

8/12/24

**Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
June 14, 2024**

This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Alabama Environmental Management Commission on June 14, 2024.



A. Frank McFadden, Chair

Alabama Environmental Management Commission

Certified this 9th day of August 2024.

**Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
June 14, 2024**

**Convened: 11:00 a.m.
Adjourned: 11:43 a.m.**

Part A

**Transcript
Word Index**

Part B

**Attachment Index
Attachment 1
Attachment 2
Attachment 3**

Part A

MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

LOCATION: ALABAMA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT (ADEM) BUILDING
ALABAMA ROOM
1400 COLISEUM BOULEVARD
MONTGOMERY, ALABAMA 36110-2400
DATE: FRIDAY, JUNE 14, 2024
TIME: 11:00 A.M.

REPORTED BY: ELAINE F. BRADLEY, CCR
Commissioner for the
State of Alabama at Large

1 APPEARANCES
2 COMMISSION MEMBERS PRESENT:
3 A. FRANK MCFADDEN, P.E., CHAIR
4 KEVIN MCKINSTRY, VICE CHAIR
5 J. PATRICK TUCKER, M.D.
6 MARY J. MERRITT
7 COMMISSION MEMBERS NOT PRESENT:
8 JOHN (JAY) MASINGILL, III
9 H. LANIER BROWN, II, ESQ.
10 RUBY L. PERRY, D.V.M.
11 ALSO PRESENT:
12 LINDSAY BARTON, ESQ., EMC LEGAL COUNSEL
13 LANCE LEFLEUR, ADEM DIRECTOR
14 DEBI THOMAS, EMC EXECUTIVE ASSISTANT
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1 MR. MCFADDEN: We'll go ahead
2 and get started. It's 11:00.
3 Welcome, everyone. Glad you
4 could come. It's cooler in here than
5 it is out there. So, maybe that's a
6 good thing.
7 We do have a quorum, barely, but
8 we do have a quorum today. So, we'll
9 continue with the meeting.
10 The first item on the agenda is
11 consideration of the minutes for the
12 meeting held on April 12, 2014, and
13 I'll entertain a motion on those
14 minutes from someone.
15 DR. TUCKER: I move to approve
16 the minutes.
17 MR. MCFADDEN: All right.
18 Motion to move to adopt the minutes of
19 the April 12, 2024, Commission meeting
20 has been discussed. And any second to
21 the motion?
22 MS. MERRITT: Second.
23 MR. MCFADDEN: Second. All

1 right. Any discussion?
2 (No response.)
3 MR. MCFADDEN: All right. Call
4 for the question: All those in favor,
5 raise your hand.
6 (All Commission members
7 raising hands.)
8 MR. MCFADDEN: And none oppose?
9 (No response.)
10 MR. MCFADDEN: Thank you. All
11 right. Item Number 2, report from the
12 Director Lance LeFleur.
13 MR. LEFLEUR: Thank you, Mr.
14 Chairman and good morning. Welcome to
15 all present for the 5th meeting of the
16 Alabama Environmental Management
17 Commission for fiscal year 2024.
18 Throughout the year, I report to
19 you on various aspects of our work to
20 fulfill our mission, which is to assure
21 for all citizens of the state a safe,
22 healthful and productive environment.
23 Our first priority is to perform

Page 5

1 our day-to-day activities in a manner
 2 that reflects dedication and
 3 top-quality results. Those duties
 4 include such things as developing
 5 scientifically sound standards,
 6 incorporating those standards in the
 7 permits for the 35,000 facilities we
 8 regulate, inspecting regulated and
 9 non-regulated facilities for compliance
 10 with permits and regulations and taking
 11 appropriate enforcement actions as
 12 necessary.

13 Performance measures such as
 14 EPA-generated compliance and
 15 enforcement metrics presented at the
 16 last Commission meeting, the State of
 17 the Environment in Alabama report, and
 18 our analysis of performance against
 19 Annual Operating Plans are routine
 20 reports.

21 Today's report will update you
 22 on the status of some of the
 23 non-routine activities that are

Page 6

1 currently being undertaken to help
 2 fulfill our mission. You'll recognize
 3 many of these from earlier reports as
 4 they are elements of our Operating
 5 Plans.

6 Today's status report will cover
 7 our budget, in particular, our Water
 8 program funding, next Generation
 9 computer software implementation, our
 10 website update, the disposal of the old
 11 Mobile Field Office, improving external
 12 communications, American Rescue Plan
 13 Act, Bipartisan Infrastructure Law, and
 14 State Revolving Fund programs to
 15 upgrade water and sewer systems in
 16 Alabama and push back on new EPA rules
 17 and actions not based on sound science,
 18 lacking legal authority or not adhering
 19 to required processes.

20 First, our budget with the focus
 21 on the Water program funding.

22 For the last five years, about
 23 six percent of the Department's \$65

Page 7

1 million operating budget has come from
 2 the State's General Fund. The
 3 Department also relies on the General
 4 Fund to provide the matching funds
 5 required to obtain federal State
 6 Revolving Fund and Bipartisan
 7 Infrastructure Law funding allocations.

8 As you know, for many years,
 9 ADEM has had the lowest per capita
 10 funding of any environmental agency in
 11 the nation.

12 Applying the inflation rate
 13 since the Department's last funding
 14 increase in 2020 would require a
 15 funding increase of about \$14 million
 16 dollars.

17 This does not include the costs
 18 of additional mandates for dealing with
 19 such things as the PFAS regulations,
 20 Greenhouse Gas regulations, Coal
 21 Combustion Residual regulations, and
 22 others.

23 Like many other state

Page 8

1 environmental programs, the funding
 2 programs have been in the water media
 3 as a result of no funding mechanisms in
 4 the federal Clean Water Act.

5 In the past, the Land and Air
 6 programs have supplemented the funding
 7 needs of the Water program with
 8 permissible transfers, but inflation
 9 now requires Land and Air to retain all
 10 available funding, so they are no
 11 longer able to provide funds to the
 12 Water program.

13 An underfunded Water program can
 14 potentially create several problems,
 15 including unstable regulatory
 16 oversight, an increase of EPA presence
 17 in Alabama, and increased costs to
 18 comply with tighter discharge limits if
 19 water quality declines due to unstable
 20 regulatory oversight.

21 I'm pleased to report that the
 22 federal -- the FY '25 General Fund
 23 budget adopted by the Legislature and

Page 9

1 signed by the Governor provides our
 2 requested \$6 million increase in
 3 operational funds to now adequately
 4 fund the Water program.
 5 I would also note that in an
 6 effort to retain State employees and
 7 compensate for inflation the Governor
 8 proposed and the legislature approved a
 9 two percent across-the-board raise for
 10 all State Employees effective October
 11 1st.
 12 The next status report is on the
 13 implementation of the new generation of
 14 computer software.
 15 ADEM has likely been the most
 16 automated environmental agency in the
 17 nation for a number of years, which has
 18 allowed us to be among the highest
 19 performing programs in the nation
 20 despite extremely low funding.
 21 In 2020, we began the
 22 development of a new generation of
 23 computer software which will further

Page 10

1 increase the efficiency and quality of
 2 our operations. To date, thirteen
 3 programs including the NPDES, State
 4 Indirect Discharge Permit, Underground
 5 Injection Control, Concentrated Animal
 6 Feeding Operations, Coastal, 401 Water
 7 Quality Certification, Recycling, Scrap
 8 Tire, Unauthorized Dumps, Underground
 9 Storage Tanks, Asbestos, and Stage I
 10 Air programs have been implemented.
 11 The Solid Waste, Air Majors and
 12 Beneficial Use programs are anticipated
 13 to be completed during the first half
 14 of 2025.
 15 The remaining three programs,
 16 including Hazardous Waste Generators,
 17 and Transporters and Medical Waste are
 18 anticipated to be completed after mid
 19 year 2025. This should keep the
 20 Department as the automation and
 21 efficiency leader in the nation.
 22 Linked to the computer software
 23 upgrades is an upgrade to the ADEM

Page 11

1 website.
 2 The ADEM website provides access
 3 to tremendous amounts of information,
 4 likely more than is available on any
 5 other state environmental agency
 6 website in the nation.
 7 It makes it exceptionally
 8 transparent; however, the design is not
 9 as user-friendly as we want it to be.
 10 Upgrades have been in the
 11 planning stages for several years, but
 12 implementation has been held off until
 13 the completion of the computer software
 14 upgrades just reviewed.
 15 A contract was recently entered
 16 into to upgrade the website.
 17 Implementation will take approximately
 18 12 months, which will allow for the
 19 completion of the software upgrades, a
 20 necessary step to have a smooth link
 21 between the two.
 22 Next, a report on the old Mobile
 23 Field Office.

Page 12

1 The outdated old Field Office
 2 and lab have been completely vacated.
 3 All salvageable equipment has
 4 been removed.
 5 A professional appraisal has
 6 been performed.
 7 The appraised value is \$665,000.
 8 Bid solicitation went out on May
 9 8, 2024, and bids were due on June 11,
 10 2024.
 11 Unfortunately, no bids were
 12 received.
 13 Now that the statutorily
 14 required bid process has been
 15 undertaken, we will begin targeted
 16 solicitation for potential buyers,
 17 understanding that by state law, the
 18 property cannot be sold for less than
 19 the appraised value.
 20 A major effort has been ongoing
 21 for several years to improve
 22 communications with the public. This
 23 is an important initiative in our

Page 13

1 Strategic and Annual Operating Plans.
 2 We are using a multi-faceted approach.
 3 The recently contracted website
 4 upgrade is a key part of improving
 5 communications with the public.
 6 You have seen more op-eds and
 7 news articles to communicate and
 8 educate the public. In the last few
 9 years, we've covered various topics
 10 such as providing funding to upgrade
 11 water and sewer systems based on need,
 12 especially in the Black Belt region,
 13 helping the public understand that land
 14 use is appropriately a local decision,
 15 and providing an accurate picture of
 16 the state of the environment in
 17 Alabama.
 18 We've begun utilizing television
 19 public service pieces showing how to
 20 find reliable current water quality
 21 information by linking to the ADEM
 22 website.
 23 Conveniently placed signage to

Page 14

1 notify the public of fish consumption
 2 advisories, swim advisories, and
 3 encourage reduced littering has been
 4 expanded.
 5 Increased stakeholder meetings
 6 are being held before drafting rules on
 7 water quality criteria, recycling,
 8 scrap tire controls, media waste
 9 handling -- excuse me -- medical waste
 10 handling and others.
 11 And increased community meetings
 12 are being held on various topics such
 13 as how to use our website, local
 14 environmental concerns, and requests
 15 for controversial permits.
 16 Another significant activity
 17 underway is the administration of the
 18 American Rescue Plan Act (ARPA), the
 19 Bipartisan Infrastructure Law (BIL),
 20 and State Revolving Fund (SRF) programs
 21 to provide funding for the long-delayed
 22 upgrades to drinking water and sewer
 23 infrastructure in Alabama.

Page 15

1 The Department contacted each of
 2 the 1,061 public drinking water and
 3 wastewater systems in Alabama
 4 requesting proposed projects for
 5 upgrades. The \$3.4 billion of proposed
 6 projects submitted were each analyzed
 7 from an engineering standpoint to
 8 assess the physical plant needs. The
 9 audited financial statements of each
 10 system were also analyzed to determine
 11 the financial needs of the individual
 12 systems.
 13 The American Rescue Plan Act,
 14 (ARPA) and (BIL) Bipartisan
 15 Infrastructure Law, are federal
 16 programs providing substantial funds
 17 for various purposes over a limited
 18 time frame.
 19 ARPA was enacted in March of
 20 2021. It provided \$1.9 trillion during
 21 '22 and '23.
 22 Individual communities in
 23 Alabama and throughout the nation

Page 16

1 received funds directly from the U.S.
 2 Treasury. Alabama state government was
 3 allocated \$2.1 billion.
 4 Of that amount, the legislature
 5 allocated ADEM \$620 million to
 6 distribute to water and sewer systems
 7 for infrastructure upgrades on a
 8 physical plant and financial needs
 9 basis.
 10 In November of 2021, the \$1.2
 11 trillion Bipartisan Infrastructure Law
 12 was signed. The allocations under BIL
 13 go directly from EPA to the individual
 14 state environmental programs over a
 15 five-year period from 2022 through
 16 2026.
 17 The total allocation to ADEM for
 18 water and sewer upgrades for the 2022
 19 through 2026 period from BIL is
 20 estimated to be approximately \$582
 21 million.
 22 Now, the Clean Water State
 23 Revolving Fund, dealing with sewer

Page 17

1 systems, is an ongoing funding program,
 2 originally put in place in 1989. Since
 3 its inception, it has provided \$1.65
 4 billion in funding for Alabama
 5 wastewater systems.
 6 The Drinking Water State
 7 Revolving Fund is also an ongoing
 8 funding program begun in 1999. It has
 9 provided approximately \$850 million in
 10 funding for public drinking water
 11 systems.
 12 From 2022 to date, today, the
 13 Department has provided \$620 million
 14 for water and sewer upgrades from ARPA,
 15 which represents all the ARPA funds
 16 available.
 17 \$361 million from Bipartisan
 18 Infrastructure Law, which is all the
 19 BIL funds currently available. It's
 20 estimated \$212 million of additional
 21 BIL funding will be available in '25
 22 and '26.
 23 And \$297 million from the SRF

Page 18

1 programs for a total of \$1.278 billion.
 2 The estimated total funding that
 3 will be available for the period '22
 4 through '26 from the three sources
 5 (ARPA, BIL and SRF) is approximately
 6 \$1.5 billion.
 7 As much good as that \$1.5
 8 billion will do, it will not satisfy
 9 the nearly \$3.4 billion of projects
 10 requested that were submitted to
 11 upgrade water and sewer systems in
 12 Alabama. Significant water and sewer
 13 upgrade challenges will remain, but
 14 when complete, this work will make a
 15 huge contribution towards addressing
 16 the problems.
 17 Finally, as you know, EPA has
 18 considerable influence on the
 19 activities of the Department. I would
 20 like to address the status of our
 21 relationship with EPA as well as the
 22 broader national relationships with
 23 EPA.

Page 19

1 Our dealings with EPA in recent
 2 years have involved four significant
 3 matters that ADEM has deemed necessary
 4 to take an adversarial position.
 5 EPA's failure to timely approve
 6 or disapprove the ADEM program to clean
 7 up coal ash -- excuse me Coal Ash --
 8 excuse me -- Coal Combustion Residuals.
 9 Secondly, EPA's flawed recent
 10 rulemaking related to CCR impoundments.
 11 Third, EPA's improper
 12 disapproval of the ADEM CCR program.
 13 And finally, EPA's improper
 14 disapproval of the ADEM Ozone Transport
 15 State Implementation Plan.
 16 ADEM is not alone in challenging
 17 EPA activities. There are also many
 18 other recent EPA rulemaking actions
 19 that are likely to be litigated on a
 20 national level. There's quite an
 21 extensive list of new rules that is
 22 driven in part by the current federal
 23 administration's efforts to get new

Page 20

1 rules in place before a possible change
 2 in the federal administration.
 3 ADEM will not be taking the lead
 4 in addressing these national issues;
 5 however, the Alabama Attorney General
 6 has so far joined Attorneys General
 7 from other states in appealing several
 8 of these EPA rules with national
 9 application.
 10 All in all, since October of
 11 '23, EPA has had more than 100 appeals,
 12 challenges, and other litigation filed
 13 against it for various actions with
 14 more than 40 of those coming in the
 15 month of May alone. These are
 16 unprecedented numbers.
 17 The first of the adversarial
 18 issues ADEM has with EPA involves EPA's
 19 failure to timely act on the
 20 Department's program to close existing
 21 Coal Combustion Residuals (CCR),
 22 sometimes referred to as coal ash
 23 impoundments.

Page 21

1 In 2018, the Commission adopted
 2 CCR rules for the closure of CCR
 3 impoundments. After working with EPA
 4 for several years, the rules were
 5 amended in 2021 to resolve several
 6 areas of concern by EPA.

7 The Department also developed a
 8 permitting program and issued permits
 9 to implement the closure rules. The
 10 CCR program rules were submitted to EPA
 11 for approval in December of 2021.

12 EPA had a non-discretionary
 13 obligation to approve or disapprove the
 14 CCR program within 180 days. Despite
 15 numerous requests by the Department,
 16 EPA did not approve or disapprove the
 17 CCR program, and after 400 days, the
 18 State of Alabama with the Department
 19 petitioned the United States District
 20 Court for the District of Columbia to
 21 compel EPA to act.

22 The Court stayed the litigation
 23 to allow EPA to finalize its proposed

Page 22

1 disapproval of the ADEM CCR program.
 2 On at least three occasions, EPA
 3 committed to a date on which it would
 4 act but did not honor those
 5 commitments.

6 So, rather than relying on yet
 7 another commitment from EPA, the
 8 Alabama Attorney General and the
 9 Department moved the Federal District
 10 Court for a summary judgment to compel
 11 EPA to act.

12 Keep in mind, this lawsuit was
 13 simply to get EPA to act on the
 14 application, which it was required to
 15 do within 180 days and it had not done
 16 for more than 875 days. The EPA
 17 finally acted on May 23rd, 2024.

18 The second matter where ADEM is
 19 in an adversarial position with EPA,
 20 like the previously noted matter,
 21 relates to Coal Combustion Residuals.
 22 In this case it involves rulemaking.
 23 During the 875-day period EPA

Page 23

1 failed to act on ADEM's CCR program,
 2 EPA finalized new rules to redefine
 3 free liquids and infiltration when
 4 closing CCR units.

5 The new rules are inconsistent
 6 with long-standing definitions and
 7 interpretations used in previously
 8 existing federal and state CCR rules
 9 and applied in other areas of EPA
 10 regulation.

11 In adopting the new rules, EPA
 12 did not comply with the required
 13 rulemaking process. Specifically, EPA
 14 adopted the rules without allowing the
 15 public an opportunity to comment on the
 16 rules prior to their adoption as the
 17 law requires.

18 It appears EPA may also have
 19 exceeded its authority by running afoul
 20 of a recent U.S. Supreme Court ruling
 21 that "Major Questions" having
 22 far-reaching economic impacts requiring
 23 explicit congressional authorization.

Page 24

1 It is noteworthy EPA adopted the
 2 new rules less than 30 days before
 3 finally acting to disapprove the ADEM
 4 CCR Program and then used the new rules
 5 as a basis for its disapproval.

6 In a separate action, the
 7 Department plans to appeal EPA's flawed
 8 rulemaking.

9 EPA, following the long delay,
 10 the adoption of the new rules, and
 11 ADEM's petition to the U.S. Court of
 12 Appeals, on May 23rd, 2024, EPA
 13 disapproved the Department's Coal
 14 Combustion Residual Permitting Program.

15 This is the third matter where
 16 ADEM is in an adversarial position with
 17 EPA. EPA -- EPA's stated basis for the
 18 disapproval was Alabama's program was
 19 significantly less protective of people
 20 and waterways than federal law
 21 requires.

22 EPA has stated the ADEM CCR rule
 23 adopted by the Commission is as

Page 25

1 protective as the federal CCR rule,
 2 which is the only criterion for
 3 approving -- for approval in the
 4 legally adopted EPA rule.

5 However, EPA arbitrarily added
 6 the review and agreement with ADEM CCR
 7 closure permits as a requirement for
 8 program approval, which is not a
 9 condition for approval under the
 10 federal law.

11 EPA incorrectly and improperly
 12 analyzed ADEM's CCR permits as not
 13 being as protective as federal
 14 requirements. Specifically, EPA states
 15 ADEM permits do not require appropriate
 16 groundwater monitoring, timely
 17 development and implementation of
 18 groundwater corrective measures, and
 19 meeting final closure requirements.

20 Addressing those three claims by
 21 EPA: First, experienced credentialed
 22 independent as well as ADEM
 23 Professional Engineers and Professional

Page 27

1 I would also note that by its
 2 own admission, EPA did only a
 3 superficial cursory review of the ADEM
 4 CCR permits, which is evidenced by its
 5 failure to recognize the clear permit
 6 requirements it claims do not exist.

7 The Department plans to appeal
 8 EPA disapproval of the ADEM CCR
 9 program.

10 The fourth significant
 11 adversarial matter between ADEM and EPA
 12 is EPA's disapproval of the Alabama
 13 Ozone Transport State Implementation
 14 Plan.

15 Based on EPA modeling in 2015,
 16 Alabama was determined not to have a
 17 significant impact from Ozone on any
 18 downwind state. ADEM therefore
 19 submitted a State Implementation Plan
 20 that did not include any additional
 21 restrictions on existing emissions of
 22 Ozone precursors in Alabama.
 23 EPA proposed approval of the

Page 26

1 Geologists familiar with the specific
 2 geology of the area have concurred that
 3 groundwater monitoring systems required
 4 in the ADEM CCR permits are appropriate
 5 for each of the individual CCR sites.

