responsibilities of Designated Representative and Alternate Designated Representative.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.50 ...	Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.51 ...	Certificate of Representation	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.52 ...	Objections Concerning Designated Representative and Alternate Designated Representative.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.53 ...	Delegation by Designated Representative and Alternate Designated Representative.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.55 ...	Establishment of Compliance Accounts, Assurance Accounts, and General Accounts.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.56 ...	Recordation of TR NO _x Ozone Season Group 2 Allowance Allocations and Auction Results.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.57 ...	Submission of TR NO _x Ozone Season Group 2 Allowance Transfers.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.58 ...	Recordation of TR NO _x Ozone Season Group 2 Allowance Transfers.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.59 ...	Compliance with TR NO _x Ozone Season Group 2 Emissions Limitation.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.60 ...	Compliance with TR NO _x Ozone Season Group 2 Assurance Provisions.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.61 ...	Banking	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.62 ...	TR NO _x Ozone Season Group 2 Trading Program—Account Error.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.63 ...	TR NO _x Ozone Season Group 2 Trading Program—Administrator's Action on Submissions.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.65 ...	General Monitoring, Recordkeeping, and Reporting Requirements.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.66 ...	Initial Monitoring System Certification and Recertification Procedures.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.67 ...	Monitoring System Out-of-Control Periods.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.68 ...	Notifications Concerning Monitoring.	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.69 ...	Recordkeeping and Reporting	6/9/2017	10/6/2017, 82 FR 46674	
Section 335–3–8–.70 ...	Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements.	6/9/2017	10/6/2017, 82 FR 46674	

Chapter No. 335–3–9 Control of Emissions from Motor Vehicles

Section 335–3–9–.01 ...	Visible Emission Restriction for Motor Vehicles.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335–3–9–.02 ...	Ignition System and Engine Speed.	8/10/2000	12/8/2000, 65 FR 76938	
Section 335–3–9–.03 ...	Crankcase Ventilation Systems ...	8/10/2000	12/8/2000, 65 FR 76938	
Section 335–3–9–.04 ...	Exhaust Emission Control Systems.	6/22/1989	3/19/1990, 55 FR 10062	
Section 335–3–9–.05 ...	Evaporative Loss Control Systems.	6/22/1989	3/19/1990, 55 FR 10062	
Section 335–3–9–.06 ...	Other Prohibited Acts	8/10/2000	12/8/2000, 65 FR 76938	
Section 335–3–9–.07 ...	Effective Date	10/15/1996	6/6/1997, 62 FR 30991	

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State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter No. 335-3-12 Continuous Monitoring Requirements for Existing Sources				
Section 335-3-12-.01	General	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-12-.02	Emission Monitoring and Reporting Requirements.	2/17/1998	9/14/1998, 63 FR 49005	
Section 335-3-12-.03	Monitoring System Malfunction ...	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-12-.04	Alternate Monitoring and Reporting Requirements.	6/22/1989	3/19/1990, 55 FR 10062	
Section 335-3-12-.05	Exemptions and Extensions	6/22/1989	3/19/1990; 55 FR 10062	
Chapter No. 335-3-13 Control of Fluoride Emissions				
Section 335-3-13-.01	General	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-13-.02	Superphosphoric Acid Plants	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-13-.03	Diammonium Phosphate Plants ..	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-13-.04	Triple Superphosphoric Plants	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-13-.05	Granular Triple Superphosphoric Storage Facilities.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-13-.06	Wet Process Phosphoric Acid Plants.	10/15/1996	6/6/1997, 62 FR 30991	
Chapter No. 335-3-14 Air Permits				
Section 335-3-14-.01	General Provisions	6/9/2017	12/14/2018, 83 FR 64285	Except for changes to 335-3-14-.04(2)(w)1., state effective July 11, 2006, which lists a 100 ton per year significant net emissions increase for regulated NSR pollutants not otherwise specified at 335-3-14-.04(2)(w). Except for the significant impact levels at 335-3-14-.04(10)(b) which were withdrawn from EPA consideration on October 9, 2014. Except for the second sentence of paragraph 335-3-14-.04(2)(bbb)2., as well as the second and fourth sentences of paragraph 335-3-14-.04(2)(bbb)3., which include changes from the vacated federal ERP rule and were withdrawn from EPA consideration by the State on May 5, 2017.
Section 335-3-14-.02	Permit Procedures	10/15/1996	6/6/1997, 62 FR 30991	
Section 335-3-14-.03	Standards for Granting Permits ...	5/23/2011	9/26/2012, 77 FR 59100.	
Section 335-3-14-.04	Air Permits Authorizing Construction in in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)].	10/5/2018	7/3/2019, 84 FR 31741	

