

## IN CLOSING . . .

Environmental regulatory activity covers a variety of operations and can often be complex and difficult to understand. This situation seems to be intensifying as the regulated community continues to grow and change. Those who are informed can better participate in ADEM's permitting and rule-making processes and hopefully this publication is useful in that regard.

If you would like to review available public records, your request must be made in writing and should be submitted to the ADEM Records Manager. Please submit your request well in advance of the time that you need to review the records because the documents you request may not be immediately available.

The Records Manager will contact you to schedule your appointment. Requests should be submitted via e-mail at [records@adem.state.al.us](mailto:records@adem.state.al.us), faxed to 334-271-7950, or mailed to ADEM Records Manager, P.O. Box 301463, Montgomery, AL 36130-1463.

If you would like to receive notice of a proposed rulemaking activity, via regular mail, contact ADEM with your request by calling the telephone number below or by email at [Permitsmail@adem.state.al.us](mailto:Permitsmail@adem.state.al.us).

ADEM  
Attn: Permits & Services Division  
Post Office Box 301463  
Montgomery, Alabama 36130-1463

Telephone Number: (334) 271-7714  
Fax Number: (334) 271-7950

**ADEM**



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# PUBLIC PARTICIPATION IN THE ADEM RULEMAKING AND PERMITTING PROCESSES

Presented by

**THE ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

An environmental permit is issued to control air emissions, water discharges, and to provide for the proper management of solid and hazardous wastes. Specific constituent limits that comply with Federal and State of Alabama standards are assigned for each permit in order to effectively measure and manage our state's air, land, and water resources, to ensure protection of human health and the environment, and to assure compliance with applicable environmental statutes.

If you need additional information please contact our Permits and Services Division at (334) 271-7714 or email to [permitsmail@adem.state.al.us](mailto:permitsmail@adem.state.al.us)

The Alabama Department of Environmental Management (ADEM) acknowledges and solicits the public's involvement in its rulemaking and permitting processes. These processes are important in sustaining and protecting Alabama's air, land, and water resources. Public participation in the rulemaking and permitting processes is a valuable tool to help the Department and the Alabama Environmental Management Commission (EMC) make environmental decisions. With the public's continued interest in, and support of, ADEM's efforts, our state's environment will be protected and preserved for the enjoyment of future generations.

This publication is intended to acquaint the public with the procedures that the Environmental Management Commission follows in establishing the environmental regulations that the Department enforces. This publication also outlines the process ADEM uses to review environmental permit applications from an activity whose operation could affect the state's environment. These procedures are designed to afford the public and those affected by the Department's regulations notice and opportunity for input prior to a final decision.

## RULEMAKING

In Alabama, rulemaking by state agencies, including the EMC, is governed by the Alabama Administrative Procedures Act, [Code of Alabama](#), 1975, and provides the necessary guidance to implement environmental statutes. Rulemaking must also follow U.S. Environmental Protection Agency (U.S. EPA) requirements. Rulemaking is a very structured process of a **quasi-legislative** nature that encompasses a number of technical considerations.

### **New environmental rules, or changes to existing rules, are generally initiated for one of the following reasons:**

- Congress passes new environmental law and/or the U.S. EPA adopts a new federal rule or modifies an existing rule. Alabama must adopt a new state rule or modify an existing one to ensure compatibility with federal regulations. Normally, ADEM would propose such changes;
- The **public may petition** the Alabama Environmental Management Commission (EMC) to initiate a new rule, which is reviewed by the EMC's Rulemaking Subcommittee. The Subcommittee makes a recommendation to the full Commission. If the reasons cited in the public petition are sound, based upon solid evidence and are accepted by the EMC, the rulemaking process will be initiated;
- The Alabama Legislature can enact new environmental laws and it may be necessary to adopt regulations to implement those new statutes. ADEM would propose such rules;
- A concern may be identified that can be addressed under existing statutory authority. The requisite regulations may be drafted by ADEM or by ADEM in concert with others.