6 EPA does not recognize that
 7 appropriate groundwater corrective
 8 measures are required to be developed
 9 in ADEM CCR permit conditions, which a
 10 Federal District Court in Alabama
 11 recognized are necessarily developed
 12 over time during the closure process
 13 rather than at the time of the permit
 14 issuance as EPA claims.

15 Final closure requirements
 16 included in ADEM CCR permits are
 17 consistent with federal closure
 18 requirements, including the requirement
 19 for the remediation of groundwater.

20 EPA belatedly now relies on the new
 21 flawed rules regarding free liquids and
 22 infiltration noted earlier to object to
 23 the closure permit conditions.

Page 28

1 Alabama Ozone Transport SIP, but later
 2 EPA delayed the formal approval citing
 3 the COVID-19 pandemic.

4 In the Spring of 2022, EPA
 5 disapproved Alabama and 18 other State
 6 Implementation Plans. The State of
 7 Alabama with the Department, like other
 8 states, is appealing that denial.

9 The reasons for our appeal
 10 include: In 2020, EPA changed its
 11 ozone transport modeling without
 12 consulting the states and unlawfully
 13 exceeded its authority in multiple
 14 aspects of its review.

15 EPA also, without going through
 16 the necessary rulemaking, arbitrarily
 17 reduced the threshold for what it
 18 considers significant impact which led
 19 to supposed significant impacts from
 20 Alabama ozone transport to the
 21 Houston-Galveston, Texas area.

22 As a result, 19 states,
 23 including Alabama, had their Ozone

Page 29

1 Transport State Implementation Plans
 2 disapproved, which meant those states
 3 would be required to operate under a
 4 Federal Implementation Plan over which
 5 the states would have no say.
 6 The status of the appeal is:
 7 EPA's action is being challenged in the
 8 4th, 5th, 6th, 8th, 9th, 10th, and D.C.
 9 Circuits of the U.S. Court of Appeals,
 10 in addition to our appeal in the 11th
 11 Circuit.
 12 As of today, the 11th Circuit
 13 has consolidated the appeal filed by
 14 electric generating utilities in
 15 Alabama with the Alabama appeal into a
 16 single action and the Court has stayed
 17 the EPA's disapproval of Alabama's
 18 State Implementation Plan.
 19 The Court has not yet acted on
 20 maintaining venue in the 11th Circuit
 21 nor on the merits of the case. Oral
 22 argument is tentatively set for the
 23 week of September 16, 2024.

Page 31

1 personnel comes from the educational
 2 achievement, work experience and
 3 rigorous testing necessary to earn the
 4 title of Professional Engineer.
 5 Scott Jackson was out of the
 6 country when I announced his name in
 7 the April Commission meeting for
 8 earning the designation of Professional
 9 Engineer. So, Scott, would you please
 10 stand and be recognized?
 11 (Applause.)
 12 MR. LEFLEUR: Steven Bissey has
 13 also earned that lofty title of
 14 Professional Engineer. Steve, would
 15 you please stand?
 16 (Applause.)
 17 MR. LEFLEUR: Congratulations to
 18 both of you and well done. Well done.
 19 A lot of work. Thank you.
 20 That concludes today's report.
 21 If you have any questions, I'll be
 22 pleased to address them.
 23 MR. MCFADDEN: Any questions?

Page 30

1 To summarize ADEM's pushback on
 2 EPA overreach, these four actions
 3 against EPA are based on EPA failing to
 4 perform its non-discretionary
 5 obligations and changing rules and
 6 interpretations without going through
 7 the required notice, comment, and, if
 8 necessary, appeal process.
 9 The Department has never before
 10 filed suit against EPA. The Alabama
 11 Attorney General approved and joined
 12 these actions.
 13 Final resolution may require
 14 many months.
 15 Last, but not least, I'm
 16 certainly pleased to introduce you to
 17 Steven Bissey in our Air Division and
 18 Scott Jackson in our Water Division.
 19 As you know, we strongly
 20 encourage our personnel to develop
 21 professionally. One of the most
 22 significant milestones in the
 23 professional development of ADEM

Page 32

1 (No response.)
 2 MR. MCFADDEN: Okay. Thank you,
 3 Lance. All right. Item -- agenda Item
 4 Number 3 will be related to my report.
 5 Basically, it's announcing it's time to
 6 start the evaluation of our Director's
 7 job performance as part of the annual
 8 upcoming ADEM job -- Director Job
 9 Performance Evaluation.
 10 Written comments from the EMC
 11 members will be requested via a memo
 12 from him. A notice providing
 13 opportunity for interested persons to
 14 submit comments will be posted on the
 15 ADEM site and emailed to the Advanced
 16 Notice of Commission Meetings
 17 notification list.
 18 Comments on Director LeFleur's
 19 job performance should cover the period
 20 of October 14, 2023, the day after the
 21 Commission reached its decision
 22 relative to the last evaluation, to
 23 July 31st, 2024, the deadline for

Page 33

1 receipt of comments for the upcoming
 2 evaluation.
 3 Compilation of the written
 4 comments received will be compiled as
 5 part of the evaluation process. And as
 6 -- I'll just add, as you can tell from
 7 his lengthy report just now and what
 8 overreach is being done by our big
 9 brother at EPA, it's a really busy time
 10 for our Director, his staff, his
 11 administration and all our division
 12 directors, and some of this overreach
 13 that's going on.
 14 So, I appreciate the hard work
 15 in defending the sovereignty of our
 16 great state from an environmental
 17 perspective. So, we will look forward
 18 to getting those comments back by the
 19 deadline.
 20 Okay. Item Number 4 -- agenda
 21 Item 4 is consideration of proposed
 22 amendments to the ADEM Administrative
 23 Code Division 335-4, the Scrap Tire

Page 35

1 The proposed revisions were the
 2 subject of a public comment period
 3 which ran from January 24th, to March
 4 21st. A public hearing was held at the
 5 Department on March 21st.
 6 Oral comments were received
 7 during the hearing and written comments
 8 were received during the public comment
 9 period.
 10 Based on the comments received,
 11 the proposed regulations have been
 12 revised to clarify the language of Rule
 13 335-4-6-.01, which is general
 14 requirements for scrap tire processors
 15 regarding the receipt of tire materials
 16 for processing and another revision was
 17 made to 335-4-4-.04(a), disposal in a
 18 solid waste management facility
 19 regarding the staging of tires and tire
 20 materials at landfills.
 21 These changes are included and
 22 described in the reconciliation package
 23 which was provided to the Commission.

Page 34

1 Program Regulations.
 2 Mr. Cobb, can you give us some
 3 insight on that?
 4 MR. COBB: Yes. Thank you. Mr.
 5 Chairman, I'm Steven Cobb, Chief of the
 6 Land Division. And I'm here today to
 7 recommend that the Commission adopt
 8 amendments to the Department's Division
 9 4 Scrap Tire Program Regulations.
 10 These amendments update the
 11 existing rules to include the use of
 12 the Department's electronic system for
 13 submission of reports and applications,
 14 to amend definitions, recordkeeping,
 15 reporting, remediation plan,
 16 registration, and permitting
 17 requirements and to clarify tire
 18 material management requirements of
 19 scrap tire receivers, processors, and
 20 transporters.
 21 New rules are also added for the
 22 in-use market development program and
 23 procedures for variances.

Page 36

1 The revised regulations were also
 2 approved by the Alabama Scrap Tire
 3 Commission on May 10th, 2024.
 4 These proposed regulations are
 5 presented today for your consideration.
 6 We ask that the Commission adopt the
 7 proposed changes to the Division 4
 8 scrap tire program, and I'm happy to
 9 answer any questions that you might
 10 have.
 11 MR. MCFADDEN: What is the
 12 general volume -- are volumes of these
 13 scrap tires going up significantly or
 14 static going down, because I know
 15 there's some exporting companies that
 16 are taking these to other places.
 17 MR. COBB: In general, the
 18 numbers that we have indicate scrap
 19 tire generation in the state by
 20 citizens is around five million tires
 21 per year. Part of this is to get
 22 better numbers with that.
 23 We also know from looking at

1 disposal receipts from our disposal
 2 facilities, we're probably getting that
 3 many tires or more from out of state.
 4 So, we're actually, from what we can
 5 tell, importing scrap tires.
 6 MR. MCFADDEN: That's a lot of
 7 tires.
 8 MR. COBB: Yes, sir.
 9 MR. MCFADDEN: Okay. Anybody
 10 else have any questions for Mr. Cobb?
 11 (No response.)
 12 MR. MCFADDEN: Thank you.
 13 Appreciate you. All right.
 14 So I'll entertain a motion from
 15 the Commission regarding the proposed
 16 amendments to the scrap tire program
 17 regulations.
 18 MS. MERRITT: I move that we
 19 adopt the proposed amendment.
 20 MR. MCFADDEN: Okay.
 21 MR. MCKINSTRY: Second.
 22 MR. MCFADDEN: I have a motion
 23 and a second. Any further discussion

1 All right. Public comment
 2 period. We had two registered members
 3 of the public to make three-minute --
 4 These are three minutes, right,
 5 Debi?
 6 MS. THOMAS: Yes.
 7 MR. MCFADDEN: Discussions and
 8 presentations to the Commission.
 9 So, the first one we have here
 10 is -- is it Mr. Adams?
 11 Would you come up to the
 12 microphone, please?
 13 MR. ADAMS: I'm Bud Adams. I
 14 own B&B Tire Landfill up in Hayden.
 15 I've been in business -- In a
 16 month and 15 days, it will be 27 years
 17 I've been burying tires. So far, I've
 18 went by everything ADEM has thrown at
 19 us. Everything -- every rule ADEM give
 20 us, I tried to follow.
 21 The rule on banning tires -- the
 22 whole tires from being buried is going
 23 to cause a real hardship on us, going

1 on that?
 2 (No response.)
 3 MR. MCFADDEN: Hearing none,
 4 call for the question. All those in
 5 favor raise your hand.
 6 (All Commissioners raising
 7 their hands.)
 8 MR. MCFADDEN: None opposed,
 9 thank you. Thank you, Debi.
 10 Okay. Agenda Item Number 5, is
 11 there any other business to come before
 12 the Commission?
 13 (No response.)
 14 MR. MCFADDEN: Okay. Hearing
 15 none, Item 6 -- agenda Item Number 6 is
 16 future business session. The next
 17 Commission meeting will be August 9,
 18 2024, and I'm sure some can make it and
 19 some can't. But does anybody in
 20 particular have an issue with that?
 21 Ms. Mary is possibly not going
 22 to make that one, but we'll have it on
 23 August 9th, 2024.

1 to cause a hardship on people in the
 2 community.
 3 Anybody who buys a tire, the
 4 cost is going to go extremely high on
 5 the public for having to bury the tire.
 6 I asked the Commission in the
 7 first meeting: Environmentally
 8 speaking, ADEM is the Environmental
 9 Protection Agency, environmentally
 10 speaking, what is the difference
 11 between burying the tire whole and
 12 shredding it?
 13 None. There's no difference in
 14 it. The only thing, it's going to make
 15 the costs go up.
 16 But there are going to be some
 17 differences. We've been doing a lot of
 18 studying and researching on it. Europe
 19 has banned chrome rubber and shredded
 20 tires from going on athletic fields.
 21 They have done that because of
 22 chemicals released when a tire is
 23 shredded.

1 They say that -- all the studies
 2 we can find, those chemicals can't be
 3 released unless a tire is shredded.
 4 One of their reports says they
 5 can get into the soil and groundwater.
 6 But my thing is: It's -- you
 7 know, I'm just -- I'm just an old
 8 country hick now, but it's going to be
 9 hard for me to stay in business if I
 10 have to cut and recycle the stuff that
 11 we get.
 12 We're the only tire landfill in
 13 north Alabama that just accepts nothing
 14 but tires. We take over 300,000 tires
 15 a month, is what we bury.
 16 So far, ADEM has liked
 17 everything we've done because they've
 18 never wrote us a violation on anything.
 19 So -- but, you know, long story short,
 20 it's going to make our cost go through
 21 the roof. It's going to go through the
 22 ceiling.
 23 I had a company from Liberty

1 Tire Recycling told me back about this
 2 time last year, they want into Alabama,
 3 but they said they couldn't come into
 4 Alabama -- the man pointed at me,
 5 sitting in my office, he said: We
 6 can't come in as long as you're in
 7 business.
 8 Shortly after that is when the
 9 stuff come in about banning tires,
 10 making us start shredding tires.
 11 There might be no connection,
 12 but it don't look right. I'm not on
 13 anybody's case, not on ADEM's case, not
 14 on nobody's case.
 15 Look, we have to have a
 16 regulatory commission. We have to have
 17 ADEM, and -- but when it goes against
 18 the grain, you've got to stand up.
 19 If I don't stand up for myself
 20 -- I've got about 40 or 50 people make
 21 their living out of the landfill. It's
 22 been suggested to me over the last
 23 month: Just close the doors; just

1 stop; no warning; no nothing.
 2 From my part, I can, but for all
 3 them people working for me, I can't.
 4 And that's what I'm standing up
 5 for today.
 6 MR. MCFADDEN: Thank you, Mr.
 7 Adams. Thank you for your comments.
 8 We appreciate that. Certainly we'll
 9 take that into consideration.
 10 The second speaker on the list
 11 is Daryl Sherrell.
 12 MR. SHERRELL: I rest my comment
 13 at this time.
 14 MR. MCFADDEN: I'm sorry?
 15 MR. SHERRELL: I rest my comment
 16 at this time.
 17 MR. MCFADDEN: Okay. Thank you.
 18 If there are no other members of
 19 the public to -- that we need to hear
 20 from today or that have signed up to
 21 address the Commission.
 22 Okay. I don't see anything else
 23 on the agenda. Do I hear a motion to

1 adjourn?
 2 MS. MERRITT: I move.
 3 UNKNOWN SPEAKER: I have a
 4 question. I have a question.
 5 MR. MCFADDEN: We have a motion
 6 on the table. So --
 7 Does anybody want to second that
 8 or not?
 9 (No response.)
 10 MR. MCFADDEN: Not hearing a
 11 second, that didn't pass.
 12 UNKNOWN SPEAKER: I have a
 13 question: I was here 15 minutes before
 14 this meeting was supposed to start to
 15 fill out where I could speak, but
 16 everything was already taken up. So,
 17 that excluded people from being able to
 18 speak.
 19 So, can someone explain to me
 20 why that was done?
 21 MR. MCFADDEN: Yes, ma'am. You
 22 need to see Ms. Thomas after the
 23 meeting today, and she can address

Page 45

1 that.

2 There's protocols we have to

3 stick by because we publish those.

4 We're sorry that happened, but Debi can

5 get you straight on what time that

6 needs to happen in the August meeting

7 if you would like to come back.

8 UNKNOWN SPEAKER: I definitely

9 will be back.

10 MR. MCFADDEN: All right. Do we

11 now have a motion to adjourn?

12 MS. MERRITT: I move.

13 MR. MCFADDEN: Moved again. Do

14 we have a second?

15 DR. TUCKER: Second.

16 MR. MCFADDEN: Second. All in

17 favor, raise your hand.

18 (All Commissioners raising

19 their hands.)

20 MR. MCFADDEN: Okay. We're

21 adjourned. Thank y'all.

22

23 (The Alabama Department of

Page 46

1 Environmental Management

2 Meeting ended at 11:43 a.m.

3 on June 14, 2024.)

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Page 47

1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA

3 TALLADEGA COUNTY

4 I, Elaine F. Bradley, Certified Court

5 Reporter and Notary Public in and for the State of

6 Alabama at Large, certify on Friday, June 14, 2024,

7 that I reported the proceedings in the matter of:

8 MEETING OF THE

9 ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

10 ALABAMA DEPARTMENT OF ENVIRONMENTAL

11 MANAGEMENT (ADEM) BUILDING

12 ALABAMA ROOM

13 1400 COLISEUM BOULEVARD

14 MONTGOMERY, ALABAMA 36110-2400

15

16 On the 14th, day of June, 2024, that the

17 foregoing 46 computer-printed pages contain a true

18 and correct transcript of the hearing set out

19 herein.

20 I further certify that I am neither a

21 relative, employee, attorney or counsel of any of

22 the parties, nor am I a relative or employee of

23 such attorney or counsel, nor am I financially

Page 48

1 interested in the results thereof. All rates

2 charged are usual and customary.

3 I further certify that I am duly licensed

4 by the Alabama Board of Court Reporting as a

5 Certified Court Reporter as evidenced by the ACCR

6 number following my name found below.

7 This 14th day of June in the year of our

8 Lord, 2024.

9

10

11 *Elaine F. Bradley*

12 Elaine F. Bradley, CCR

13 ACCR NO. 354 Exp. 9/30/24

14 Certified Court Reporter and

15 Notary Public

16 Commission Expires 11/14/27

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A				
a.m 1:10 46:2	24:22 25:6,15	Alabama 1:2,4,6	anybody 37:9	areas 21:6 23:9
able 8:11 44:17	25:22 26:4,9	1:8,21 4:16	38:19 40:3	argument 29:22
accepts 41:13	26:16 27:3,8	5:17 6:16 8:17	44:7	ARPA 14:18
access 11:2	27:11,18 30:23	13:17 14:23	anybody's 42:13	15:14,19 17:14
ACCR 48:5,13	32:8,15 33:22	15:3,23 16:2	appeal 24:7 27:7	17:15 18:5
accurate 13:15	39:18,19 40:8	17:4 18:12	28:9 29:6,10	articles 13:7
achievement	41:16 42:17	20:5 21:18	29:13,15 30:8	Asbestos 10:9
31:2	47:11	22:8 26:10	appealing 20:7	ash 19:7,7 20:22
across-the-bo...	ADEM's 23:1	27:12,16,22	28:8	asked 40:6
9:9	24:11 25:12	28:1,5,7,20,23	appeals 20:11	aspects 4:19
act 6:13 8:4	30:1 42:13	29:15,15 30:10	24:12 29:9	28:14
14:18 15:13	adequately 9:3	36:2 41:13	appears 23:18	assess 15:8
20:19 21:21	adhering 6:18	42:2,4 45:23	Applause 31:11	ASSISTANT
22:4,11,13	adjourn 44:1	47:2,6,9,10,12	31:16	2:14
23:1	45:11	47:14 48:4	application 20:9	assure 4:20
acted 22:17	adjourned 45:21	Alabama's	22:14	athletic 40:20
29:19	administration	24:18 29:17	applications	attorney 20:5
acting 24:3	14:17 20:2	allocated 16:3,5	34:13	22:8 30:11
action 24:6 29:7	33:11	allocation 16:17	applied 23:9	47:21,23
29:16	administratio...	allocations 7:7	Applying 7:12	Attorneys 20:6
actions 5:11	19:23	16:12	appraisal 12:5	audited 15:9
6:17 19:18	Administrative	allow 11:18	appraised 12:7	August 38:17,23
20:13 30:2,12	33:22	21:23	12:19	45:6
activities 5:1,23	admission 27:2	allowed 9:18	appreciate	authority 6:18
18:19 19:17	adopt 3:18 34:7	allowing 23:14	33:14 37:13	23:19 28:13
activity 14:16	36:6 37:19	amend 34:14	43:8	authorization
Adams 39:10,13	adopted 8:23	amended 21:5	approach 13:2	23:23
39:13 43:7	21:1 23:14	amendment	appropriate	automated 9:16
add 33:6	24:1,23 25:4	37:19	5:11 25:15	automation
added 25:5	adopting 23:11	amendments	26:4,7	10:20
34:21	adoption 23:16	33:22 34:8,10	appropriately	available 8:10
addition 29:10	24:10	37:16	13:14	11:4 17:16,19
additional 7:18	Advanced 32:15	American 6:12	approval 21:11	17:21 18:3
17:20 27:20	adversarial 19:4	14:18 15:13	25:3,8,9 27:23	B
address 18:20	20:17 22:19	amount 16:4	28:2	B&B 39:14
31:22 43:21	24:16 27:11	amounts 11:3	approve 3:15	back 6:16 33:18
44:23	advisories 14:2	analysis 5:18	19:5 21:13,16	42:1 45:7,9
addressing	14:2	analyzed 15:6	approved 9:8	banned 40:19
18:15 20:4	afoul 23:19	15:10 25:12	30:11 36:2	banning 39:21
25:20	agency 7:10	Animal 10:5	approving 25:3	42:9
ADEM 1:5 2:13	9:16 11:5 40:9	announced 31:6	approximately	barely 3:7
7:9 9:15 10:23	agenda 3:10	announcing	11:17 16:20	BARTON 2:12
11:2 13:21	32:3 33:20	32:5	17:9 18:5	based 6:17
16:5,17 19:3,6	38:10,15 43:23	annual 5:19	April 3:12,19	13:11 27:15
19:12,14,16	agreement 25:6	13:1 32:7	31:7	30:3 35:10
20:3,18 22:1	ahead 3:1	answer 36:9	arbitrarily 25:5	Basically 32:5
22:18 24:3,16	Air 8:5,9 10:10	anticipated	28:16	basis 16:9 24:5
	10:11 30:17	10:12,18	area 26:2 28:21	