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State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 335–3–14–.05	Air Permits Authorizing Construction in or Near Nonattainment Areas.	6/9/2017	12/14/2018, 83 FR 64285	With the exception of: The portion of 335–3–14–.05(1)(k) stating “excluding ethanol production facilities that produce ethanol by natural fermentation”; and 335–3–14–.05(2)(c)3 (addressing fugitive emission increases and decreases). Also with the exception of the state-withdrawn elements: 335–3–14–.05(1)(h) (the actual-to-potential test for projects that only involve existing emissions units); the last sentence at 335–3–14–.05(3)(g), stating “Interpollutant offsets shall be determined based upon the following ratios”; and the NNSR interpollutant ratios at 335–3–14–.05(3)(g)1–4.

Chapter No. 335–3–15 Synthetic Minor Operating Permits

Section 335–3–15–.01	Definitions	10/15/1996	6/6/1997, 62 FR 30991	
Section 335–3–15–.02	General Provisions	8/10/2000	12/8/2000, 65 FR 76938	
Section 335–3–15–.03	Applicability	11/23/1993	10/20/1994, 59 FR 52916	
Section 335–3–15–.04	Synthetic Minor Operating Permit Requirements.	10/15/1996	6/6/1997, 62 FR 30991	
Section 335–3–15–.05	Public Participation	6/9/2017	12/14/2018, 83 FR 64285	

Chapter No. 335–3–17 Conformity of Federal Actions to State Implementation Plans

Section 335–3–17–.01	Transportation Conformity	5/28/2013	10/12/2017, 82 FR 47383	
Section 335–3–17–.02	General Conformity	5/23/2011	9/26/2012, 77 FR 59100	

(d) EPA approved Alabama source specific requirements.

EPA APPROVED ALABAMA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
Lafarge Cement Kiln	AB70004_1_01	2/6/2008	7/30/2009, 74 FR 37945	Certain provisions of the permit.
Lehigh Cement Kiln	4–07–0290–03	2/6/2008	7/30/2009, 74 FR 37945	Certain provisions of the permit.

(e) EPA Approved Alabama Non-Regulatory Provisions.

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EPA APPROVED ALABAMA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
Attainment Plan for the Alabama Portion of the Chattanooga 1997 Annual PM _{2.5} Nonattainment Area.	A portion of Jackson County, Alabama.	10/07/2009	10/5/2012, 77 FR 60904.	
Birmingham 1990 Baseline Emissions Inventory.	Birmingham Ozone Nonattainment Area.	11/13/1992	6/4/1999, 64 FR 29961.	
Alabama Interagency Transportation Conformity Memorandum of Agreement.		1/20/2000	5/11/2000, 65 FR 30362.	
Alabama Fuel Waiver Request—Appendix II of Attainment Demonstration of the 1-hour NAAQS for Ozone for the Birmingham Nonattainment Area.	Birmingham Ozone Nonattainment Area.	12/1/2000	11/7/2001, 66 FR 56220.	
Attainment Demonstration of the 1-hour NAAQS for Ozone for the Birmingham Nonattainment Area.	Birmingham Ozone Nonattainment Area.	12/1/2000	11/7/2001, 66 FR 56224.	
Maintenance Plan for the Birmingham area.	Jefferson County and Shelby County.	1/30/2004	3/12/2004, 69 FR 11800.	
8-Hour Ozone Maintenance plan for the Birmingham area.	Jefferson County and Shelby County.	1/26/2006	5/12/2006, 71 FR 27631.	
Conformity SIP for Birmingham and Jackson County.	Jefferson County, Shelby County, Jackson County.	12/12/2008	3/26/2009, 74 FR 13118.	
110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards.	Alabama	12/10/2007	7/13/2011, 76 FR 41088	For the 1997 8-hour ozone NAAQS.
Chattanooga; Fine Particulate Matter 2002 Base Year Emissions Inventory.	Jackson County	7/31/2009	2/8/2012, 77 FR 6467.	
Regional haze plan	Statewide	7/15/2008	6/28/2012, 77 FR 38515..	
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	Alabama	7/25/2008	10/1/2012, 77 FR 59755	With the exception of sections 110(a)(2)(D)(i) and 110(a)(2)(E)(ii).
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards.	Alabama	9/23/2009	10/1/2012, 77 FR 59755	With the exception of sections 110(a)(2)(D)(i) and 110(a)(2)(E)(ii).
1997 Annual PM _{2.5} Maintenance Plan for the Birmingham Area.	Birmingham PM _{2.5} Nonattainment Area.	5/2/2011	1/22/2013, 78 FR 4341.	
2006 24-hour PM _{2.5} Maintenance Plan for the Birmingham Area.	Birmingham PM _{2.5} Nonattainment Area.	6/17/2010	1/25/2013, 78 FR 5306 ..	
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	Alabama	7/25/2008	4/12/2013, 78 FR 21841	Addressing element 110(a)(2)(D)(i)(II) prong 3 only
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards.	Alabama	9/23/2009	4/12/2013, 78 FR 21841	Addressing element 110(a)(2)(D)(i)(II) prong 3 only
2008 Lead Attainment Demonstration for Troy Area.	Troy Area	11/9/2012	1/28/2014, 79 FR 4407.	
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	Alabama	7/25/2008	5/7/2014, 79 FR 26143 ..	Addressing prong 4 of section 110(a)(2)(D)(i) only.