### **The Rulemaking Process:**

- A **35-day public notice** of a proposed rule is published in the [Alabama Administrative Monthly](#). The public notice describes the proposed rule, and the date, time, and place of a **public hearing** where interested citizens may comment on the proposed rule. *The public notice will also list a deadline for receipt of written or electronically-submitted comments.*
- The Environmental Management Act requires publication in the three newspapers of the state with the largest circulation. ADEM routinely publishes the notice in the four major dailies.\* Additionally, advanced notice of a proposed rule is sent to all individuals who have requested to be on ADEM's mailing list, as well as county newspapers in the state. Complete copies of the proposed rule are also made available for public review at ADEM's central office; at the Department's field offices in Mobile, Montgomery, Birmingham, and Decatur; the Department's web page; and the Legislative Reference Service in Montgomery.
- A **public hearing** is conducted on all ADEM or EMC rulemaking activities to solicit public comments. A Hearing Officer conducts the public hearing and a court reporter records and subsequently transcribes all comments for inclusion in the record of the rulemaking. The Hearing Officer has no decision-making authority, but serves as an administrator of the process, explaining the purpose of the public hearing, receiving oral and written testimony for the record, and generally maintaining order.
- If ADEM is proposing a rule, a representative explains the proposed rule and why it is being offered. Persons who have pre-registered are then called upon to offer comments, data, views, and arguments on the proposed rule. Those not wishing to speak or who wish to submit lengthy technical data in support of their views are encouraged to submit written comments.
- The hearing record, which encompasses all oral and written comments submitted within the prescribed period, is then reviewed by the ADEM staff. This review is made to determine if the rule should be proposed as drafted or if changes are appropriate. As a part of the review, ADEM personnel develop a "reconciliation statement" (or, response to comments) addressing the public comments submitted and, if any changes to the proposed rule are made, an explanation why they were made. If significant changes are deemed appropriate, a new public comment period is required to effect such changes to the proposal. A copy of the Department's response is mailed to all persons who request it.
- If, after completion of the public hearing, review of the record and compilation of the reconciliation statement, ADEM wishes to propose the rule for the EMC's consideration, the complete record, reconciliation statement, and proposed rule is provided to the EMC.
- The EMC considers the hearing record and at its next business meeting votes to adopt, reject, or modify the proposed rule. Once the EMC has taken action on the proposed rule, any aggrieved person has 45 days to appeal that decision. In such instances, a Hearing Officer assigned by the Attorney General's Office will hear the appeal and make a recommendation to the EMC.

\*More than 80 Alabama Press Association member newspapers have also joined an initiative to have public notices appear on the Web as well as in newspaper legal sections. Currently, approximately 40 Alabama counties have at least one participating newspaper posting their public notices on-line each time the notice is run in their newspapers. To view legal advertisements on-line, log on to [www.alabamalegals.com](http://www.alabamalegals.com).

Source: Alabama Press Association; October 2004

## PERMITTING

Permitting is a significant administrative component of the environmental regulatory process and is a function performed by ADEM. Each Division of the Department has permitting duties relevant to the applicable requirements of state and federal statutes and associated regulations. However, these various permitting responsibilities have a unified purpose: to make certain that any source with the potential to impact our state's environment has demonstrated that it can comply with applicable environmental rules and regulations.

Permitting procedures are initiated when ADEM receives an application for air emissions, water discharges, the disposal of solid wastes and the treatment, storage, and disposal of hazardous and medical wastes. Permitting can involve a proposed new activity or modifications/expansions of an existing one.

### **The Permitting Process:**

- One or more of the operational components of an activity are determined to require a permit from ADEM to meet the requirements of applicable environmental laws and associated regulations.
- The company applies to ADEM for the necessary permit(s) by completing the required permit application(s). Communications between the potential applicant and ADEM prior to the permit application process sometimes reveal that, due to water or air quality constraints or other factors, a permit cannot be issued or the applicant may determine that such constraints render the proposed activity infeasible. In these instances, a permit application is not submitted. *Proposed solid waste landfills must receive local approval of the site location prior to submitting a permit application to ADEM.*
- The permit application(s) is received and reviewed by the appropriate ADEM component(s). This process may be repetitive in nature until any identified deficiencies in the permit application are corrected and the Department determines the application to be complete.
- Once a determination has been made that what is sought in the application meets applicable regulatory requirements, ADEM prepares a "draft" permit outlining the requirements the applicant must follow to be in compliance with applicable state and federal statutes and associated regulations. This determination is preliminary in nature and initiates a **public comment period** to solicit public input before a final permit decision is made.
- **Public notice** of the Department's proposal to issue a permit is advertised in the legal notices section of major state newspapers, including at least one newspaper of general circulation in the area where the activity is located. **Public notice** is also posted on the Department's web page and is mailed to individuals who have requested to be notified of ADEM's permitting activities.\* The public notice briefly describes the regulatory statute under which the permit is sought, the operations, modifications, or expansions that will be addressed by the permitting action and requests that all public comments concerning the company's application be submitted to the Department by a specific date. The period specified for receipt of public comments varies by permit type.
- A **public hearing** may be part of the public participation process if significant technical or legal issues within the Department's jurisdiction are apparent. The public hearing may be scheduled at the time of the public notice and included in that notification or set at some point during or after the original comment period. In the latter case, a separate notice of the public hearing is made. If a public hearing is held, a Hearing Officer will be appointed to preside over the public hearing and a court reporter will be present to record all comments.
- All comments submitted to the Department during the comment period, including those made at a public hearing, are compiled and a response is drafted to all of the comments. All comments and responses become part of the public record, available for public review. This completed record is used by the Department to make a final permitting decision.
- ADEM is required to make decisions within the bounds of the applicable laws and regulations that it administers. As such, a number of concerns that are more properly addressed through planning, zoning, or other similar controls cannot be considered by the Department in making a final permitting decision.

\* In some instances, a public notice is not required for certain minor permit modifications, as prescribed by applicable regulations.