24:17				
began 9:21		C	citing 28:2	37:15 38:12,17
begun 13:18	C 2:1 48:17	call 4:3 38:4	citizens 4:21	39:8 40:6
17:8	case 22:22 29:21	capita 7:9	36:20	42:16 43:21
belatedly 26:20	42:13,13,14	case 22:22 29:21	claims 25:20	47:9 48:14
Belt 13:12	cause 39:23 40:1	CCR 1:19 19:10	26:14 27:6	Commissioner
Beneficial 10:12	19:12 20:21	21:2,2,10,14	clarify 34:17	1:20
better 36:22	21:17 22:1	23:1,4,8 24:4	35:12	Commissioners
bid 12:8,14	24:22 25:1,6	25:12 26:4,5,9	clean 8:4 16:22	38:6 45:18
bids 12:9,11	26:16 27:4,8	48:12	19:6	commitment
big 33:8	ceiling 41:22	ceiling 41:22	clear 27:5	22:7
BIL 14:19 15:14	certainly 30:16	CERTIFICA...	close 20:20	commitments
16:12,19 17:19	43:8	47:1	42:23	22:5
17:21 18:5	Certification	Certification	closing 23:4	committed 22:3
billion 15:5 16:3	10:7	Certified 47:4	closure 21:2,9	communicate
17:4 18:1,6,8,9	Certified 47:4	48:5,13	25:7,19 26:12	13:7
Bipartisan 6:13	certify 47:6,20	48:3	26:15,17,23	communicatio...
7:6 14:19	CHAIR 2:3,4	CHAIR 2:3,4	coal 7:20 19:7,7	6:12 12:22
15:14 16:11	Chairman 4:14	Chairman 4:14	19:8 20:21,22	13:5
17:17	34:5	challenged 29:7	22:21 24:13	communities
Bissey 30:17	challenged 29:7	challenges 18:13	Coastal 10:6	15:22
31:12	challenges 18:13	20:12	Cobb 34:2,4,5	community
Black 13:12	challenging	challenging	36:17 37:8,10	14:11 40:2
Board 48:4	19:16	change 20:1	Code 33:23	companies
Boggs 48:17,18	change 20:1	changed 28:10	COLISEUM 1:7	36:15
BOULEVARD	changes 35:21	36:7	47:13	company 41:23
1:7 47:13	36:7	changing 30:5	Columbia 21:20	compel 21:21
Bradley 1:19	changing 30:5	charged 48:2	Combustion	22:10
47:4 48:12	charged 48:2	chemicals 40:22	7:21 19:8	compensate 9:7
broader 18:22	chemicals 40:22	41:2	20:21 22:21	Compilation
brother 33:9	41:2	Chief 34:5	24:14	33:3
BROWN 2:9	Chief 34:5	chrome 40:19	come 3:4 7:1	compiled 33:4
Bud 39:13	chrome 40:19	Circuit 29:11,12	38:11 39:11	complete 18:14
budget 6:7,20	Circuit 29:11,12	29:20	42:3,6,9 45:7	completed 10:13
7:1 8:23	29:20	Circuits 29:9	comes 31:1	10:18
BUILDING 1:5	Circuits 29:9		coming 20:14	completely 12:2
47:11			comment 23:15	completion
buried 39:22			30:7 35:2,8	11:13,19
bury 40:5 41:15			39:1 43:12,15	compliance 5:9
burying 39:17			comments 32:10	5:14
40:11			32:14,18 33:1	comply 8:18
business 38:11			33:4,18 35:6,7	23:12
38:16 39:15			35:10 43:7	computer 6:9
41:9 42:7			commission 1:2	9:14,23 10:22
busy 33:9			2:2,7 3:19 4:6	11:13
buyers 12:16			4:17 5:16 21:1	computer-pri...
buys 40:3			24:23 31:7	47:17
			32:16,21 34:7	Concentrated
			35:23 36:3,6	10:5
				concern 21:6
				concerns 14:14
				concludes 31:20
				concurred 26:2
				condition 25:9
				conditions 26:9
				26:23
				Congratulatio...
				31:17
				congressional
				23:23
				connection
				42:11
				consent 48:18
				considerable
				18:18
				consideration
				3:11 33:21
				36:5 43:9
				considers 28:18
				consistent 26:17
				consolidated
				29:13
				consulting 28:12
				consumption
				14:1
				contacted 15:1
				contain 47:17
				continue 3:9
				contract 11:15
				contracted 13:3
				contribution
				18:15
				Control 10:5
				controls 14:8
				controversial
				14:15
				Conveniently
				13:23
				cooler 3:4
				Copyright 48:17
				correct 47:18
				corrective 25:18
				26:7
				cost 40:4 41:20
				costs 7:17 8:17
				40:15
				counsel 2:12

47:21,23	dedication 5:2	27:12 29:17	10:21	22:11,13,16,19
country 31:6	deemed 19:3	disapprove 19:6	effort 9:6 12:20	22:23 23:2,9
41:8	defending 33:15	21:13,16 24:3	efforts 19:23	23:11,13,18
COUNTY 47:3	definitely 45:8	disapproved	Elaine 1:19 47:4	24:1,9,12,17
Court 21:20,22	definitions 23:6	24:13 28:5	48:12	24:17,22 25:4
22:10 23:20	34:14	29:2	electric 29:14	25:5,11,14,21
24:11 26:10	delay 24:9	discharge 8:18	electronic 34:12	26:6,14,20
29:9,16,19	delayed 28:2	10:4	elements 6:4	27:2,8,11,15
47:4 48:4,5,13	denial 28:8	discussed 3:20	emailed 32:15	27:23 28:2,4
cover 6:6 32:19	Department 1:4	discussion 4:1	EMC 2:12,14	28:10,15 30:2
covered 13:9	7:3 10:20 15:1	37:23	32:10	30:3,3,10 33:9
COVID-19 28:3	17:13 18:19	Discussions 39:7	emissions 27:21	EPA's 19:5,9,11
create 8:14	21:7,15,18	disposal 6:10	employee 47:21	19:13 20:18
credentialed	22:9 24:7 27:7	35:17 37:1,1	47:22	24:7,17 27:12
25:21	28:7 30:9 35:5	distribute 16:6	employees 9:6	29:7,17
criteria 14:7	45:23 47:10	District 21:19	9:10	EPA-generated
criterion 25:2	Department's	21:20 22:9	enacted 15:19	5:14
current 13:20	6:23 7:13	26:10	encourage 14:3	equipment 12:3
19:22	20:20 24:13	division 30:17	30:20	especially 13:12
currently 6:1	34:8,12	30:18 33:11,23	ended 46:2	ESQ 2:9,12
17:19	described 35:22	34:6,8 36:7	enforcement	estimated 16:20
cursor 27:3	design 11:8	document 48:17	5:11,15	17:20 18:2
customary 48:2	designation 31:8	doing 40:17	Engineer 31:4,9	Europe 40:18
cut 41:10	despite 9:20	dollars 7:16	31:14	evaluation 32:6
	21:14	doors 42:23	engineering	32:9,22 33:2,5
	determine 15:10	downwind	15:7	evidenced 27:4
D	determined	27:18	Engineers 25:23	48:5
D.C 29:8	27:16	DR 3:15 45:15	entered 11:15	exceeded 23:19
D.V.M 2:10	develop 30:20	drafting 14:6	entertain 3:13	28:13
Daryl 43:11	developed 21:7	drinking 14:22	37:14	exceptionally
date 1:9 10:2	26:8,11	15:2 17:6,10	environment	11:7
17:12 22:3	developing 5:4	driven 19:22	4:22 5:17	excluded 44:17
day 32:20 47:16	development	due 8:19 12:9	13:16	excuse 14:9 19:7
48:7	9:22 25:17	duly 48:3	environmental	19:8
day-to-day 5:1	30:23 34:22	Dumps 10:8	1:2,4 4:16 7:10	EXECUTIVE
days 21:14,17	difference 40:10	duties 5:3	8:1 9:16 11:5	2:14
22:15,16 24:2	40:13		14:14 16:14	exist 27:6
39:16	differences	E	33:16 40:8	existing 20:20
deadline 32:23	40:17	E 2:1,1	46:1 47:9,10	23:8 27:21
33:19	directly 16:1,13	earlier 6:3 26:22	environmenta...	34:11
dealing 7:18	Director 2:13	earn 31:3	40:7,9	Exp 48:13
16:23	4:12 32:8,18	earned 31:13	EPA 6:16 8:16	expanded 14:4
dealings 19:1	33:10	earning 31:8	16:13 18:17,21	experience 31:2
Debi 2:14 38:9	Director's 32:6	economic 23:22	18:23 19:1,17	experienced
39:5 45:4	directors 33:12	educate 13:8	19:18 20:8,11	25:21
December 21:11	disapproval	educational 31:1	20:18 21:3,6	Expires 48:14
decision 13:14	19:12,14 22:1	effective 9:10	21:10,12,16,21	explain 44:19
32:21	24:5,18 27:8	efficiency 10:1	21:23 22:2,7	explicit 23:23
declines 8:19				

exporting 36:15	find 13:20 41:2	8:22 20:5,6	happy 36:8	improve 12:21
extensive 19:21	first 3:10 4:23	22:8 30:11	hard 33:14 41:9	improving 6:11
external 6:11	6:20 10:13	35:13 36:12,17	hardship 39:23	13:4
extremely 9:20	20:17 25:21	generating	40:1	in-use 34:22
40:4	39:9 40:7	29:14	Hayden 39:14	inception 17:3
<hr/>	fiscal 4:17	generation 6:8	Hazardous	include 5:4 7:17
F	fish 14:1	9:13,22 36:19	10:16	27:20 28:10
F 1:19 47:4	five 6:22 36:20	Generators	healthful 4:22	34:11
48:12	five-year 16:15	10:16	hear 43:19,23	included 26:16
facilities 5:7,9	flawed 19:9 24:7	Geologists 26:1	hearing 35:4,7	35:21
37:2	26:21	geology 26:2	38:3,14 44:10	including 8:15
facility 35:18	focus 6:20	getting 33:18	47:18	10:3,16 26:18
failed 23:1	follow 39:20	37:2	held 3:12 11:12	28:23
failing 30:3	following 24:9	give 34:2 39:19	14:6,12 35:4	inconsistent
failure 19:5	48:6	Glad 3:3	help 6:1	23:5
20:19 27:5	foregoing 47:17	go 3:1 16:13	helping 13:13	incorporating
familiar 26:1	formal 28:2	40:4,15 41:20	hick 41:8	5:6
far 20:6 39:17	forward 33:17	41:21	high 40:4	incorrectly
41:16	found 48:6	goes 42:17	highest 9:18	25:11
far-reaching	four 19:2 30:2	going 28:15 30:6	honor 22:4	increase 7:14,15
23:22	fourth 27:10	33:13 36:13,14	Houston-Galv...	8:16 9:2 10:1
favor 4:4 38:5	frame 15:18	38:21 39:22,23	28:21	increased 8:17
45:17	FRANK 2:3	40:4,14,16,20	huge 18:15	14:5,11
federal 7:5 8:4	free 23:3 26:21	41:8,20,21	<hr/>	independent
8:22 15:15	Friday 1:9 47:6	good 3:6 4:14	I	25:22
19:22 20:2	fulfill 4:20 6:2	18:7	II 2:9	indicate 36:18
22:9 23:8	fund 6:14 7:2,4	government	III 2:8	Indirect 10:4
24:20 25:1,10	7:6 8:22 9:4	16:2	impact 27:17	individual 15:11
25:13 26:10,17	14:20 16:23	Governor 9:1,7	28:18	15:22 16:13
29:4	17:7	grain 42:18	impacts 23:22	26:5
Feeding 10:6	funding 6:8,21	great 33:16	28:19	infiltration 23:3
Field 6:11 11:23	7:7,10,13,15	Greenhouse	implement 21:9	26:22
12:1	8:1,3,6,10 9:20	7:20	implementation	inflation 7:12
fields 40:20	13:10 14:21	groundwater	6:9 9:13 11:12	8:8 9:7
filed 20:12 29:13	17:1,4,8,10,21	25:16,18 26:3	11:17 19:15	influence 18:18
30:10	18:2	26:7,19 41:5	25:17 27:13,19	information
fill 44:15	funds 7:4 8:11	<hr/>	28:6 29:1,4,18	11:3 13:21
final 25:19	9:3 15:16 16:1	H	implemented	infrastructure
26:15 30:13	17:15,19	H 2:9	10:10	6:13 7:7 14:19
finalize 21:23	further 9:23	half 10:13	important 12:23	14:23 15:15
finalized 23:2	37:23 47:20	hand 4:5 38:5	importing 37:5	16:7,11 17:18
finally 18:17	48:3	45:17	impoundments	initiative 12:23
19:13 22:17	future 38:16	handing 14:9	19:10 20:23	Injection 10:5
24:3	FY 8:22	handling 14:10	21:3	insight 34:3
financial 15:9	<hr/>	hands 4:7 38:7	improper 19:11	inspecting 5:8
15:11 16:8	G	45:19	19:13	interested 32:13
financially	Gas 7:20	happen 45:6	improperly	48:1
47:23	general 7:2,3	happened 45:4	25:11	interpretations

23:7 30:6	landfills 35:20	14:21	37:22 38:3,8	monitoring
introduce 30:16	language 35:12	long-standing	38:14 39:7	25:16 26:3
involved 19:2	LANIER 2:9	23:6	43:6,14,17	MONTGOM...
involves 20:18	Large 1:21 47:6	longer 8:11	44:5,10,21	1:8 47:14
22:22	law 6:13 7:7	look 33:17 42:12	45:10,13,16,20	month 20:15
issuance 26:14	12:17 14:19	42:15	MCKINSTRY	39:16 41:15
issue 38:20	15:15 16:11	looking 36:23	2:4 37:21	42:23
issued 21:8	17:18 23:17	Lord 48:8	meant 29:2	months 11:18
issues 20:4,18	24:20 25:10	lot 31:19 37:6	measures 5:13	30:14
item 3:10 4:11	lawsuit 22:12	40:17	25:18 26:8	morning 4:14
32:3,3 33:20	lead 20:3	low 9:20	mechanisms 8:3	motion 3:13,18
33:21 38:10,15	leader 10:21	lowest 7:9	media 8:2 14:8	3:21 37:14,22
38:15	led 28:18		medical 10:17	43:23 44:5
	LeFleur 2:13	M	14:9	45:11
J	4:12,13 31:12	M.D 2:5	meeting 1:1 3:9	move 3:15,18
J 2:5,6	31:17	ma'am 44:21	3:12,19 4:15	37:18 44:2
Jackson 30:18	LeFleur's 32:18	maintaining	5:16 25:19	45:12
31:5	legal 2:12 6:18	29:20	31:7 38:17	moved 22:9
January 35:3	legally 25:4	major 12:20	40:7 44:14,23	45:13
JAY 2:8	legislature 8:23	23:21	45:6 46:2 47:8	multi-faceted
job 32:7,8,8,19	9:8 16:4	Majors 10:11	meetings 14:5	13:2
JOHN 2:8	lengthy 33:7	making 42:10	14:11 32:16	multiple 28:13
joined 20:6	level 19:20	man 42:4	members 2:2,7	
30:11	Liberty 41:23	management	4:6 32:11 39:2	N
judgment 22:10	licensed 48:3	1:2,5 4:16	43:18	N 2:1
July 32:23	liked 41:16	34:18 35:18	memo 32:11	name 31:6 48:6
June 1:9 12:9	limited 15:17	46:1 47:9,11	merits 29:21	nation 7:11 9:17
46:3 47:6,16	limits 8:18	mandates 7:18	MERRITT 2:6	9:19 10:21
48:7	LINDSAY 2:12	manner 5:1	3:22 37:18	11:6 15:23
	link 11:20	March 15:19	44:2 45:12	national 18:22
K	Linked 10:22	35:3,5	metrics 5:15	19:20 20:4,8
keep 10:19	linking 13:21	market 34:22	microphone	nearly 18:9
22:12	liquids 23:3	Mary 2:6 38:21	39:12	necessarily
KEVIN 2:4	26:21	MASINGILL	mid 10:18	26:11
key 13:4	list 19:21 32:17	2:8	milestones 30:22	necessary 5:12
know 7:8 18:17	43:10	matching 7:4	million 7:1,15	11:20 19:3
30:19 36:14,23	litigated 19:19	material 34:18	9:2 16:5,21	28:16 30:8
41:7,19	litigation 20:12	materials 35:15	17:9,13,17,20	31:3
	21:22	35:20	17:23 36:20	need 13:11
L	littering 14:3	matter 22:18,20	mind 22:12	43:19 44:22
L 2:10	living 42:21	24:15 27:11	minutes 3:11,14	needs 8:7 15:8
lab 12:2	local 13:14	47:7	3:16,18 39:4	15:11 16:8
lacking 6:18	14:13	matters 19:3	44:13	45:6
Lance 2:13 4:12	LOCATION 1:4	MCFADDEN	mission 4:20 6:2	neither 47:20
32:3	lofty 31:13	2:3 3:1,17,23	Mobile 6:11	never 30:9 41:18
land 8:5,9 13:13	long 24:9 41:19	4:3,8,10 31:23	11:22	new 6:16 9:13
34:6	42:6	32:2 36:11	modeling 27:15	9:22 19:21,23
landfill 39:14	long-delayed	37:6,9,12,20	28:11	23:2,5,11 24:2
41:12 42:21				

24:4,10 26:20 34:21 news 13:7 nobody's 42:14 non-discretio... 21:12 30:4 non-regulated 5:9 non-routine 5:23 north 41:13 Notary 47:5 48:14 note 9:5 27:1 noted 22:20 26:22 noteworthy 24:1 notice 30:7 32:12,16 notification 32:17 notify 14:1 November 16:10 NPDES 10:3 number 4:11 9:17 32:4 33:20 38:10,15 48:6 numbers 20:16 36:18,22 numerous 21:15	ongoing 12:20 17:1,7 op-eds 13:6 operate 29:3 operating 5:19 6:4 7:1 13:1 operational 9:3 operations 10:2 10:6 opportunity 23:15 32:13 oppose 4:8 opposed 38:8 Oral 29:21 35:6 originally 17:2 outdated 12:1 overreach 30:2 33:8,12 oversight 8:16 8:20 ozone 19:14 27:13,17,22 28:1,11,20,23	performing 9:19 period 16:15,19 18:3 22:23 32:19 35:2,9 39:2 permissible 8:8 permit 10:4 26:9 26:13,23 27:5 permits 5:7,10 14:15 21:8 25:7,12,15 26:4,16 27:4 permitting 21:8 24:14 34:16 PERRY 2:10 personnel 30:20 31:1 persons 32:13 perspective 33:17 petition 24:11 petitioned 21:19 PFAS 7:19 physical 15:8 16:8 picture 13:15 pieces 13:19 place 17:2 20:1 placed 13:23 places 36:16 plan 6:12 14:18 15:13 19:15 27:14,19 29:4 29:18 34:15 planning 11:11 plans 5:19 6:5 13:1 24:7 27:7 28:6 29:1 plant 15:8 16:8 please 31:9,15 39:12 pleased 8:21 30:16 31:22 pointed 42:4 portion 48:17 position 19:4 22:19 24:16 possible 20:1	possibly 38:21 posted 32:14 potential 12:16 potentially 8:14 precursors 27:22 presence 8:16 present 2:2,7,11 4:15 presentations 39:8 presented 5:15 36:5 previously 22:20 23:7 prior 23:16 priority 4:23 probably 37:2 problems 8:14 18:16 procedures 34:23 proceedings 47:7 process 12:14 23:13 26:12 30:8 33:5 processes 6:19 processing 35:16 processors 34:19 35:14 productive 4:22 professional 12:5 25:23,23 30:23 31:4,8 31:14 professionally 30:21 program 6:8,21 8:7,12,13 9:4 17:1,8 19:6,12 20:20 21:8,10 21:14,17 22:1 23:1 24:4,14 24:18 25:8 27:9 34:1,9,22 36:8 37:16	programs 6:14 8:1,2,6 9:19 10:3,10,12,15 14:20 15:16 16:14 18:1 projects 15:4,6 18:9 property 12:18 proposed 9:8 15:4,5 21:23 27:23 33:21 35:1,11 36:4,7 37:15,19 Protection 40:9 protective 24:19 25:1,13 protocols 45:2 provide 7:4 8:11 14:21 provided 15:20 17:3,9,13 35:23 provides 9:1 11:2 providing 13:10 13:15 15:16 32:12 public 12:22 13:5,8,13,19 14:1 15:2 17:10 23:15 35:2,4,8 39:1,3 40:5 43:19 47:5 48:14 publish 45:3 purposes 15:17 push 6:16 pushback 30:1 put 17:2
<hr/> O <hr/>	<hr/> P <hr/>			<hr/> Q <hr/>
object 26:22 obligation 21:13 obligations 30:5 obtain 7:5 occasions 22:2 October 9:10 20:10 32:20 office 6:11 11:23 12:1 42:5 Okay 32:2 33:20 37:9,20 38:10 38:14 43:17,22 45:20 old 6:10 11:22 12:1 41:7	P 2:1,1 P.E 2:3 package 35:22 pages 47:17 pandemic 28:3 part 13:4 19:22 32:7 33:5 36:21 43:2 particular 6:7 38:20 parties 47:22 pass 44:11 PATRICK 2:5 people 24:19 40:1 42:20 43:3 44:17 percent 6:23 9:9 perform 4:23 30:4 performance 5:13,18 32:7,9 32:19 performed 12:6	quality 8:19 10:1,7 13:20 14:7 question 4:4 38:4 44:4,4,13 questions 23:21 31:21,23 36:9		