EPA APPROVED ALABAMA NON-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards.	Alabama	9/23/2009	5/7/2014, 79 FR 26143 ..	Addressing prong 4 of section 110(a)(2)(D)(i) only.
1997 Annual PM _{2.5} Maintenance Plan for the Alabama portion of the Chattanooga TN-GA-AL Area.	Portion of Jackson County in the Chattanooga TN-GA-AL Area.	4/23/2013	12/22/2014, 79 FR 76235.	
110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead NAAQS.	Alabama	11/4/2011	3/18/2015, 80 FR 14019	Addressing the PSD permitting requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) only.
110(a)(1) and (2) Infrastructure Requirements for the 2008 Ozone NAAQS.	Alabama	8/20/2012	3/18/2015, 80 FR 14019	Addressing the PSD permitting requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) only.
110(a)(1) and (2) Infrastructure Requirements for the 2010 NO ₂ NAAQS.	Alabama	4/23/2013	3/18/2015, 80 FR 14019	Addressing the PSD permitting requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) only.
Non-interference Demonstration for Federal Low-Reid Vapor Pressure Requirement for the Birmingham Area.	Jefferson and Shelby Counties.	11/14/2014	4/17/2015, 80 FR 21170	
110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards.	7/17/2012	4/2/2015	4/2/2015, 80 FR 17689 ..	With the exception of PSD permitting requirements for major sources of sections 110(a)(2)(C) and (J); interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II), 110(a)(2)(E)(ii), and the visibility requirements of section 110(a)(2)(J).
Cross State Air Pollution Rule—State-Determined Allowance Allocations for the 2016 control periods.	Alabama	3/27/2014	9/22/2015	
110(a)(1) and (2) Infrastructure Requirements for the 2008 Ozone NAAQS.	Alabama	8/20/2012	8/12/2015, 80 FR 48258	Addressing the visibility requirements of 110(a)(2)(J) only.