37:10	regulate 5:8	requesting 15:4	16:23 17:7	44:7,11 45:14
quite 19:20	regulated 5:8	requests 14:14	right 3:17 4:1,3	45:15,16
quorum 3:7,8	regulation 23:10	21:15	4:11 32:3	Secondly 19:9
	regulations 5:10	require 7:14	37:13 39:1,4	see 43:22 44:22
	7:19,20,21	25:15 30:13	42:12 45:10	seen 13:6
	34:1,9 35:11	required 6:19	rights 48:17	separate 24:6
R	36:1,4 37:17	7:5 12:14	rigorous 31:3	September
R 2:1	regulatory 8:15	22:14 23:12	roof 41:21	29:23
raise 4:5 9:9	8:20 42:16	26:3,8 29:3	ROOM 1:6	service 13:19
38:5 45:17	related 19:10	30:7	47:12	session 38:16
raising 4:7 38:6	32:4	requirement	routine 5:19	set 29:22 47:18
45:18	relates 22:21	25:7 26:18	rubber 40:19	sewer 6:15
ran 35:3	relationship	requirements	RUBY 2:10	13:11 14:22
rate 7:12	18:21	25:14,19 26:15	rule 24:22 25:1	16:6,18,23
rates 48:1	relationships	26:18 27:6	25:4 35:12	17:14 18:11,12
reached 32:21	18:22	34:17,18 35:14	39:19,21	Sherrell 43:11
real 39:23	relative 32:22	requires 8:9	rulemaking	43:12,15
really 33:9	47:21,22	23:17 24:21	19:10,18 22:22	short 41:19
reasons 28:9	released 40:22	requiring 23:22	23:13 24:8	Shortly 42:8
receipt 33:1	41:3	Rescue 6:12	28:16	showing 13:19
35:15	reliable 13:20	14:18 15:13	rules 6:16 14:6	shredded 40:19
receipts 37:1	relies 7:3 26:20	researching	19:21 20:1,8	40:23 41:3
received 12:12	relying 22:6	40:18	21:2,4,9,10	shredding 40:12
16:1 33:4 35:6	remain 18:13	reserved 48:17	23:2,5,8,11,14	42:10
35:8,10	remaining 10:15	Residual 7:21	23:16 24:2,4	signage 13:23
receivers 34:19	remediation	24:14	24:10 26:21	signed 9:1 16:12
recognize 6:2	26:19 34:15	Residuals 19:8	30:5 34:11,21	43:20
26:6 27:5	removed 12:4	20:21 22:21	ruling 23:20	significant
recognized	report 4:11,18	resolution 30:13	running 23:19	14:16 18:12
26:11 31:10	5:17,21 6:6	resolve 21:5		19:2 27:10,17
recommend	8:21 9:12	response 4:2,9	S	28:18,19 30:22
34:7	11:22 31:20	32:1 37:11	S 2:1	significantly
reconciliation	32:4 33:7	38:2,13 44:9	safe 4:21	24:19 36:13
35:22	reported 1:19	rest 43:12,15	salvageable 12:3	simply 22:13
recordkeeping	47:7	restrictions	satisfy 18:8	single 29:16
34:14	Reporter 47:5	27:21	says 41:4	SIP 28:1
recycle 41:10	48:5,13	result 8:3 28:22	science 6:17	sir 37:8
recycling 10:7	REPORTER'S	results 5:3 48:1	scientifically 5:5	site 32:15
14:7 42:1	47:1	retain 8:9 9:6	Scott 30:18 31:5	sites 26:5
redefine 23:2	reporting 34:15	review 25:6 27:3	31:9	sitting 42:5
reduced 14:3	48:4,17,18	28:14	scrap 10:7 14:8	six 6:23
28:17	reports 5:20 6:3	reviewed 11:14	33:23 34:9,19	smooth 11:20
referred 20:22	34:13 41:4	revised 35:12	35:14 36:2,8	software 6:9
reflects 5:2	represents 17:15	36:1	36:13,18 37:5	9:14,23 10:22
regarding 26:21	reproduced	revision 35:16	37:16	11:13,19
35:15,19 37:15	48:18	revisions 35:1	second 3:20,22	soil 41:5
region 13:12	requested 9:2	Revolving 6:14	3:23 22:18	sold 12:18
registered 39:2	18:10 32:11	7:6 14:20	37:21,23 43:10	solicitation 12:8
registration				
34:16				

12:16	statements 15:9	34:12	20:19 25:16	<hr/> U <hr/>
solid 10:11	states 20:7 21:19	systems 6:15	tire 10:8 14:8	U.S 16:1 23:20
35:18	25:14 28:8,12	13:11 15:3,12	33:23 34:9,17	24:11 29:9
sorry 43:14 45:4	28:22 29:2,5	16:6 17:1,5,11	34:19 35:14,15	Unauthorized
sound 5:5 6:17	static 36:14	18:11 26:3	35:19 36:2,8	10:8
sources 18:4	status 5:22 6:6	<hr/> T <hr/>	36:19 37:16	underfunded
sovereignty	9:12 18:20	table 44:6	39:14 40:3,5	8:13
33:15	29:6	take 11:17 19:4	40:11,22 41:3	Underground
speak 44:15,18	statutorily 12:13	41:14 43:9	41:12 42:1	10:4,8
speaker 43:10	stay 41:9	taken 44:16	tires 35:19 36:13	understand
44:3,12 45:8	stayed 21:22	TALLADEGA	36:20 37:3,5,7	13:13
speaking 40:8	29:16	47:3	39:17,21,22	understanding
40:10	step 11:20	Tanks 10:9	40:20 41:14,14	12:17
specific 26:1	Steve 31:14	targeted 12:15	42:9,10	undertaken 6:1
Specifically	Steven 30:17	television 13:18	title 31:4,13	12:15
23:13 25:14	31:12 34:5	tell 33:6 37:5	today 3:8 17:12	underway 14:17
Spring 28:4	stick 45:3	tentatively	29:12 34:6	Unfortunately
SRF 14:20 17:23	stop 43:1	29:22	36:5 43:5,20	12:11
18:5	Storage 10:9	testing 31:3	44:23	United 21:19
staff 33:10	story 41:19	Texas 28:21	today's 5:21 6:6	units 23:4
Stage 10:9	straight 45:5	thank 4:10,13	31:20	UNKNOWN
stages 11:11	Strategic 13:1	31:19 32:2	told 42:1	44:3,12 45:8
staging 35:19	strongly 30:19	34:4 37:12	top-quality 5:3	unlawfully
stakeholder	studies 41:1	38:9,9 43:6,7	topics 13:9	28:12
14:5	studying 40:18	43:17 45:21	14:12	unprecedented
stand 31:10,15	stuff 41:10 42:9	thereof 48:1	total 16:17 18:1	20:16
42:18,19	subject 35:2	thing 3:6 40:14	18:2	unstable 8:15,19
standards 5:5,6	submission	41:6	transcript 47:18	upcoming 32:8
standing 43:4	34:13	things 5:4 7:19	transfers 8:8	33:1
standpoint 15:7	submit 32:14	third 19:11	transparent	update 5:21
start 32:6 42:10	submitted 15:6	24:15	11:8	6:10 34:10
44:14	18:10 21:10	thirteen 10:2	transport 19:14	upgrade 6:15
started 3:2	27:19	Thomas 2:14	27:13 28:1,11	10:23 11:16
state 1:21 4:21	substantial	39:6 44:22	28:20 29:1	13:4,10 18:11
5:16 6:14 7:5	15:16	three 10:15 18:4	transporters	18:13
7:23 9:6,10	suggested 42:22	22:2 25:20	10:17 34:20	upgrades 10:23
10:3 11:5	suit 30:10	39:4	Treasury 16:2	11:10,14,19
12:17 13:16	summarize 30:1	three-minute	tremendous	14:22 15:5
14:20 16:2,14	summary 22:10	39:3	11:3	16:7,18 17:14
16:22 17:6	superficial 27:3	threshold 28:17	tried 39:20	use 10:12 13:14
19:15 21:18	supplemented	threw 39:18	trillion 15:20	14:13 34:11
23:8 27:13,18	8:6	tighter 8:18	16:11	user-friendly
27:19 28:5,6	supposed 28:19	time 1:10 15:18	true 47:17	11:9
29:1,18 33:16	44:14	26:12,13 32:5	TUCKER 2:5	usual 48:2
36:19 37:3	Supreme 23:20	33:9 42:2	3:15 45:15	utilities 29:14
47:2,5	sure 38:18	43:13,16 45:5	two 9:9 11:21	utilizing 13:18
State's 7:2	swim 14:2	timely 19:5	39:2	<hr/> V <hr/>
stated 24:17,22	system 15:10			

vacated 12:2	43:3	1989 17:2	35:13
value 12:7,19	written 32:10	1999 17:8	35,000 5:7
variances 34:23	33:3 35:7	1st 9:11	354 48:13
various 4:19	48:18		361 17:17
13:9 14:12	wrote 41:18	<hr/> 2 <hr/>	36110-2400 1:8
15:17 20:13		24:11	47:14
venue 29:20	<hr/> X <hr/>	2.1 16:3	
VICE 2:4	<hr/> Y <hr/>	2014 3:12	<hr/> 4 <hr/>
Video 48:17,18	y'all 45:21	2015 27:15	4 33:20,21 34:9
violation 41:18	year 4:17,18	2018 21:1	36:7
volume 36:12	10:19 36:21	2020 7:14 9:21	40 20:14 42:20
volumes 36:12	42:2 48:7	28:10	400 21:17
<hr/> W <hr/>	years 6:22 7:8	2021 15:20	401 10:6
want 11:9 42:2	9:17 11:11	16:10 21:5,11	46 47:17
44:7	12:21 13:9	2022 16:15,18	4th 29:8
warning 43:1	19:2 21:4	17:12 28:4	<hr/> 5 <hr/>
waste 10:11,16	39:16	2023 32:20	5 38:10
10:17 14:8,9		2024 1:9 3:19	50 42:20
35:18	<hr/> Z <hr/>	4:17 12:9,10	582 16:20
wastewater 15:3	<hr/> 0 <hr/>	22:17 24:12	5th 4:15 29:8
17:5	<hr/> 1 <hr/>	29:23 32:23	<hr/> 6 <hr/>
water 6:7,15,21	1 10:9	36:3 38:18,23	6 9:2 38:15,15
8:2,4,7,12,13	1,061 15:2	46:3 47:6,16	620 16:5 17:13
8:19 9:4 10:6	1.2 16:10	48:8,17	65 6:23
13:11,20 14:7	1.278 18:1	2025 10:14,19	665,000 12:7
14:22 15:2	1.5 18:6,7	2026 16:16,19	6th 29:8
16:6,18,22	1.65 17:3	212 17:20	<hr/> 7 <hr/>
17:6,10,14	1.9 15:20	21st 35:4,5	<hr/> 7 <hr/>
18:11,12 30:18	100 20:11	22 15:21 18:3	<hr/> 8 <hr/>
waterways	10th 29:8 36:3	23 15:21 20:11	<hr/> 8 <hr/>
24:20	11 12:9	23rd 22:17	8 12:9
we'll 3:1,8 38:22	11/14/27 48:14	24:12	812 9
43:8	11:00 1:10 3:2	24th 35:3	850 17:9
we're 37:2,4	11:43 46:2	25 8:22 17:21	875 22:16
41:12 45:4,20	11th 29:10,12,20	26 17:22 18:4	875-day 22:23
we've 13:9,18	12 3:12,19 11:18	27 39:16	8th 29:8
40:17 41:17	14 1:9 7:15	297 17:23	<hr/> 9 <hr/>
website 6:10	32:20 46:3	<hr/> 3 <hr/>	9 38:17
11:1,2,6,16	47:6	3 32:4	9/30/24 48:13
13:3,22 14:13	1400 1:7 47:13	3.4 15:5 18:9	9th 29:8 38:23
week 29:23	14th 47:16 48:7	30 24:2	
Welcome 3:3	15 39:16 44:13	300,000 41:14	
4:14	16 29:23	31st 32:23	
went 12:8 39:18	18 28:5	335-4 33:23	
work 4:19 18:14	180 21:14 22:15	335-4-4-.04(a)	
31:2,19 33:14	19 28:22	35:17	
working 21:3		335-4-6-.01	

Part B

Attachment Index

Attachment 1 Agenda

**Attachment 2 Director's Slides
(Agenda Item 2)**

**Attachment 3 Resolution adopting amendments to ADEM Administrative Code Division
335-4, Scrap Tire Program Regulations, and Attachment A, Final Proposed
Rules
(Agenda Item 4)**

Attachment 1

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: June 14, 2024

TIME: 11:00 a.m.

LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

<u>ITEM</u>	<u>PAGE</u>
1. Consideration of minutes of meeting held on April 12, 2024	2
2. Report from the ADEM Director	2
3. Report from the Commission Chair	2
4. Consideration of proposed amendments to ADEM Administrative Code Division 4, Scrap Tire Program Regulations	2
5. Other business	2
6. Future business session	2
PUBLIC COMMENT PERIOD	2
Brief statements by members of the public registered to speak	2

* The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov,
under Environmental Management Commission.

** The Minutes for this meeting will be available on the ADEM website
under Environmental Management Commission.

1. CONSIDERATION OF MINUTES OF MEETING HELD ON FEBRUARY 9, 2024
2. REPORT FROM THE ADEM DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-4, SCRAP TIRE PROGRAM REGULATIONS

The Commission will consider amendments to ADEM Administrative Code Division 335-4, Scrap Tire Program Regulations. Revisions to the Division 4 Code are being proposed to provide updates to the existing language to include the use of the Department-approved electronic system, amend definitions and recordkeeping and reporting requirements, update remediation plan requirements, clarify registration and permitting, management of tire materials, requirements for scrap tire receivers, processors, and transporters, and overall updates for clarity and consistency. In addition, rules were added for the End-Use Market Development Program and Procedures for Variances. The Department held a public hearing on the proposed amendments on March 12, 2024.

5. OTHER BUSINESS
6. FUTURE BUSINESS SESSION

PUBLIC COMMENT PERIOD

BRIEF STATEMENTS BY MEMBERS OF THE PUBLIC REGISTERED TO SPEAK

Members of the public that wish to make a brief statement at a Commission meeting may do so by first signing in on a register maintained by the Commission office prior to each regularly scheduled meeting. The register will close ten minutes prior to convening each meeting of the Commission. Following completion of all agenda items, the Commission Chair will call on members of the public wishing to make a statement in the order their names appear on the register. Speakers are encouraged to limit their statement to matters that directly relate to the Commission's functions. Speakers will be asked to observe a three minute time limit. While an effort will be made to hear all members of the public signed on the register, the Commission may place reasonable limitations on the number of speakers to be heard. (Guideline 11, Guidelines for Public Comment).

The Guidelines for Public Comment are used in the application of ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda and Public Participation. The Guidelines for Public Comment serve to educate and inform the public as to how the Commission interprets and intends to apply the Rule. The revised Rule 335-2-3-.05 was effective October 7, 2016.

Attachment 2

Status of ADEM Activities

- ADEM Budget - Water Program Funding
- Next Generation Computer Software
- Website Update
- Sale of Old Mobile Field Office
- External Communications
- ARPA /BIL / SRF Water & Sewer Funding
- Pushback on EPA Overreach

1

**ADEM Budget - Water Program
Funding**

2



Alabama Department Of Environmental Management

ADEM Budget

- Operating budget \$65 million / yr.
- Lowest per capita in nation following last increase in 2020
- Applied inflation since 2020 = \$14 million
- Additional mandates since 2020
- Funding shortfall in water program

3



Alabama Department Of Environmental Management

ADEM Water Program Funding

- ADEM Water program funding previously supplemented by Air and Land programs.
- Water program funding shortfall concerns:
 - Unstable water regulatory oversight
 - Increased EPA presence in Alabama
 - Increased costs for regulated community if WQ down
- FY 2025 General Fund Appropriation \$6 million

4

Next Generation Computer Software

5

Next Generation Computer Software

- ADEM Leader in Automation = High Performance / Low-Cost Operations.
- Since 2020:
 - NPDES, SID, UIC, CAFO, Coastal, 401 WQ, Recycling, Scrap Tire, UAD, UST, Asbestos, Stage 1 Air applications complete
- Solid Waste, Air Majors, Beneficial Use Completed 1st half of 2025
- Remaining programs after 1st half of 2025

6

Website Update

7

Website Upgrade

- Major public information source
- Exceptionally transparent but needs to be more user friendly.
- Tying to software upgrades.
- Contract signed for upgrade to coincide with software upgrades.

8

Sale of Old Mobile Field Office & Lab

9

Sale of Old Mobile Field Office and Lab

- Vacated
- All salvageable equipment removed
- Professional appraisal performed
- Appraised value \$665,000
- Request for bids on 5/8/24, bids due 6/11/24
- No bids received – start solicitation

10

External Communications

11

External Communications

- Improved Website
- Op-eds & news articles
- Public Service Announcements
- Signage
- Stakeholder meetings before drafting rules
- Community meetings

12

ARPA / BIL / SRF Water & Sewer Funding

13

ARPA / BIL / SRF Funding Programs

- **ARPA:**
 - 2021 \$1.9 Trillion (2022 - 2023)
 - Alabama \$2.1 Billion
 - ADEM \$620 Million
- **BIL:**
 - 2021 \$1.2 Trillion (2022 - 2026)
 - Alabama / ADEM \$582 Million (estimated)

14



ARPA / BIL / SRF Funding Programs

- SRF:
 - 1989 ADEM Sewer \$1.65 Billion
 - 1999 ADEM Drinking Water \$850 million

15



Alabama Water and Sewer Funding

FY 2022-2024:

620 Mil\$ American Rescue Plan Act

361 Mil\$ Bipartisan Infrastructure Law

297 Mil\$ State Revolving Fund

1,278 Mil\$ TOTAL

16

Pushback on EPA Overreach

17

ADEM Pushback on EPA

- EPA failure to timely approve or disapprove ADEM CCR Program.
- EPA unlawful CCR rulemaking.
- EPA disapproval of ADEM CCR Program.
- EPA disapproval of ADEM Ozone Transport State Implementation Plan.

18

EPA Failure to Timely Act

- ADEM CCR rule 2018 / 2021 w/EPA
- ADEM CCR rule submitted for approval 12/2021
- EPA required to act in 180 days
- EPA did not act for > 875 days

19

EPA Flawed CCR Rulemaking

- New rules on free liquids & infiltration
- Inconsistent with longstanding definitions
- Public denied opportunity to comment
- Exceed EPA authority – “Major Questions”
- < 30 days before EPA final CCR program disapproval & a basis for disapproval

20

EPA Disapproval of ADEM CCR Program

- Arbitrarily changed requirements for program approval.
- Incorrectly and improperly determined ADEM CCR permits do not meet federal requirements for:
 - Groundwater monitoring
 - Groundwater corrective measures
 - Final closure

21

EPA Disapproval of ADEM CCR Program

- Multiple experts approve groundwater monitoring system in ADEM CCR permits
- Federal Court concurs groundwater corrective measures development required in ADEM CCR permits appropriate
- Final closure requires groundwater remediation in ADEM CCR permits

22

**EPA Disapproval of ADEM Ozone
Transport State Implementation Plan**

- Arbitrarily changed modeling w/o consulting states and exceeded its authority in review.
- Arbitrarily changed definition of significant impact.
- Sought to subject 19 states to a Federal Implementation Plan.

23

**EPA Disapproval of ADEM Ozone
Transport State Implementation Plan**

- EPA action challenged in 4th, 5th, 6th, 8th, 9th, 10th, 11th, and DC Circuits.
- 11th Circuit consolidated appeals by ADEM and Alabama electric utilities and stayed SIP disapproval.
- Venue and merits determination pending in 11th Circuit.

24

Attachment 3

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-4 of the Department's Land Division's Scrap Tire Program Rules and Regulations in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

WHEREAS, a public hearing was held before a representative of the Alabama Department of Environmental Management designated by the Environmental Management Commission for the purpose of receiving data, views and arguments on the amendment of such proposed rules; and

WHEREAS, the Alabama Department of Environmental Management has reviewed the oral and written submissions introduced into the hearing record, and has prepared a concise statement of the principal reasons for and against the adoption of the proposed rules incorporating therein its reasons for the adoption of certain revisions to the proposed rules in response to oral and written submissions, such revisions, where appropriate, having been incorporated into the proposed rules attached hereto; and

WHEREAS, the Environmental Management Commission has considered fully all oral and written submissions respecting the proposed amendments and the Reconciliation Statement prepared by the Alabama Department of Environmental Management.

NOW THEREFORE, pursuant to Ala. Code §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate the Uniform Environmental Covenants Program [Chapters 335-4-1 General Provisions (Amend); 335-4-2 Scrap Tire Remediation (Amend); 335-4-3 Registration and Permitting (Amend); 335-4-4 Management of Tire Materials (Amend); 335-4-5 Scrap Tire Receivers (Amend); 335-4-6 Scrap Tire Processors

(Amend); 335-4-7 Scrap Tire Transporters (Amend); 335-4-8 Financial Assurance (Amend); 335-4-9 Delegation of County Enforcement Programs (Amend); 335-4-10 End-Use Market Development Program (New); 335-4-11 Procedures for Variances (New)], of the Department's Land Division – Scrap Tire Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

Environmental Management Commission Resolution
Page 3

ADEM Admin. Code division 335-4 – Scrap Tire Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 14th day of
June, 2024.

APPROVED:



Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner



J. Patrick Tucker, Commissioner



Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner



A. Frank McFadden, Commissioner

DISAPPROVED:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, Commissioner

Environmental Management Commission Order
Page 4

ABSTAINED:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

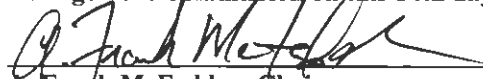
Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, Commissioner

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 14th day of June 2024.



A. Frank McFadden, Chair

Environmental Management Commission

Certified this 14th day of June 2024

ATTACHMENT A

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION -
SCRAP TIRE PROGRAM
ADMINISTRATIVE CODE

CHAPTER 335-4-1
GENERAL PROVISIONS

TABLE OF CONTENTS

335-4-1-.01	Definitions <u>Applicability</u>
335-4-1-.02	Communications With ADEM <u>Definitions</u>
335-4-1-.03	Penalty For Violations <u>Communications</u> <u>with the Department</u>
335-4-1-.04	General <u>Penalty for Violations</u>
<u>335-4-1-.05</u>	<u>General</u>

335-4-1-.01 ~~Definitions~~Applicability.

~~For the purpose of these rules, the following words and phrases shall have the meanings given to them in this Rule and as given by law unless the context of ADEM Administrative Code 335-4 indicates differently.~~These rules are not applicable to and do not limit the handling,

~~(a) Accumulation — any of the following activities related to scrap tires at a particular location:~~

~~1. The amassing or gathering of scrap tires, for whatever purpose, not in accordance with the Act and 335-4, in a manner that poses a threat to human health and the environment.~~

~~2. The amassing or gathering of scrap tires by a permitted processor, registered receiver, or permitted landfill or solid waste disposal facility.~~storage, or

~~(b) Act — the "Alabama Scrap Tire Environmental Quality Act," Act No. 2003-332, Code of Ala. 1975, §22-40A-1 et seq.~~use of

~~(c) Approved — authorized, certified, permitted by, or meets standards of a regulatory authority.~~

~~(d) Baling — a method of volume reduction in which whole tires are compressed into bales.~~

~~(e) Centers for Disease Control and Prevention (CDC) — an agency of the U.S. Department of Health and Human Services whose function is developing and applying disease prevention and control, environmental health, and health promotion and education activities designed to improve the health of the people of the United States.~~

~~(f) Cleanup — the cleaning up, remediation, control, or removal of scrap tires from the environment.~~

~~(g) Closure Plan — the plan for closing a processing facility prepared in accordance with 335-4-6-.06(b).~~

~~(h) Consumer — either a retail purchaser or a vehicle dealer who buys a tire to be installed on a vehicle for resale. A wholesale purchaser who buys tires for resale is not considered a consumer.~~

~~(i) Current Closure Cost Estimate — the most recent of the estimates prepared in accordance with 335-4-8-.03(2).~~

~~(j) Department — the Alabama Department of Environmental Management (ADEM) or its successor organization having similar responsibility.~~

~~(k) Department of Public Health (ADPH) — the Alabama Department of Public Health as defined by Code of Ala. 1975, §22-2-1.~~

~~(l) Director — the Director of ADEM or a duly authorized representative.~~

~~(m) Disposal — the deposit of a tire in a permitted solid waste disposal facility or landfill.~~

~~(n) Duly Authorized Representative — a person or position designated by a responsible official to act in place of that responsible official. A person or position is a duly authorized representative if:~~

- ~~1. The authorization is made in writing by a responsible official and is submitted to ADEM. The written authorization shall specify the actions or activities the duly authorized representative has approval to conduct for the regulated facility or activity, and shall be updated in writing to accurately identify any changes to the authorized individual or position.~~
- ~~2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity.~~

~~(o) Enforcement Officer — an employee of ADEM or the person appointed by the County Commission having a delegation agreement with ADEM to enforce the Act and 335-4, enforcement officers under the supervision of the County Enforcement Officer, and persons authorized by law or regulation to enforce the Act and/or 335-4.~~

~~(p) Engineer — a person currently registered as a professional engineer with the Alabama Board of Licensure for Professional Engineers and Land Surveyors.~~

~~(q) Final Designated Facility — a person indicated on a manifest as the last, or ultimate, recipient of the scrap tires or processed tire material to be recycled, reused or disposed. new tires or used tires meeting the~~

~~(r) Fuel User — a processor that uses tire derived fuel as a source of energy and has been permitted by ADEM or a local air pollution control agency for the use of tire derived fuel. definition of~~

~~(s) Ground or Crumb Rubber — a processed tire material resulting from the grinding or other processing of scrap tires whose particles have a diameter of less than 0.375 inches and are 98% wire free by weight.~~ used tires

~~(t) Individual Scrap Tire Generator — an individual who generates eight (8) or less scrap tires per year from his personal use vehicles. Not included in this definition are tires removed from a vehicle used in commerce or business by an individual, even if that vehicle is owned by the individual.~~

~~(u) Innocent Landowner — one who meets either all of the conditions of 335-4-1-.01(u)(1) or 335-4-1-.01(u)(2):~~
335-4-1-.02.

~~1. an owner of real property upon which there is located an accumulation of scrap tires~~

~~i. The scrap tires were disposed of on the property after the owner acquired title to or obtained financial interest in the property, or the scrap tires were disposed of before the owner acquired title to the property and the owner lacked actual knowledge of the waste after conducting reasonable due diligence or title was acquired by intestate succession or devise.~~

~~ii. The owner did not have knowledge that the scrap tires were being disposed of on the property, or the owner took steps, including, but no limited to, posting signs to prevent disposal on the property.~~

~~iii. The owner did not participate in or consent to the disposal of scrap tires on the property.~~

~~iv. The owner did not receive any financial benefit from the disposal of scrap tires on the property.~~

~~v. Title to the property was not transferred to the owner for the purpose of evading liability for operating an unauthorized accumulation of scrap tires.~~

~~vi. The person or persons responsible for disposing of the scrap tires on the property, in doing so, was not acting as an agent for the property owner or interest holder.~~

~~2. The State of Alabama shall be considered an innocent landowner for properties it owns or holds upon which scrap tires are disposed in which disposal the State did not participate nor to which the State consented.~~

~~(v) Manifest — a form used for identifying the quantity, composition, origin, routing and destination of scrap tires or processed tire material during its transportation from the point of origination to the point of end use, processing or disposal.~~

~~(w) Operating Record — a collection of documents relating to the permitting or operation of a scrap tire facility.~~

~~(x) Operator — the person responsible for the overall operation of a scrap tire facility, or a part of a facility, with the authority and knowledge to make and implement decisions, or whose actions or failure to act may result in noncompliance with the requirements of 335-4 or the Act.~~

~~(y) Owner — The person who owns a scrap tire facility or part of a facility.~~

~~(z) Permit — written authorization granted to a person by ADEM to transport scrap tires or to operate a scrap tire processing facility.~~

~~(aa) Permitted Processor — a person engaged in the processing of tires as defined in this section, that has received the proper permit from ADEM. A retreader or sorter is not considered a processor.~~

~~(bb) Permitted Transporter — a person who has received the proper transporter permit from ADEM.~~

~~(cc) Person — an individual, organization, business, or entity, whether or not organized for profit.~~

~~(dd) Processed Tire Material — a material produced from scrap tires through any chemical, physical, or thermal process, including, but not limited to, baling.~~

~~(ee) Processing — for purposes of tire processing, the term includes any of the following activities related to pneumatic tires:~~

~~1. The compression and binding of whole tires or processed tire material or baling.~~

~~2. Shredding, reducing, or altering tires by any physical, chemical, or thermal process, including, specifically, the burning of tires as fuel.~~

~~3. Incorporating whole scrap tires into any end use product or structure where the scrap tire is not deconstructed into its component parts.~~

~~4. Punching or stamping products from whole scrap tires or producing processed tire material, crumb, or ground rubber product, whether or not that product is held for sale or used in the facility to produce an end product.~~

~~(ff) Recall Tire — a scrap tire resulting from its replacement at no cost to the consumer due to a manufacturing defect and specifically recalled by the manufacturer or by the federal government.~~

~~(gg) Receiver — a person who generates or accumulates scrap tires, including the following:~~

~~1. Class One Receivers include retail tire dealers, retreaders, and used tire dealers.~~

~~2. Class Two Receivers include all other receivers of scrap tires, other than Class One Receivers, that generate or accumulate a minimum of ten (10) scrap tires in a year, specifically including, among others, a component of government, vehicle fleet maintenance or~~

~~dismantling, rental or sales operations, or other activity that generates scrap tires, whether or not organized for profit.~~

~~(hh) Recycling or Reuse — a use of scrap tires or processed tire material other than for land disposal, including, but not limited to, new products, rubber modified asphalt, civil engineering applications, or fuel use.~~

~~(ii) Remediation — this term is synonymous with "cleanup."~~

~~(jj) Replacement Tire — a pneumatic tire sold to the consumer regardless of whether or not mounted on a rim or wheel.~~

~~(kk) Responsible Official — means one of the following:~~

~~1. For a corporation, a president, vice president, secretary, or treasurer of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of the person if the representative is responsible for the overall operation of one or more facilities applying for or subject to a permit and either:~~

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

~~(ii) The delegation of authority to the representative is approved in advance by ADEM.~~

~~2. For a partnership, a general partner.~~

~~3. For a sole proprietorship, the proprietor.~~

~~4. For a limited liability company, a person as designated under the authority of Code of Ala. 1975, §10-12-22.~~

~~5. For a municipality, state, federal, or other public agency, either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.~~

~~(ll) Responsible Party or Responsible Person — with respect to the remediation of any accumulation of scrap tires on any property, a person who meets one or more of the following conditions:~~

~~1. A person who deposited the scrap tires on the property, if other than the person who holds the title to or has a financial interest in the property.~~

~~2. A person who holds title to or has a financial interest in the property, and who does not qualify as an innocent landowner.~~

~~(mm) Retail Tire Dealer — a person selling replacement tires to the consumer whether or not mounted on a rim.~~

~~(nn) Retreaded Casing Replacement Tire — a retreaded casing sold to the consumer regardless of whether or not mounted on a rim or wheel.~~

~~(oo) Retreader — a person engaged in the retreading of casings.~~

~~(pp) Scrap Tire — any pneumatic tire no longer suitable or useable for its original purpose, and, in addition, includes but is not limited to, all tires with a manufacturing defect, except those that are in the process of being returned to the manufacturer for a refund.~~

~~(qq) Scrap Tire Commission (STC) — the commission established to review implementation of the Act and to recommend changes of the Act to the Legislature.~~

~~(rr) Scrap Tire Environmental Fee — the fee established by the Act, to be collected on the purchase of replacement tires by the Department of Revenue and deposited to the Scrap Tire Fund.~~

~~(ss) Scrap Tire Facility or Facility — all contiguous land, structures and other appurtenances thereto used for the accumulation, storage or processing of scrap tires or processed tire material.~~

~~(tt) Scrap Tire Fund (STF) — the separate fund established by the Act to fund the cleanup of scrap tire sites, the scrap tire program implemented by ADEM and other activities described in the Act.~~

~~(uu) Scrap Tire Site — a site or location where scrap tires or tire pieces are illegally stored or accumulated and is not in compliance with the Act or 335-4.~~

~~(vv) Solid Wastes and Recyclable Materials Management Act — Chapter 27 of Title 22, Code of Ala. 1975.~~

~~(ww) Solid Waste Disposal Facility (SWDF) — all contiguous land, structures and other appurtenances used for the processing, treatment or disposal of solid waste including landfill cells, and is not a land application unit, surface impoundment, injection well or waste pile as those terms are defined in ADEM Admin. Code 335-13-1-.03.~~

~~(xx) Thirty Day Supply — the amount of scrap tires or processed tire material necessary to provide a 30 calendar day supply for the indicated process.~~

~~(yy) Threat — a condition creating a substantial probability of harm, where the probability and potential extent of harm makes it reasonably necessary to take immediate action to prevent, reduce, or mitigate damage to persons, property, the environment, natural resources, or the public health and safety.~~

~~(zz) Tire Chips — A processed tire material resulting from the shredding or chopping of whole scrap tires whose pieces have a basic geometrical shape and are generally between~~

~~one half (0.5) inches and two (2) inches in size and have most of the wire removed.~~

~~(aaa) Tire Dealer — a person engaged in the sale of tires to the consumer, whether or not mounted on a rim or wheel.~~

~~(bbb) Tire Derived Fuel (TDF) — a scrap tire or processed tire material intended for use as fuel.~~

~~(ccc) Tire Materials — either scrap tires, processed tire material, or both.~~

~~(ddd) Tire Shreds — A processed tire material resulting from the shredding or chopping of whole scrap tires whose pieces have a basic geometrical shape and are generally between two (2) inches and twelve (12) inches in size.~~

~~(eee) Used Replacement Tire or Used Tire — a pneumatic tire that is capable of reuse as a tire, directly or following repair, regrooving, or retread, excluding processed tire material, end use products or by products derived from scrap tires, that meets all of the following requirements:~~

~~1. If a tire is designed for highway use it shall still have more than two thirty seconds (0.0625) inch of tread.~~

~~2. The tire is stored in a rack or a stack, but not in a pile, in a manner consistent with National Fire Protection Association guidelines for tire storage, as well as in a manner that minimizes vector breeding.~~

~~3. The tire is stored in a manner to allow inspection of each individual tire.~~

~~(fff) Warranty Tire — a scrap tire resulting from the replacement of a tire at no or reduced cost to the consumer, under a manufacturer's or other warranty, due to damage to the tire while mounted on a vehicle.~~

~~(ggg) Whole Tire — a scrap tire that has been removed from a rim but which has not been processed.~~

Author: James L. Bryant, M. Gavin Adams, Adam N. Rhodes

Statutory Authority: Code of Ala. Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004.

Amended: Filed February 3, 2007; effective April 3, 2007.

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

Amended: Published ; effective .

335-4-1-.02

Definitions.

For the purpose of these rules, the following words and phrases shall have the meanings given to them in this Rule and as given by law unless the context of 335-4 indicates differently.

(a) Accumulation - any of the following activities related to scrap tires at a particular location:

1. The amassing or gathering of scrap tires, for whatever purpose, not in accordance with the Act and 335-4, in a manner that poses a threat to human health and the environment.

2. The amassing or gathering of scrap tires by a permitted processor, registered receiver, or permitted landfill or solid waste disposal facility.

(b) Act - the "Alabama Scrap Tire Environmental Quality Act," Act No. 2003-332, Code of Alabama 1975, §22-40A-1 et seq.

(c) Approved - authorized, certified, permitted by, or meets standards of a regulatory authority.

(d) Baling - a method of volume reduction in which whole tires are compressed into bales.

(e) Beneficial Use of Processed Tire Material - the processed scrap tire material should meet all of the following conditions:

1. It must provide a functional benefit;

2. It must substitute for the use of a virgin material, conserving natural resources that would otherwise need to be obtained through practices, such as extraction;

3. It must meet relevant product specifications, regulatory standards or design standards when available, and when such standards are not available, the processed tire material is not used in excess quantities.

(f) Centers for Disease Control and Prevention (CDC) - an agency of the U.S. Department of Health and Human Services whose function is developing and applying disease prevention and control, environmental health, and health promotion and education activities designed to improve the health of the people of the United States.

(g) Cleanup - the cleaning up, remediation, control, or removal of scrap tires from the environment.

(h) Closure Plan - the plan for closing a processing facility prepared in accordance with 335-4-6-.06(b).

(i) Consumer - either a retail purchaser or a vehicle dealer who buys a tire to be installed on a vehicle for resale. A wholesale purchaser who buys tires for resale is not considered a consumer.

(j) Current Closure Cost Estimate - the most recent of the estimates prepared in accordance with 335-4-8-.03(2).

(k) Department or ADEM- the Alabama Department of Environmental Management as established by Code of Alabama, 1975, §22-2-1 or its successor organization having similar responsibility.

(l) Department of Public Health (ADPH) - the Alabama Department of Public Health as defined by Code of Alabama 1975, §22-2-1, et seq, as amended.

(m) Director - the Director of ADEM or a duly authorized representative.

(n) Disposal - the deposit of a tire in a permitted solid waste disposal facility or landfill.

(o) Duly Authorized Representative - a person or position designated by a responsible official to act in place of that responsible official. A person or position is a duly authorized representative if:

1. The authorization is made in writing by a responsible official and is submitted to ADEM. The written authorization shall specify the actions or activities the duly authorized representative has approval to conduct for the regulated facility or activity, and shall be updated in writing to accurately identify any changes to the authorized individual or position.

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity.

(p) Enforcement Officer - an employee of ADEM or the person appointed by the County Commission having a delegation agreement with ADEM to enforce the Act and 335-4, enforcement officers under the supervision of the County Enforcement Officer, and persons authorized by law or regulation to enforce the Act and/or 335-4.

(q) Engineer - a person currently registered as a professional engineer with the Alabama Board of Licensure for Professional Engineers and Land Surveyors.

(r) Final Designated Facility - a person, as defined in 335-4-1-.02, indicated on a manifest as the last, or ultimate,

recipient of the scrap tires or processed tire material to be recycled, reused or disposed.

(s) Fuel User - a processor that uses tire-derived fuel as a source of energy and has been permitted by ADEM or a local air pollution control agency for the use of tire-derived fuel.

(t) Ground or Crumb Rubber - a processed tire material resulting from the grinding or other processing of scrap tires whose particles have a diameter of less than 0.375 inches and are 98% wire free by weight.

(u) Individual Scrap Tire Generator - an individual who generates eight (8) or less scrap tires per year from his personal use vehicles. Not included in this definition are tires removed from a vehicle used in commerce or business by an individual, even if that vehicle is owned by the individual.

(v) Innocent Landowner - one who meets all of the conditions of either 335-4-1-.02(v) (1) or 335-4-1-.02(v) (2):

I. an owner of real property upon which there is located an accumulation of scrap tires

i. The scrap tires were disposed of on the property after the owner acquired title to or obtained financial interest in the property, or the scrap tires were disposed of before the owner acquired title to the property and the owner lacked actual knowledge of the waste after conducting reasonable due diligence or title was acquired by intestate succession or devise.

ii. The owner did not have knowledge that the scrap tires were being disposed of on the property, or the owner took steps, including, but not limited to, posting signs to prevent disposal on the property.

iii. The owner did not participate in or consent to the disposal of scrap tires on the property.

iv. The owner did not receive any financial benefit from the disposal of scrap tires on the property.

v. Title to the property was not transferred to the owner for the purpose of evading liability for operating an unauthorized accumulation of scrap tires.

vi. The person or persons responsible for disposing of the scrap tires on the property, in doing so, was not acting as an agent for the property owner or interest holder.

2. The State of Alabama shall be considered an innocent landowner for properties it owns or holds upon which scrap tires are disposed in which disposal the State did not participate nor to which the State consented.

(w) Limited-Use Transporter Permit - a transporter permit that is valid for no longer than ninety (90) days and is only for the remediation of scrap tire sites or as approved by the Department.

(x) Manifest - a form used for identifying the quantity, composition, origin, routing and destination of scrap tires or processed tire material during its transportation from the point of origination to the final designated facility.

(y) Operating Record - a collection of documents relating to the permitting or operation of a scrap tire facility.

(z) Operator - the person responsible for the overall operation of a scrap tire facility, or a part of a facility, with the authority and knowledge to make and implement decisions, or whose actions or failure to act may result in noncompliance with the requirements of 335-4 or the Act.

(aa) Owner - The person who owns a scrap tire facility or part of a scrap tire facility.

(bb) Permit - written authorization granted to a person by ADEM to transport scrap tires in Alabama or to operate a scrap tire processing facility in Alabama.

(cc) Permitted Processor - a person engaged in the processing of tires, as defined in 335-4-1-.02, that has received the proper permit from ADEM. A retreader or sorter is not considered a processor.