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EPA APPROVED ALABAMA NON-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards.	Alabama	11/4/2011	10/9/2015, 80 FR 61111	With the exception of provisions pertaining to PSD permitting requirements in sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), 110(a)(2)(J); and section 110(a)(2)(E)(ii).
110(a)(1) and 110(a)(2) Infrastructure Requirements for the 2010 NO ₂ NAAQS—Update.	Alabama	12/9/2015	9/22/2016, 81 FR 65286	Addressing Prongs 1 and 2 of Section 110(a)(2)(D)(i)(I) only.
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO ₂ NAAQS.	Alabama	4/23/2013	11/21/2016, 81 FR 83142	With the exception of sections: 110(a)(2)(C) and (J) concerning PSD permitting requirements; 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4) concerning interstate transport requirements and the state boards of section 110(a)(2)(E)(ii).
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO ₂ NAAQS.	Alabama	4/23/2013	1/12/2017, 82 FR 3637 ..	With the exception of interstate transport requirements of section 110(a)(2)(D)(i)(II) (prong 4), and the state board requirements of section 110(a)(2)(E)(ii).
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM _{2.5} NAAQS.	Alabama	12/9/2015	9/18/2017, 82 FR 43487	With the exception of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2 and 4) and the state board requirements of section 110(a)(2)(E)(ii).
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO ₂ NAAQS.	Alabama	12/9/2015	10/12/2017, 82 FR 47393	Addressing Prong 4 of Section 110(a)(2)(D)(i)(I) only.
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO ₂ NAAQS.	Alabama	4/23/2013	10/12/2017, 82 FR 47393	Addressing Prong 4 of Section 110(a)(2)(D)(i)(I) only.
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM _{2.5} NAAQS.	Alabama	12/9/2015	10/12/2017, 82 FR 47393	Addressing Prong 4 of Section 110(a)(2)(D)(i)(I) only.
Regional Haze Plan Revision 2008 Lead Maintenance Plan for the Troy Area.	Alabama Troy Area	10/26/2015 1/3/2018	10/12/2017, 82 FR 47393. 6/20/2018, 83 FR 28543.	

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EPA APPROVED ALABAMA NON-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
110(a)(1) and (2) Infrastructure Requirements for the 1997 Annual PM _{2.5} NAAQS.	Alabama	12/8/2017	7/6/2018, 83 FR 31454 ..	Addressing the state board requirements of sections 128 and 110(a)(2)(E)(ii) only.
110(a)(1) and (2) Infrastructure Requirements for the 2006 24-hour PM _{2.5} NAAQS.	Alabama	12/8/2017	7/6/2018, 83 FR 31454 ..	Addressing the state board requirements of sections 128 and 110(a)(2)(E)(ii) only.
110(a)(1) and (2) Infrastructure Requirements for the 2012 24-hour PM _{2.5} NAAQS.	Alabama	12/8/2017	7/6/2018, 83 FR 31454 ..	Addressing the state board requirements of sections 128 and 110(a)(2)(E)(ii) only.
110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead NAAQS.	Alabama	12/8/2017	7/6/2018, 83 FR 31454 ..	Addressing the state board requirements of sections 128 and 110(a)(2)(E)(ii) only.
110(a)(1) and (2) Infrastructure Requirements for the 2008 8-hour Ozone NAAQS.	Alabama	12/8/2017	7/6/2018, 83 FR 31454 ..	Addressing the state board requirements of sections 128 and 110(a)(2)(E)(ii) only.
110(a)(1) and (2) Infrastructure Requirements for the 2010 NO ₂ NAAQS.	Alabama	12/8/2017	7/6/2018, 83 FR 31454 ..	Addressing the state board requirements of sections 128 and 110(a)(2)(E)(ii) only.
110(a)(1) and (2) Infrastructure Requirements for the 2010 SO ₂ NAAQS.	Alabama	12/8/2017	7/6/2018, 83 FR 31454 ..	Addressing the state board requirements of sections 128 and 110(a)(2)(E)(ii) only.
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM _{2.5} NAAQS.	Alabama	12/9/2015	9/25/2018, 83 FR 48387	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i)(I) only.
June 2018 Regional Haze Progress Report.	Alabama	6/26/2018	3/5/2019, 84 FR 7823.	
110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS.	Alabama	8/27/2018	2/6/2020, 85 FR 6808	With the exception of 110(a)(2)(D)(i)(I) (prongs 1 and 2).
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO ₂ NAAQS.	Alabama	8/20/2018	3/10/2020, 85 FR 13755	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i) only.

[63 FR 70672, Dec. 22, 1998]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 52.50, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 52.51 Classification of regions.

The Alabama plan was evaluated on the basis of the following classifications:

CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Ala. R. App. P. 28(j)(1) because, excluding the parts of the brief exempted, because this brief contains 13,984 words as computed by the word count function in Word Perfect X7.

This brief complies with the font type and size requirements of Ala. R. App. P. 32(a)(7) because it uses Century Schoolbook 14 throughout.

Done this 27th day of May, 2021.

s/ David A. Ludder
David A. Ludder

CERTIFICATE OF SERVICE

I, David A. Ludder, hereby certify that I served the following parties by electronic service, as authorized by R. 57(h)(5), Ala. R. App.

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