(dd) Permitted Transporter - a person who has received the proper transporter permit from ADEM.

(ee) Person - an individual, organization, business, or entity, whether or not organized for profit.

(ff) Processed Tire Material - a material produced from scrap tires through any chemical, physical, or thermal process, including, but not limited to, baling.

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(gg) Processing - for purposes of tire processing, the term includes any of the following activities related to pneumatic tires:

1. The compression and binding of whole tires or processed tire material or baling.

2. Shredding, reducing, or altering tires by any physical, chemical, or thermal process, including, specifically, the burning of tires as fuel.

3. Incorporating whole scrap tires into any end use product or structure where the scrap tire is not deconstructed into its component parts.

4. Punching or stamping products from whole scrap tires or producing processed tire material, crumb, or ground rubber product, whether or not that product is held for sale or used in the facility to produce an end product.

(hh) Recall Tire - a scrap tire resulting from its replacement at no cost to the consumer due to a manufacturing defect and specifically recalled by the manufacturer or by the federal government.

(ii) Registered Receiver - a person who generates or accumulates scrap tires, including the following:

1. Class One Receivers include retail tire dealers, retreaders, and used tire dealers.

2. Class Two Receivers include all other receivers of scrap tires, other than Class One Receivers, that generate or accumulate a minimum of ten (10) scrap tires in a year, specifically including, among others, a component of government, vehicle fleet maintenance or dismantling, rental or sales operations, or other activity that generates scrap tires, whether or not organized for profit.

(jj) Recycling or Reuse - a use of scrap tires or processed tire material other than for land disposal, including, but not limited to, new products, rubber modified asphalt, civil engineering applications, or fuel use.

(kk) Remediation - this term is synonymous with "cleanup."

(ll) Replacement Tire - a pneumatic tire sold to the consumer regardless of whether or not it is mounted on a rim or wheel.

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(mm) Responsible Official - means one of the following:

1. For a corporation, a president, vice-president, secretary, or treasurer of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of the person if the representative is responsible for the overall operation of one or more facilities applying for or subject to a permit/registration and either:

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

(ii) The delegation of authority to the representative is approved in advance by ADEM.

2. For a partnership, a general partner.

3. For a sole proprietorship, the proprietor.

4. For a limited liability company, a person as designated under the authority of Alabama Code, §10A-5A-1.02(2014) et seq, as amended.

5. For a municipality, state, federal, or other public agency, either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(nn) Responsible Party or Responsible Person- with respect to the remediation of any accumulation of scrap tires on any property, a person who meets one or more of the following conditions:

1. A person who deposited the scrap tires on the property, if other than the person who holds the title to or has a financial interest in the property.

2. A person who holds title to or has a financial interest in the property, and who does not qualify as an innocent landowner.

(oo) Retail Tire Dealer - a person selling replacement tires to the consumer whether or not mounted on a rim.

(pp) Retreaded Casing Replacement Tire - a retreaded casing sold to the consumer regardless of whether or not mounted on a rim or wheel.

(qq) Retreader - a person engaged in the retreading of casings.

(rr) Scrap Tire - any pneumatic tire no longer suitable or useable for its original purpose, and, in addition, includes but is not limited to, all tires with a manufacturing defect, except those that are in the process of being returned to the manufacturer for a refund.

(ss) Scrap Tire Commission (STC) - the commission established to review implementation of the Act and to recommend changes of the Act to the Legislature.

(tt) Scrap Tire Environmental Fee - the fee established by the Act, to be collected on the purchase of replacement tires by the Department of Revenue and deposited to the Scrap Tire Fund.

(uu) Scrap Tire Facility or Facility - all contiguous land, structures and other appurtenances thereto used for the accumulation, storage or processing of scrap tires or processed tire material.

(vv) Scrap Tire Fund (STF) - the separate fund established by the Act to fund the cleanup of scrap tire sites, the scrap tire program implemented by ADEM and other activities described in the Act.

(ww) Scrap Tire Site - a site or location where scrap tires or tire pieces are illegally stored or accumulated and is not in compliance with the Act or 335-4.

(xx) Solid Wastes and Recyclable Materials Management Act - Chapter 27 of Title 22, Code of Alabama 1975, as amended.

(yy) Solid Waste Disposal Facility (SWDF) - any landfill or part of a facility where final disposition of solid waste occurs and at which waste may remain after closure.

(zz) Thirty-Day Supply - the amount of scrap tires or processed tire material necessary to provide a thirty (30) calendar day supply for the indicated process.

(aaa) Threat - a condition creating a substantial probability of harm, where the probability and potential extent of harm makes it reasonably necessary to take immediate action to prevent,

reduce, or mitigate damage to persons, property, the environment, natural resources, or the public health and safety.

(bbb) Tire Chips - A processed tire material resulting from the shredding or chopping of whole scrap tires whose pieces have a basic geometrical shape and are generally between one-half (0.5) inches and two (2) inches in size and have most of the wire removed.

(ccc) Tire Dealer - a person engaged in the sale of tires to the consumer, whether or not mounted on a rim or wheel.

(ddd) Tire-Derived Fuel (TDF) - a scrap tire or processed tire material intended for use as fuel.

(eee) Tire Materials - either scrap tires, processed tire material, or both.

(fff) Tire Shreds - A processed tire material resulting from the shredding or chopping of whole scrap tires whose pieces have a basic geometrical shape and are generally between two (2) inches and twelve (12) inches in size.

(ggg) Used Replacement Tire or Used Tire - a pneumatic tire that is capable of reuse as a tire, directly or following repair, regrooving, or retread, excluding processed tire material, end-use products or by-products derived from scrap tires, that meets all of the following requirements:

1. If a tire is designed for highway use it shall still have more than two thirty-seconds (0.0625) inch of tread.

2. The tire is stored in a rack or a stack, but not in a pile, in a manner consistent with current National Fire Protection Association guidelines (including Chapter 33-34 and any other applicable chapters) for storage of rubber tires, as well as in a manner that minimizes vector breeding.

3. The tire is stored in a manner to allow inspection of each individual tire.

(hhh) Vector - any organism that functions as a carrier of an infectious agent between organisms.

(iii) Warranty Tire - a scrap tire resulting from the replacement of a tire at no or reduced cost to the consumer, under a manufacturer's or other warranty, due to damage to the tire while mounted on a vehicle.

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(jjj) Whole Tire - a scrap tire that has been removed from a rim but which has not been processed.

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes.

Statutory Authority: Code of Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. Amended: Filed February 3, 2007; effective April 3, 2007. Amended: Published ; effective .

335-4-1-.03 Communications ~~With ADEM~~with the Department.

(1) All correspondence ~~concerning 335-4 or facilities regulated under 335-4 shall be mailed to ADEM, Scrap Tire Program, P. O. Box 301463, Montgomery, Alabama 36130-1463. All correspondence delivered as packages or overnight or express mail concerning 335-4 or facilities regulated under 335-4 shall be addressed to ADEM, Scrap Tire Program, 1400 Coliseum Blvd., Montgomery, Alabama 36110-2059. Electronic copies of documents may be sent via e-mail to TireMail@adem.state.al.us in accordance with 335-4-1.~~ such as: applications, registrations, certifications, and permits along with any supporting documentation including payment of any fees, as defined in 335-1, shall be completed and submitted electronically via the Department-approved electronic system.

~~02(4).~~

(2) All applications, reports required by permits or registrations, or other information requested by ADEM shall be signed and completed electronically by a responsible official or by a duly authorized representative.

(3) Any person submitting an application or a report under 335-4 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(4) Electronic submittal of reports, applications and other documents required under 335-4 may be sent to ADEM in accordance with Code of Ala-Alabama 1975, §8-1A-1 et seq. The electronic

submittal shall contain all required information and be formatted in an electronic file format approved by ADEM. ~~The documents may be submitted by mail on compact disk or in an e-mail.~~

(a) Any document submitted electronically is assumed by ADEM to have been submitted on behalf of the responsible corporate official having responsibility to certify the submittal in 335-4-1-.023(3).

(b) A written signature is not required for documents sent electronically. The applicant assumes the responsibility of assuring himself that any electronic document submitted on his behalf would have been certified by his written signature as required in 335-4-1-.023(3).

(c) The receipt date for an electronic submittal ~~via e-mail~~ shall be the date and time the document is received by ADEM as indicated by the computer software accepting the submission, in accordance with Code of Ala. Alabama 1975, §8-1A-15.

(d) ~~Fees may be submitted electronically via an e-government contractor when the service becomes available to ADEM~~ All fees may be submitted electronically as provided by the Department.

(e) All governmental organizations, whether federal, state, or other local governing bodies, shall be exempt from the payment of the Scrap Tire Environmental Fee. These organizations shall comply with all provisions of these ~~regulations~~ rules regarding the storage, transport, processing, cleanup, and disposal of scrap tires.

~~(5)~~

~~ADEM may place certain documents resulting from~~

~~implementation~~ Author: James L. Bryant; M. Gavin Adams; Adam N. Rhodes

Statutory Authority: Code of Alabama 1975, §§22-40A-1 et seq., 22-22A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. Amended: Published _____; effective _____.

335-4-1-.04 Penalty for Violations.

No person shall violate any of the provisions of 335-4. Violation of 335-4 shall be considered to be a violation of Code of Alabama 1975, §22-40A-1 et seq., and shall be punishable as provided therein or by the Environmental Management Act, Code of Alabama 1975, §22-22A-1 et seq. ~~of 335-4 on its Internet web~~

~~site at www.adem.state.al.us for viewing or use by the public and regulated persons~~

Author: James L. Bryant, M. Gavin Adams, [Adam N. Rhodes](#).
Statutory Authority: Code of ~~Ala.~~Alabama 1975, §§22-40A-1 et seq.
History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 3, 2007; effective April 3, 2007.

~~335-4-1-.03~~ **Penalty For Violations.**

~~No person shall violate any of the provisions of 335-4. Violation of 335-4 shall be considered to be a violation of Code of Ala. 1975, §22-40A-1 et seq., and shall be punishable as provided therein or by the Environmental Management Act.~~

~~**Author:** James L. Bryant~~

~~**Statutory Authority:** Code of Ala. 1975, §§22-40A-1 et seq., 22-22A-1 et seq.~~

~~**History: New Rule**~~**Amended:** Filed ~~June 30, 2004; effective August 4, 2004~~February 23, 2010; effective March 30, 2010.

~~**Amended:** Published ; effective .~~

335-4-1-.045 **General.**

(1) Gender and Number.

(a) Words in the masculine gender also include the feminine and neuter genders.

(b) Words in the singular include the plural.

(c) Words in the plural include the singular.

(2) All scrap tires shall be processed and disposed of in a manner consistent with the requirements of 335-4.

(3) The following tires are exempt from regulation under 335-4:

(a) Tires used on devices moved exclusively by human power.

(b) Solid tires manufactured from plastic or rubber.

(c) Tires used on medical and health care devices, such as wheelchairs, gurneys, battery-assisted transportation devices and others as may be exempted under 335-4-1-.045(3)(d).

(d) Other tires as may be approved by ADEM on a case-by-case basis.

(4) Scrap Tire Environmental Fee. A tire dealer selling replacement tires, whether or not the tires are mounted on a rim or wheel, shall collect the Scrap Tire Environmental Fee at a rate of one dollar (\$1.00) per tire. The Alabama Department of Revenue (ADOR) shall specify how the fee is to be submitted.

(a) Used tires are subject to the Scrap Tire Environmental Fee.

(b) Recall tires are not subject to the Scrap Tire Environmental Fee.

(c) Warranty tires are subject to the Scrap Tire Environmental Fee, except those replaced at no charge due to a manufacturing defect.

(5) Vector Control Plans. A Vector Control Plan required to be developed by a person remediating scrap tire sites or storing tire materials shall be prepared and implemented to protect public health and welfare by controlling mosquitoes and rodents. The Vector Control Plan may be required to contain all of the following, but at a minimum shall be required to contain (c), (d), (e) and (f) below:

(a) A list of all vectors that may be associated with the scrap tire site or facility.

(b) A description of surveillance and monitoring techniques appropriate for the type of vectors expected, and a schedule for surveillance and monitoring.

(c) A description of preventative treatments, including ~~larvacides~~larvicides and adulticides, and a schedule of the treatments.

(d) A list of the chemicals to be used, including a copy of all labels or ~~Material~~-Safety Data Sheets.

(e) A copy of a contract with a licensed pest control operator who will perform the inspections, treatments, monitoring and surveillance, or a narrative of how the facility will perform these functions.

(f) A legible log of the dates that the pest control operator, or other designated person, applied preventative treatments to scrap tires exposed to the elements.

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(6) Inspection of Facilities or Vehicles.

(a) A receiver, processor, fuel user, processor exempt in 3345-4-3-.02, or transporter shall, upon request of an authorized enforcement officer, permit the enforcement officer to enter, at all reasonable times, property and buildings relating to past, present, and future management of scrap tires and allow the representative to inspect facilities, equipment, vehicles, or the operating record, and to conduct monitoring and sampling activities. The inspections may be unannounced, and a written report prepared by the enforcement officer shall be provided to the authorized representative of the facility.

(b) The facility may be required to prepare certain items for inspection upon the request of an authorized enforcement officer.

(7) Electronic Records and Retention. Electronic versions of records may be maintained in the operating record in accordance with Code of ~~Ala.~~Alabama 1975, §8-1A-12 and must provide that:

(a) The electronic storage medium is of sufficient quality to maintain the record in viewable form ~~for~~within at least five (5) years.

(b) The electronic information is indexed and filed so it is easily accessible to an authorized enforcement officer when reviewing records.

(c) The appropriate electronic viewing device is made available to ADEM upon request to review records. ~~Paper copies of documents larger than 11 inches by 17 inches shall be maintained~~All required documents shall be made available in a format acceptable to the Department upon request.

~~(8) Applicability. These regulations are not applicable to and do not limit the handling, storage or use of new tires or used tires meeting the definition of used tires found in 335-4-1-.01(ccc).~~

~~(9) The Department may grant variances to these regulations~~ (8) The Department may grant variances to these rules in accordance with 335-4-11.

Author: James L. Bryant, M. Gavin Adams, Adam N. Rhodes
Statutory Authority: Code of ~~Ala.~~Alabama 1975, §§22-40A-1 et seq.

History: ~~New Rule: Filed June 30, 2004; effective August 4, 2004. Amended: Filed February 3, 2007; effective April 3, 2007. Amended: Filed February 23, 2010; effective March 30, 2010~~Published _____ ; effective _____ .

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION -
SCRAP TIRE PROGRAM
ADMINISTRATIVE CODE

CHAPTER 335-4-2
SCRAP TIRE SITE REMEDIATION

TABLE OF CONTENTS

335-4-2-.01	Remediation Of Sites
335-4-2-.02	Site Ranking System
335-4-2-.03	Scrap Tire Fund
335-4-2-.04	Remediation Contracting

335-4-2-.01 Remediation Of Sites.

(1) ADEM, ADPH or delegated County Enforcement Officers may access property suspected of containing scrap tire sites for the purpose of evaluation of the threat to public health, the environment and safety.

(2) The responsible party for a scrap tire site shall be responsible for the remediation of the site. If the responsible party is not determined, the landowner shall be responsible for remediation of the site, unless the landowner qualifies as an innocent landowner as defined in 335-4-1-.02.

(3) If ADPH, County Health Departments or CDC determines that a significant threat to public health exists from disease vectors associated with the scrap tire site, ADEM can require the responsible party or landowner through an administrative or civil action to immediately implement vector control at the site. If the responsible party or landowner refuses to implement vector control measures, STF monies may be used for this purpose. ADEM may recover all costs associated with the vector control actions pursuant to a determination of a public health threat.

(4) Unless approved in advance by ADEM or the scrap tire site meets the requirements outlined in 335-4-2-.01(6), a person remediating a scrap tire site, whether on their own initiative or at the direction of ADEM, ~~shall submit a Remediation Plan prepared by an engineer which shall~~ must submit a Remediation Plan prepared by an engineer which must be used to direct remedial actions.

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(5) If required by ADEM, the Remediation Plan ~~shall be approved by ADEM prior to initiating action, and provide for~~ must be approved by ADEM prior to initiating action, and must include the following as applicable:

(a) Remove all scrap tires from the site and transport to a permitted processor, solid waste transfer station or SWDF, unless otherwise approved by ADEM. Verification of removal and transport to an authorized facility shall be provided to ADEM. All other regulated solid waste at the site may be required ~~may be require~~ to be removed in the same manner.

(b) Removal or treatment of substances that are a threat to human health and the environment that may have been released to the environment from accumulation, burning or processing scrap tires and other materials.

(c) Restoration of the site by placing backfill in excavated areas, sloping and landscaping to minimize erosion and establish a vegetative cover over the site, if required.

(d) Securing the site by a barricade or other device and posting signs indicating the dump site is closed and the location of the nearest SWDF when considered necessary by ADEM. The method or methods of securing the site shall be approved by ADEM.

(e) ~~Methods~~ Estimated cleanup amounts along with the methods to remediate the site and to remove scrap tires and other wastes, to include:

1. An estimate of the quantity of whole tires, scrap tire material, or processed tire material to be removed.
2. An estimate of the type and quantity of other regulated wastes to be removed.
3. A list of equipment to be utilized.
4. Any processing of scrap tires on-site, and storage of processed tire material.

(f) Vector Control Plan.

(g) Stormwater runoff control.

(h) Access control.

(i) Fire protection measures.

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(j) Key staff involved in the supervision and performance of the proposed work.

(k) A schedule of proposed work.

(l) Disposition of the scrap tires, processed tire materials and other materials removed from the site.

(m) Site restoration.

(n) The total cost of remediation, with a breakdown of costs estimated by the contractor, if the cost of remediation is to be paid from the STF.

(6) A Remediation Plan prepared by an engineer is not required when the total number of scrap tires at a site is less than 500. The responsible person or legal property owner at a site with less than 500 scrap tires shall submit a general description of work to be performed, the disposition of the scrap tires and other solid waste removed from the site, and restoration of the site.

~~(7) Prior to September 30, 2006, a person holding an interest in real property upon which scrap tires were discarded was allowed to remediate that property without obtaining a permit from ADEM to transport scrap tires to a permitted processor or SWDF. Remediation of property by such person now requires a limited-use transporter permit to transport tire materials.~~ A landowner or the landowner's duly authorized representative who chooses to personally remove scrap tires or scrap tire material from a scrap tire site shall obtain a limited-use transporter permit, as defined in 335-4-1-.02, from ADEM to transport them to a permitted scrap tire processor or SWMF.

Author: James L. Bryant; Michael J. Cruise

Statutory Authority: Code of ~~Ala.~~Alabama 1975, §§ 22-40A-1 et seq.

History: **New Rule:** Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Published ; effective .

335-4-2-.02 Site Ranking System.

A site ranking system shall be used to determine priority for remediating existing scrap tire sites utilizing STF monies. Higher ranking sites will be remediated before lower ranking sites. Sites with greater than 25,000 tires shall qualify as

large sites and sites with 25,000 tires or less shall qualify as small sites. Large sites and small sites shall be ranked separately utilizing the factors set out below.

(a) Large Scrap Tire Sites. The following factors shall be considered in determining priority ranking of large sites:

1. Human and ~~Animal Infection or Disease Threats~~ animal infection or disease threats, including:

(i) The presence or threat of vectors that may cause the following infections or diseases:

(I) West Nile Virus.

(II) Eastern Equine Encephalitis.

(III) Other infection or disease threats as determined in conjunction with ADPH and CDC.

(ii) The presence of an infection or disease threat in 335-4-2-.02(a)1. as reported by ADPH or CDC, in the form of:

(I) Human mortality confirmed in area.

(II) Human infection confirmed in area.

(III) Animal mortality confirmed in area.

(IV) Animal infection confirmed in area.

2. Estimated Quantity of Scrap Tires.

(i) Greater than 3,000,000.

(ii) Greater than 1,000,000.

(iii) Greater than 250,000.

(iv) Greater than 25,000.

3. Proximity of a Scrap Tire Site to:-

(i) Schools, hospitals, and nursing homes.

(ii) Churches, businesses, residential areas, recreational areas and other populated structures or areas.

-

(iii) Public water supply systems or sources, or coastal area beaches and dunes.

(iv) Gas pipelines, electrical power lines, phone lines, and cable lines.

(v) Roadways, railroads, and other transportation resources.

(vi) Other structures or areas.

4. Fire Hazards.

(i) Lack of availability of adequate fire protective equipment or services.

(ii) Height and width of scrap tire pile.

(iii) Inadequate fire lanes.

(iv) Inadequate access control.

(b) Small Scrap Tire Sites. The following factors shall be considered in determining priority ranking of small sites.

1. Human and animal infection or disease, including:

(i) The presence of an infection or disease as reported by ADPH or CDC, in the form of West Nile Virus, Eastern Equine Encephalitis, or other infection or disease as determined by ADPH or CDC, as follows:

(I) West Nile Virus.

(II) Eastern Equine Encephalitis.

(III) Other infection or disease.

2. Estimated Quantity of Scrap Tires.

(i) Greater than 15,000 to 25,000.

(ii) Greater than 5,000.

(iii) Greater than 1,000.

(iv) 1,000 or less.

3. Proximity of a Scrap Tire Site to:

-

(i) Schools, hospitals and nursing homes.

(ii) Churches, businesses, residential areas, recreational areas, and other populated areas or structures.

(iii) Public water supply systems or sources, or coastal area beaches and dunes.

4. Fire Hazards.

(i) Lack of availability of adequate fire protective equipment or services.

(ii) Location and composition of scrap tire materials piles.

5. Other factors.

(c) Mixed Waste Sites. In the case of sites with mixed wastes, the following may apply:

1. Sites with mixed wastes may be determined to be ineligible for cleanup utilizing the STF if scrap tires and tire materials are a small percentage of wastes present. The STF may be utilized to clean up the entire site, only the portion of the site that contains tires/tire materials, or only the tires/tire materials present.

2. Sites with mixed waste may be given lower priority for cleanup than other scrap tire sites.

3. Sites for which the STF has been utilized to perform a previous cleanup may be given lower priority than other sites. Utilizing STF funds for cleanup of a site that was previously remediated utilizing the STF will be at the discretion of ADEM, and may be determined to be the responsibility of the landowner.

(d) For small sites, the Department may utilize processes available under state law for contractor selection and contract execution.

(e) The Department may, at its discretion, apply any or all provisions of 335-4 relating to large site cleanups to any small site cleanup.

(f) ADEM shall review the site ranking and adjust the scrap tire site cleanup priority list at intervals determined by the Department. If no new sites are added during the previous year, the priority list will not be adjusted unless additional information on an existing site affects its ranking. The

priority list shall be adjusted when remediation has been completed on a site, and it is removed from the priority list.

Author: James L. Bryant, M. Gavin Adams, Brent A. Watson;
Michael J. Cruise. ~~Watson~~

Statutory Authority: Code of ~~Ala.~~Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Filed February 23, 2010; effective March 30, 2010. Amended: Published ; effective .

335-4-2-.03 Scrap Tire Fund.

The STF may be used by the Department to pay for the cost of remediation at a scrap tire site on the Site Ranking System.

(a) A scrap tire site will be eligible for remediation utilizing the STF if either of the following occurs:

1. The responsible party cannot be identified, and the site is located on property owned by an innocent landowner; or
2. The responsible party has been identified and refuses to remediate the site.

(b) If the responsible party refuses to remediate a scrap tire site after notice from ADEM, and the STF is used to remediate the site, ADEM may through a civil action in circuit court recover all costs incurred during the site remediation. Recoverable costs may include, but are not limited to, legal expenses for remediation or cost recovery, utilization of remediation contractors, vector control, disposal costs, administrative costs, and other associated costs.

(c) An innocent landowner shall not be liable for remediation costs if that person works cooperatively with ADEM to remediate the site. The innocent landowner shall ~~do all of~~ complete the following:

1. Provide site access to ADEM or its representatives.
2. Restrict site access.
3. Provide all information the landowner may have regarding the source(s) of the scrap tires, and cooperate with ADEM in enforcement of the Act and 335-4 in determining the responsible party and recovering cost of remediation.

4. Remove other wastes or impediments to cleanup, if required.

5. ~~Be in compliance~~Comply with the regulatory requirements of 335-4.

(d) Obligation of Funds.

1. STF monies for remediation of sites shall be obligated on an annual basis from funds collected the previous fiscal year by ADOR, funds not previously expended, or funds recovered under 335-4-2-.03(b).

2. Once a site has qualified for remediation using STF monies, remediation shall be continuously funded until the site is closed.

(e) Nothing in 335-4 shall establish liability or responsibility on the part of ADEM, the STC or the State of Alabama to pay remediation costs from a source other than the STF, nor to make payments for remediation costs if the STF is insufficient to do so.

(f) ADEM, the STC or the State of Alabama shall have no liability or responsibility if the owner or operator defaults in payment for remedial actions undertaken by the owner or operator to remediate a scrap tire site.

(g) If funds from a financial assurance instrument are deposited in the STF in accordance with 335-4-8-.01(4), those funds shall be used exclusively for closure or remediation of the site or facility covered by the financial assurance instrument. The site or facility does not have to be in the Site Ranking System to utilize the funds deposited to the STF. Any funds remaining in the STF after completion of closure or remediation of the site or facility shall remain in the STF for use as allowed by 335-4-2-.03 for closure or remediation at other sites on the Site Ranking System. If there are insufficient funds from the financial assurance instrument to complete closure or remediation, the STF shall be used and ADEM may seek the recoverable cost as described in 335-4-2-.03(b) through a civil action in circuit court.

Author: James L. Bryant, M. Gavin Adams, Brent A. Watson; Michael J. Cruise.

Statutory Authority: Code of Ala-Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 27, 2007; effective April 3,

2007. **Amended:** Filed February 23, 2010; effective March 30,
2010. **Amended:** Published ; effective .

335-4-2-.04 Remediation Contracting.

(1) Approved Contractors List.

(a) For large sites, remediation contractors who wish to perform work under the STF must demonstrate to the satisfaction of ADEM through the submittal of a technical proposal using ADEM Form 530, and any other documents as may be required by ADEM, that they have adequate staff and resources to perform scrap tire site remediation and that they have the legal standing to perform the work. The remediation contractor must provide services that include, but are not limited to, preparation of a remediation plan, site assessment, site security, excavation or processing of scrap tires or tire materials, vector control, transportation of tire materials, and site closure.

(b) ADEM will ~~provide notice of requests for technical proposals from remediation contractors by publication of a legal advertisement.~~ place a notice on the Department's website requesting technical proposals from prospective remediation contractors.

1. Completed proposals shall be independently evaluated by members of a Contractor Review Committee to establish an approved contractor list. The Review Committee shall consist of three (3) ADEM staff appointed by the Director and two (2) members of the STC appointed by the Chairperson of the STC. This process shall be repeated at intervals determined by ADEM to provide interested firms with the opportunity to submit qualifications to be included on the approved contractors list.

2. Contractors that have been approved will not be required to resubmit except under the provisions of 335-4-2-.04(1)(c)._

3. Contractors who submitted technical proposals but were not approved may resubmit in response to the next request for proposals. Contractors will be notified in writing of the reasons why they were not approved.

4. A contractor shall not be eligible for payment of expenses from the STF if he is not on the approved contractors list._

5. Misrepresentation of any information in the technical proposal shall be cause for disqualification of the firm from

further consideration or removal of the firm from the approved list.

(c) Remediation contractors that fail to satisfactorily maintain the requirements of 335-4-2-.04(1) will not be approved to perform remediation work utilizing the STF until a demonstration is made that satisfies the requirements of 335-4-2-.04(1).

1. A contractor may lose authorization to perform work for the STF if, due to the quality or timeliness of work performed by the contractor, progress in completing actions at STF-funded sites has been significantly delayed or inhibited.

2. A contractor removed from the approved contractor list may submit a request for evaluation as an approved contractor at the next notice of request for proposals as described in 335-4-2-.04(1)(b). This contractor shall satisfactorily demonstrate that steps have been taken to address the causes for losing approval. A satisfactory evaluation by the Contractor Review Committee will enable the contractor to perform STF work. Contractors will be notified in writing if they are approved.

(d) A remediation contractor may lose authorization to perform work under the Scrap Tire Fund if either of the following occurs:

1. The contractor is determined to be in significant noncompliance with any environmental permit, regulation, or statute; or

2. The contractor ~~is determined by the Department to be failing~~fails to meet applicable requirements of public contracts executed on behalf of the State of Alabama and its agencies, as determined by the Department.

(e) The approval of a remediation contractor shall in no way establish liability or responsibility on the part of ADEM, STC or the State of Alabama in ~~regards~~regard to the services provided by the contractor or circumstances which may occur as a result of the services, nor guarantee that the contractor will receive STF funded work.

(2) Contractor Selection.

(a) Once a scrap tire site has been determined by ADEM to be eligible for STF remediation, ADEM shall issue a Request for Remediation Plans from those contractors on the approved contractor list. The Request for Remediation Plans shall identify the site, scope of work, and a deadline for submittals.

(b) Interested remediation contractors shall submit, as described in 335-4-1-.03, one (1) set ~~three (3) sets~~ of its Remediation Plan, prepared in accordance with 335-4-2-.01(5) for closure of the scrap tire site.

(c) Not later than thirty (30) days after the deadline for accepting remediation proposals in 335-4-2-.04(2)(a), ADEM shall select the remediation contractor submitting the lowest bid meeting all requirements of the scope of work in the Request for Remediation Plan.

(d) A contract between ADEM and the remediation contractor will be executed in compliance with State of Alabama contracting procedures. The contract shall contain:

1. Detailed scope of work.
2. Schedule for completion of the work.
3. Recordkeeping and reporting requirements. _
4. Maximum amount of remediation cost reimbursement.
5. Methods of payment to the contractor. _
6. Reserve to be held until completion of the work.
7. Provisions for removing the contractor for inadequate performance.

(3) Contractor Performance.

(a) A remediation contractor performing work payable by the STF shall not be required to obtain a processor permit.

(b) If the costs of completing the activities in the approved scope of work are estimated to exceed the amount of funds obligated from the STF, an amended Remediation Plan shall be submitted that details the cost increases proposed. ADEM shall review the amended Plan, and, if costs projections are justified, shall approve the amended Remediation Plan, modify the approved scope of work, and obligate more funds from the STF before the additional work may proceed. However, there shall be a presumption against allowing amendments to Remediation Plans for failure to adequately estimate costs. To justify increased cost projections, extraordinary reasons must be shown to exist that were not known at the time the scope of work was approved by ADEM.

(c) The remediation activities shall be implemented consistent with the approved Remediation Plan in a manner acceptable to ADEM ~~in order~~ for the contractor to be reimbursed for all costs associated with those activities.

Author: James L. Bryant, M. Gavin Adams, Brent A. Watson;
Michael J. Cruise

Statutory Authority: Code of ~~Ala.~~Alabama 1975, ~~§~~§22-40A-1 et seq.

History: **New Rule:** Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Filed February 23, 2010; effective March 30, 2010. **Amended:** Published ; effective .

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION -
SCRAP TIRE PROGRAM
ADMINISTRATIVE CODE

CHAPTER 335-4-3
REGISTRATION AND PERMITTING

TABLE OF CONTENTS

335-4-3-.01	Registration Requirements
335-4-3-.02	Requests For Exemption
335-4-3-.03	Requirement For A Permit
335-4-3-.04	Permit Applications
335-4-3-.05	Issuance Of Permits
335-4-3-.06	Changes To Permits
335-4-3-.07	Enforcement Under The Act

335-4-3-.01 Registration Requirements.

~~(1) Scrap Tire Sites. All persons who are not registered receivers of scrap tires or permitted processors and who have more than 100 scrap tires on their property as of September 1, 2003, shall register with ADEM no later than September 1, 2004 using ADEM Form 541 and provide an estimate of the number of scrap tires and their location.~~

~~(2) The following scrap tire facilities are required to register with ADEM. The following scrap tire facilities are required to register with ADEM using ADEM Form 537 via the Department-approved electronic system:~~

~~(a) Class One and Class Two Receivers.~~

~~(b) Fuel users.~~

~~(c) Facilities that produce an end-use material or product from ground or crumb rubber derived from scrap tires purchased from another facility.~~

~~(d) Facilities using the component parts of tire materials as a substitute raw material.~~

~~(3)~~

(2) Scrap tire facilities, as described in 335-4-3-.01(1), shall apply for a registration at least forty-five (45) days prior to receiving tire material. Upon receipt of a complete application Owners or operators of scrap tire facilities in existence on the effective date of 335-4 shall register with ADEM within forty-

~~five (45) days of the effective date of 335-4 or not later than September 15, 2004. New scrap tire facilities desiring to begin operation after the effective date of 335-4 shall register at least forty five (45) days prior to receiving tire material. Once ADEM has reviewed the registration form,~~ ADEM shall provide the facility with its registration number and the accumulation limit of tire materials ~~it~~that the facility may accumulate or store.

(3) All new registrations issued after the effective date of 335-4-3-.01(3), will be valid for three (3) years.

(4) All existing registered facilities, except for fuel users, as of the effective date of 335-4-3-.01(3) and as described in 335-4-3-.01(1), shall submit an application for registration renewal in accordance with 335-4-1-.03(4) within one hundred eighty (180) days of the effective date of these rules. Facilities that do not submit an application for registration renewal within one hundred eighty (180) days of the effective date of these regulations, shall have their registration terminated.

(5) Registered facilities may request a modification to the registration approval to increase the accumulation limit of tire materials they may accumulate or store. The ~~Registered facilities may request a modification to the registration approval if they desire to increase the accumulation limit of tire materials they may accumulate or store.~~ This request shall be submitted to ADEM at least forty-five (45) days prior to the proposed change in operations utilizing ADEM Form 537 via the Department approved electronic system. ~~Approval of the. Approval of this~~ modification shall be at the sole discretion of ADEM.

~~(5)~~
(6) Registrations are not transferable. If a registered facility has a change in ownership, the new owner shall ~~register~~apply, as described in 335-4-1-.03, for a new registration at least thirty (30) days prior to assuming ownership or operational control of the facility, where such change was foreseen and advance notification was practical.

~~(6)~~
(7) If a scrap tire receiver is found to be in significant noncompliance with 335-4, the registration for the receiver may be ~~terminated or denied by the Director. The receiver may request an informal hearing with ADEM to discuss the termination or denial by ADEM. Following this hearing, the Director shall advise the receiver of his~~ revoked and deactivated by the Director. Within thirty (30) days of the date of the revocation, the receiver may request an informal hearing with ADEM to discuss the revocation by ADEM. Following this hearing, the

Director shall advise the receiver of the final determination on the registration.

~~(7)~~

(8) Registered facilities that discontinue receiving, processing or utilizing tire materials shall notify ADEM, as described in 335-4-1-.03, within thirty (30) days of a change in operations and request that their registration be terminated. All tire materials shall be removed from the facility before ADEM will terminate the registration.

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes.

Statutory Authority: Code of ~~Ala.~~Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. Amended: Filed February 27, 2007; effective April 3, 2007. Amended: Filed February 23, 2010; effective March 30, 2010. Amended: Published ; effective .

335-4-3-.02 Requests For Exemption.

Facilities described in 335-4-3-.01(1) ~~in 335-4-3-.01(2)~~ (c) and (d) may request an exemption as a processor.

(a) The request shall be made ~~on~~ using ADEM Form 537 via the Department approved electronic system. A person applying for an exemption shall submit fees as required in 335-1-6, unless expressly exempted by 335-4.

(b) ADEM will terminate review of the request and notify the applicant of any deficiency if sufficient information is not submitted with the application.

(c) After review of the complete application for exemption, ADEM shall notify the processor if the application is approved or denied ~~application for exemption, ADEM shall notify the processor if the application is approved.~~

1. The ADEM exemption shall specify the accumulation limit of tire materials that may be stored at the facility, and other special handling requirements.

2. An exemption granted by ADEM shall be valid for a period of three (3) years. Application for renewal of the exemption shall be made on ADEM Form 537 and submitted to ADEM at least forty-five (45) days prior to the expiration date of the current exemption.

3. If processes or conditions that warranted an exemption for the facility change during the term of the exemption, the facility shall notify ADEM via the Department approved electronic system within thirty (30) days of the change. ADEM may revoke the exemption if the ~~within thirty (30) days of the change. ADEM may terminate the exemption if~~ changes reported by the facility require a permit.

(d) An exemption may be transferred to a new owner or operator by submitting, as described in 335-4-1-.03, an application using ADEM Form 330 and following the procedures described in 335-4-3-.06 (a) ~~an application using ADEM Form 330. Procedures in 335-4-3-.06 (a) must be followed.~~

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes.

Statutory Authority: Code of ~~Ala.~~Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Published ; effective .

335-4-3-.03 Requirement For A Permit.

The following facilities ~~shall obtain~~ require a permit from ADEM to transport or process tire materials, except as provided in 335-4-3-.03 (c) and (d):

(a) Transporters of Scrap Tires. Transporters of scrap tires who transport more than eight (8) scrap tires at a time shall obtain a transporter permit. ~~A transporter who processes scrap tires shall obtain a transporter permit and a processor permit.~~

(b) Processors of Scrap Tires. Permits shall be issued for processing based on the activities performed. The classification of processors shall be:

1. Class One Processor. Processors who shred, size-reduce or alter tires, punch or stamp tire materials to produce an end product or produce products from ground or crumb rubber at their facility. ~~Processors who shred, size-reduce or alter tires, punch or stamp tire materials to produce a end-product, or produce products from ground or crumb rubber at their facility. These shall be known as Class One processors.~~

2. Class Two Processor. Processors who only shred, size reduce or alter tires at their facility. ~~Processors who only shred, size-reduce or alter tires at their facility, and who shall be known as Class Two processors.~~

3. ~~Mobile processors, who shall be known as~~ Class Three Processor. Processors who shred or alter scrap tires at different locations.

(c) The following transporters of scrap tires are exempt from the requirement to obtain a permit as required by this rule from ADEM:

1. Class One and Class Two Receivers transporting tires received or generated from their own operations. For Class Two Receivers, this exemption applies only to scrap tires they generate and does not apply to scrap tires generated by other persons.

2. Persons transporting less than eight (8) scrap tires at one time to a registered receiver, permitted processor or SWDF.

3. State, county, or municipal vehicles transporting illegally disposed tire materials removed from property owned or controlled by the governmental unit.

(d) The following processors of scrap tires are exempt from the requirement to obtain a permit as required by this rule from ADEM:

1. Registered Class One and Class Two Receivers and permitted transporters who evaluate tires to determine suitability for reuse as used tires or as casings for retreading.

2. Processors described in 335-4-3-.01(1)(b) to (d) ~~in 335-4-3-.01(2)(b) to (d) and fuel users~~ that are properly registered and have received the necessary exemptions in 335-4-3-.02.

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes.

Statutory Authority: Code of Ala. Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Filed February 23, 2010; effective March 30, 2010. Amended: Published ; effective .

335-4-3-.04 Permit Applications.

~~An existing facility in operation on the effective date of these regulations that must obtain a permit shall submit a complete application not later than 120 days after the effective date of these regulations. A facility not in operation on the effective date of these regulations shall submit a complete permit~~

~~application at least 60~~A facility requiring a scrap tire permit shall submit a complete permit application at least sixty (60) days prior to receiving tire materials for transportation or processing.

(a) ~~Transporters of Scrap Tires~~. Applicants for a permit to transport tire materials shall electronically submit ADEM Form 538.

(b) ~~Processors of Scrap Tires~~. Applicants for a permit to process tire materials shall electronically submit ADEM Form 540.

Author: James L. Bryant, M. Gavin Adams, Adam N. Rhodes.

Statutory Authority: Code of Ala.Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Published ; effective .

335-4-3-.05 Issuance Of Permits.

~~(1) When ADEM is satisfied that an application is complete it shall make a determination to issue or to deny a permit for the operations or activities described in the application. ADEM shall notify the applicant of this determination. If the determination is to issue, reissue, or modify a permit, ADEM shall prepare a draft permit. Following review of the draft permit by the applicant and resolution of any comments received from the applicant, the permit shall be issued by ADEM. Upon receipt of a complete application ADEM shall issue, renew, modify, or deny a permit for the operations or activities described in the application. If denied, ADEM shall notify the applicant of this determination.~~

(2) A determination may be made by the ~~director~~Director to deny a permit or to delay consideration of a permit application if the applicant owns or operates facilities within the state that are in substantial or continuing noncompliance with the Act or a permit issued by ADEM, as determined by ADEM, until the noncompliance is corrected or, if the applicant could not comply with the permit if issued. ADEM shall notify the applicant of this determination.

(3) Duration of Permits.

(a) Transporter permits shall be valid for three (3) years.

(b) Limited-use transporter permits shall be valid no longer than ninety (90) days. If a permit is required for longer than ninety (90) days, then the transporter shall apply for a transporter permit as required in 335-4-3-.03.

(c) Processor permits are valid for five (5) years.

~~(e)~~
(d) Permits are subject to revocation or termination under 335-4-3-.06(c).

(4) Continuation of Expiring Permits. The terms and conditions of an expiring scrap tire permit are automatically extended pending the issuance of a new permit if the owner/operator~~issuance of a new permit if the permittee~~ has submitted a complete application for reissuance of a permit in accordance with 335-4-3-.04 at least ~~120~~sixty (60) days prior to permit expiration, and the delay in permit issuance has not been caused by the actions of the ~~permittee~~owner/operator. A complete application is one that contains all items required in the permit application and its accompanying instructions, and the items contain enough information to allow ADEM to conduct a detailed review of the application. Failure to submit a complete application and reapply at least ~~120 days prior to permit expiration may result in expiration before reissuance. If ADEM determines that it cannot reissue an existing permit prior to its expiration date because a completed application was not received in time to reissue the permit, ADEM shall notify the permittee forty five (45) days prior to the expiration date that the permit will expire and may subject the permittee to enforcement action as described in 335-4-3-.sixty (60) days~~ sixty (60) days prior to permit expiration may result in the permit expiration before reissuance.

~~07.~~
Author: James L. Bryant. Adam N. Rhodes.
Statutory Authority: Code of Ala.Alabama 1975, §§22-40A-1 et seq.
History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Published _____ ; effective _____.

335-4-3-.06 Changes To Permits.

Subject to notice, hearing, and appeal rights of the ~~permittee~~owner/operator, ADEM may transfer, modify, or revoke and reissue a scrap tire permit during its term for cause, including but not limited to, the causes listed in 335-4-3-.06.

~~(a)~~ Permit Transfers. A permit may be transferred to a new owner or operator only if the permit has been modified or

revoked and reissued through electronic submission of a complete application to ADEM utilizing the appropriate ADEM Form and payment of fees in 335-1-6, unless new owner or operator is exempted from the payment of fees by 335-4.

1. If there ~~is to be no change in the operation of the scrap tire facility that affects the permittee's ability to comply with the permit and if there are to be~~ no changes in the operation of the scrap tire facility that affects the owner's/ operator's ability to comply with the permit and if there are no changes in the design or operation of the facility, the permit may be transferred, provided that all of the following conditions are met:

(i) The current ~~permittee and the prospective permittee shall apply for a transfer of~~ owner/operator and the prospective owner/operator shall electronically submit a complete application to transfer the permit at least thirty (30) days in advance of the change in owner or operator utilizing ADEM Form 330.

(ii) The application shall include a notarized written agreement between the existing and new permittees containing the specific date for transfer of permit responsibilities, coverage and liability.

(iii) Financial assurance requirements of 335-4-8 have been met by the new ~~permittee~~ owner/operator and ADEM has been provided copies of and approved the financial instruments utilized.

2. If the transfer ~~would result~~ results in changes to the design or operation of the facility, the transfer of ownership may not commence until a new application has been submitted electronically to ADEM as required by ~~to ADEM in~~ 335-4-3-.04 and the permit has been modified accordingly.

3. All persons having or claiming an interest in the real property where the facility is located shall be notified by the applicant that ~~change of permittee~~ of owner/operator has been requested. The permit shall not be transferred until the applicant has provided verification to ADEM that these notices have been received by those persons.

(b) - Modification or Revocation and Reissuance of Permits. When ADEM receives information or an application for modification with fees as required in 335-1-6 ~~in 335-1-6, or conducts a review of the permit file,~~ it may determine whether or not cause for modification or revocation and reissuance exists. ADEM may modify or revoke and reissue the permit accordingly and may request an updated application ~~if necessary. The permittee may~~

~~submit an.~~ The owner/operator shall submit a complete application for modification or revocation and reissuance and shall provide justification of the request and clearly outline what parts of the permit are to be modified. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit may be reissued for a new term. If cause does not exist, ADEM shall not modify or revoke and reissue the permit.

1. The following are causes for modification:

(i) Material and substantial alterations or additions to the permitted facility that occurred after permit issuance.

(ii) Receipt of information not available at the time of permit issuance (other than revised regulations).

(iii) Changes by statute, promulgation of new or amended rules, or judicial decisions.

(iv) Changes to General Permit ~~Provisions:~~Provision.

(I) Administrative and informational changes.

(II) Changes to the financial assurance instruments.

(III) Changes to remove permit conditions that are no longer applicable.

(v) Changes to General Facility Standards:

(I) Changes to the amount or volume of tire materials that may be accumulated, stored, or processed that occur without a change or addition of processing equipment.

(II) Changes in procedures for maintaining the operating record.

(vi) A permit may be modified to correct typographical or technical mistakes associated with establishing permit conditions.

(vii) Other causes for modification not listed in 335-4-3-.06(b)1.(i) to (vi) may be considered by ADEM. The applicant or ADEM must justify why this modification is necessary.

2. Request for modification shall be made at least forty-five (45) days prior to the commencement of alterations or other changes that may affect operation of the facility.

(c) Termination of Permits or Denial of Permit Application~~or Denial of Permits~~. Any of the following are causes for terminating a permit during its term, or for denying an application for permit reissuance:

1. Substantial or continuing permit noncompliance.
2. The permittee owner's/operator's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee owner's/operator's misrepresentation of relevant facts.
3. A change in a condition that requires either a temporary or a permanent cessation of activities controlled by the permit.
4. The permittee owner's/operator's failure to submit a complete application electronically to include additional information or items requested by ADEM.
5. A determination that continued operation of the facility endangers human health or the environment.
6. The permittee owner's/operator's failure to submit a complete renewal application electronically at least 120 days prior to permit expiration.
7. The permittee owner's/operator's failure to maintain financial assurance as required in 335-4-8.

(d) Permit Suspension. When ~~a permittee is not in compliance with a permit, the director~~ an owner/operator is not in compliance with a permit, the Director may suspend the permit until the permittee has taken the action(s) necessary to achieve compliance with the permit.

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes.
Statutory Authority: Code of ~~Ala.~~ Alabama 1975, §§22-40A-1 et seq.
History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 27, 2007; effective April 3, 2007. Amended: Published ; effective .

335-4-3-.07 Enforcement Under The Act.

(1) A permit issued by ADEM is a permit for the purpose of the Act and is enforceable under 335-4-1-.034. Violations of the conditions of a permit are subject to one or more of the

following enforcement actions under the Act or the Environmental Management Act:

(a) An administrative order requiring abatement, compliance, mitigation, cessation of activity, cleanup, or penalties.

(b) An action for damages.

(c) An action for injunctive relief.

(d) An action for penalties.

(2) An order issued by ADEM shall specify a reasonable time within which compliance shall be achieved.

Author: James L. Bryant. Adam N. Rhodes.

Statutory Authority: Code of ~~Ala.~~Alabama 1975, §§ 22-40A-1 et. seq.; §22-22A-1

History: New Rule: Filed June 30, 2004; effective August 4, 2004. Amended: Published ; effective .

APA-3

**CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR**

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on Friday, June 14, 2024, and filed with the agency secretary on Tuesday, June 18, 2024.

AGENCY NAME: Alabama Department of Environmental Management Land Division - Scrap Tire Program

INTENDED ACTION: Amend

RULE NO.: Chapter 335-4-4

(If amended rule, give specific paragraph, subparagraphs, etc., being amended) **335-4-4-.04(a)**

RULE TITLE: Management of Tire Materials

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

Adopted with changes. One comment was made regarding 335-4-4-.04 pointing out that ADEM, in fact, routinely allows beneficially reusable materials such as vegetative, or "green waste," and recyclable materials such as "white goods" accepted at solid waste landfills to be segregated from incoming disposal loads and staged until such time as they are picked up for further processing (i.e. wood chipping and metal scrap recycling). However, the current wording of the proposed regulations prohibits the segregation and staging of scrap tires and tire materials since it requires these be "...placed directly in the landfill cell..."

Another comment was made that "tires must be added directly to the working face as they enter the landfill. This creates an issue logistically at landfills. Most are worried about potential violations if the tires are shred at their facility away from the working face."

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XLII, ISSUE NO. 4, AAM, DATED WEDNESDAY, JANUARY 31, 2024.

STATUTORY RULEMAKING AUTHORITY:

Ala. Code §§ 22- 22A- 5, 22- 22-A 6, 22- 22A-8, 22 -28 -14, (as amended) and Ala. Code §§ 41-22-4 and 41-22-5 (as amended)

APA-3

(Date Filed)
(For LRS Use Only)

Certifying Officer or his or her
Deputy

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.)

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION -
SCRAP TIRE PROGRAM
ADMINISTRATIVE CODE

CHAPTER 335-4-4
MANAGEMENT OF TIRE MATERIALS

TABLE OF CONTENTS

335-4-4-.01	Accumulation Of Scrap Tires
335-4-4-.02	Storage Requirements
335-4-4-.03	Engineered Uses Of Processed Tire Material
335-4-4-.04	Disposal In A SWDF
335-4-4-.05	Manifests

335-4-4-.01 Accumulation Of Scrap Tires.

(1) No person may accumulate more than 100 scrap tires, except a permitted processor, a person who registers as required in 335-4-3-.01(1), or a permitted SWDF. No person may expose accumulated scrap tires to the elements for more than thirty (30) days.

(2) A Class One Receiver may be registered to accumulate no more than 1,500 scrap tires.

(3) A Class Two Receiver may be registered to accumulate no more than 300 scrap tires. Tire manufacturers are excluded from this limit if the scrap tires are not exposed to the elements.

Author: James L. Bryant. Adam N. Rhodes.

Statutory Authority: Code of Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Published _____; effective _____ June 28, 2024; effective August 12, 2024.

335-4-4-.02

Storage Requirements.

(1) Indoor Storage. The amount of tire materials that may be stored indoors shall not exceed the number of scrap tires or weight of processed tire material that can be processed or utilized in a thirty-day period. The facility shall process or utilize tire materials on a first-in, first-used basis. ADEM shall approve the amount of tire materials that may be stored indoors when it issues a facility registration or permit. A Vector Control Plan is required if tire materials containing water are stored indoors.

(2) Outdoor Storage. The amount of tire materials that may be stored outdoors shall not exceed the number of scrap tires or weight of processed tire material that can be processed or utilized in a thirty (30) day period. The facility shall process or utilize tire materials on a first-in, first-used basis. ADEM shall approve the amount of tire materials that may be stored outdoors when it issues a facility registration or permit. All scrap tire facilities that store scrap tires or processed tire material outdoors shall comply with the following technical and operational standards:

(a) Tire materials shall not be stored in the 100-year flood plain, in coastal beaches or dunes, or within 200 feet of a wetland or waters of the state as these terms are defined in 335-13, unless otherwise approved by ADEM.

(b) The maximum dimensions of a tire materials pile shall not exceed:

1. A width of fifty (50) feet.

2. A length of 200 feet.

3. An area of 10,000 square feet.

4. A height of fifteen (15) feet for whole tires or nine (9) feet for processed tire material, unless measures are provided that assures maximum temperature shall not exceed 300° Fahrenheit at a point in the pile.

(c) For piles of tire materials capable of holding water, a Vector Control Plan shall be prepared.

(d) A facility shall arrange for fire protection.

1. If a facility does not provide its own fire protection, the facility shall make arrangements with public or private emergency response personnel that are capable of providing an adequate fire protection system. Documentation of this arrangement shall be submitted to ADEM.

2. The facility shall provide a letter to ADEM from the fire department or fire marshal within whose jurisdiction the facility is located stating that they have reviewed and approved the fire protection system or plan.

(e) An Emergency Response Plan shall be developed prior to initial receipt of tire materials and updated at least annually or upon changes in the operation. The Plan shall contain the following:

1. A list of names and telephone numbers of persons to be contacted in case of a fire, accident or other emergency. Communication equipment sufficient to ensure notification of applicable agencies in case of an emergency shall be maintained at the facility and described in the Plan.

2. A list of emergency response equipment, its location, and how it shall be utilized.

3. Procedures to contain and dispose of tire fire residue.

4. A list of other materials stored on-site that may accelerate or expand a fire, to include location and other necessary precautions to take with these materials.

(f) A 100-foot-wide fire lane shall be placed around the perimeter of tire material piles, and 50-foot fire lanes shall be placed between individual tire material piles, unless otherwise approved by ADEM. Access to the fire lane shall be unobstructed at all times. Potentially flammable vegetation shall be removed if growing within the fire lane.

(g) A berm or other features shall be constructed around tire materials piles to contain liquid runoff from a tire fire.

(h) No operations or activities involving open flames shall be conducted within twenty-five (25) feet of a tire material pile.

(i) Adequate access controls, to include fences, gates, or other means, shall be provided to minimize entrance by unauthorized persons.

(j) An attendant, operator, or some authorized person shall be present at all times when the facility is operating.

Author: James L. Bryant. Adam N. Rhodes

Statutory Authority: Code of Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Published ~~_____~~; ~~effective _____~~ June 28, 2024;
effective August 12, 2024.

335-4-4-.03

Engineered Uses Of Processed Tire Material.

(1) A person proposing to utilize processed tire material in a civil engineering application shall receive approval from ADEM in writing before initiating the Engineered Use Application as detailed in 335-4-4-.03. Engineered uses shall be in general conformity with the latest edition of "ASTM Standard Practice for Use of Scrap Tires in Civil Engineering Applications" (D 6270-98).

(2) Approved engineered uses of processed tire material include, but are not limited to:

(a) SWDF construction and closure, including:

1. Underdrain layer beneath a liner system.
2. Pipe trenches associated with leachate collection or recirculation, and landfill gas collection systems.
3. The leachate drainage or protective layer above the liner.
4. The drainage layer in the final cover design for closure.

(b) Public works construction, including:

1. Backfill material in an embankment or behind a retaining wall.
2. Subgrade base beneath pavement.

3. Rubber-modified asphalt using crumb rubber.

(c) Drainfield aggregate construction of subsurface sewage disposal systems or drains for groundwater/surface water diversion systems. The tire chips shall be protected from soil infiltration by a synthetic geotextile fabric.

(d) Others as may be approved by ADEM.

(3) The engineered use of processed tire material shall comply with all of the following standards:

(a) Processed tire material shall not be placed or discharged into waters of the state.

(b) The use will not adversely affect human health, public safety or the environment.

(c) Processed tire material shall not be used in a manner that constitutes disposal or is not in compliance with other ADEM regulations.

(d) Tire chips or tire shreds may not be used in an application where the thickness of a layer exceeds nine (9) feet, unless approved by the Department.

(e) Uses approved by ADEM may be subject to approvals, standards or specifications imposed by other persons. The applicant and its engineer shall certify to ADEM that all other approvals or permits have been obtained prior to submittal of the Engineered Use Application. Approval for use by ADEM does not constitute approval for use by other persons or agencies.

(4) A person proposing to utilize processed tire material in a civil engineering application shall submit to ADEM as outlined in 335-4-1-.03, a complete Engineered Use Application that provides details of the proposed use, and appropriate fees. The design and specifications shall be prepared by an engineer. The Engineered Use Application, ADEM Form 537, shall contain all of the following:

(a) The general location where project activities will take place to include either the $\frac{1}{4}$, $\frac{1}{4}$ Section, Township, and Range, or Global Positioning System coordinates, and a legal description of the property. The location shall be shown on a U.S. Geological Survey 7.5-minute quadrangle map.

(b) An affidavit from the property owner acknowledging the use or placement of processed tire material.

(c) Detailed plans and specifications of the engineered use.

(d) The approximate volume or weight of processed tire material to be used.

(e) The approximate periods of time during which the project will be conducted with estimated start and finish dates.

(f) The source of the processed tire material, and how the material will be stored prior to use. If processed tire material that may retain rainfall is to be stored more than seven (7) days and exposed to the elements, a Vector Control Plan shall be included in the application.

(5) The local fire marshal or fire chief shall be notified of the proposed engineered use of processed tire material.

(6) The following uses do not require an Engineered Use Application or notification to the local fire marshal or fire chief:

(a) Use of tire materials in construction or closure of a SWDF.

(b) Use as subgrade base or in rubber modified asphalt when installation is done in compliance with state or federal standards for highway construction.

(c) Use in a domestic on-site sewage disposal system approved by a County Health Department or ADPH.

(7) ADEM shall approve the Engineered Use Application before the activity may proceed. ADEM shall assign a project identification number that shall be used in all correspondence with ADEM.

(8) Following completion of the project, the owner or operator shall submit to ADEM certification signed by an engineer verifying that the project has been completed in accordance with the approved application.

(9) Use of whole tires or tire bales in engineered use applications may be subject to other provisions considered necessary by ADEM, or may require financial assurance for closure of the site.

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes.

Statutory Authority: Code of Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 23, 2010; effective March 30, 2010. **Amended:** Published ~~_____~~; ~~effective _____~~ June 28, 2024;
effective August 12, 2024.

335-4-4-.04 Disposal In A SWDF.

A SWDF permitted by ADEM under 335-13 does not have to obtain a new or different permit to accept tires for disposal if tires are an approved waste stream for that SWDF. Additional requirements for SWDF include:

(a) Tire materials transported to a SWDF for disposal shall be placed directly in the landfill cell, unless the materials can be beneficially used, recycled, or further processed, and are managed as described in the SWDF permit and in accordance with 335-13 ~~and are managed in accordance with 335-4.~~

(b) A SWDF may remove tires usable as used tires or casings for retreading and shall store the tires in accordance with 335-4-4-.02.

(c) Processed tire material delivered to a SWDF for engineered use shall not be stored within 200 feet of an active landfill cell, and shall be stored in accordance with 335-4-4-.02(2) except that an Emergency Response Plan is not required. There shall be no time limit for storage of processed tire material to be used in this manner.

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes.

Statutory Authority: Code of Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Published ~~_____~~; ~~effective _____~~ June 28, 2024; effective August 12, 2024.

335-4-4-.05 Manifests.

All scrap tire receivers, transporters, processors, and SWDF are required to use a written manifest for the movement, shipment, transportation or receipt of scrap tires and processed tire material, except as otherwise provided in 335-4-4-.05.

(a) General Requirements. The manifest shall be originated by the receiver or other person shipping the tire materials and shall identify the quantity of tire materials transported.

1. Each user of a manifest shall be responsible for obtaining the manifest form at their cost from a source producing the form which shall be similar to and contain all the contents in accordance with ADEM Form 536.

2. The manifest shall be a multi-part, carbonless-paper form.

3. For shipments of scrap tires from another state to the State of Alabama, the receiver or transporter may use a manifest approved by the other state if the manifest contains all information required by ADEM.

4. ADEM may accept other documents in lieu of a manifest if the documents contain all information required on the manifest form, meets other requirements in accordance with 335-4-4-.05, and ADEM has approved use of the alternate document in writing.

5. If a person is shipping tires or tire materials that may be exempt from the requirements of 335-4-4-.05, that shipment shall be accompanied by sufficient paperwork and documentation to assure ADEM, its delegated enforcement officers and other law enforcement officers that the shipment is exempt from 335-4-4-.05.

6. A SWDF may receive scrap tires transported by a person permitted as a Solid Waste Collector or Transporter by a County Health Department without requiring a manifest if the tires are collected as part of a routine program of household waste collection. The SWDF may not accept shipments of only scrap tires or scrap tire materials transported by a permitted Solid Waste Collector or Transporter who collects tires at a registered scrap

tire receiver unless that person has also received a scrap tire permit to transport scrap tires.

(b)Receiver Requirements. A receiver who transports, or offers for transportation, more than ten (10) scrap tires per year for off-site processing or disposal shall complete a manifest for each shipment.

1. Class One Receivers are exempt from using a manifest when transporting their own scrap tires from one business location to another or between a customer site and the receiver. Decal requirements for Class One Receivers may be found in 335-4-7-.02.

2. Class One Receivers shall use a manifest when transporting their own scrap tires to a processor or SWDF. Decal requirements for Class One Receivers may be found in 335-4-7-.02.

3. A receiver shall designate on the manifest the next receiver, transporter, processor, SWDF, or final designated facility that will receive the scrap tires described on the manifest. The receiver may designate where or to whom the transporter shall deliver the scrap tires. If a transporter is unable to deliver the scrap tires to the next designated facility, the receiver generating the manifest shall either designate another facility or instruct the transporter to return the scrap tires to the receiver.

(c)Processor Requirements.

1. Processors Receiving Tire Materials.

(i) A processor shall not accept tire materials from a receiver or transporter unless accompanied by a manifest. This regulation applies to all processing facilities receiving tire materials, including permitted processors, registered fuel user, registered manufacturers using tire materials or ground or crumb rubber to

make other products, and registered users of tire materials as a substitute raw material.

(ii) A processor may accept scrap tires from an individual scrap tire generator without a manifest, provided the individual is transporting his own scrap tires and delivers no more than eight (8) tires at a time. The processor shall maintain records of receipt of tires from individuals in the Operating Record and shall report those receipts separately when submitting semi-annual reports to ADEM.

(iii) A processor may receive scrap tires without a manifest from recognized non-profit civic organizations, associations or clubs, and state, county or municipal governments who deliver scrap tires resulting from roadside, stream or other cleanup programs. The processor shall maintain records of receipt of tires from these groups in the Operating Record and shall report those receipts separately when submitting semi-annual reports to ADEM.

2. Processors Shipping Tire Materials.

(i) A processor shall not transport, or offer tire materials for shipment by a transporter, unless that shipment of tire materials is accompanied by a manifest originated by the processor.

(ii) Manifests are not required for a processor to transport tire materials on a public or private right-of-way within or along the border of contiguous property under the control of the processor, even if the contiguous property is divided by a public or private right-of-way.

(iii) Manifests are not required for a processor to ship its final end product produced from tire materials if the end product requires no further processing or is incorporated into another product.

(d) Transporter Requirements. No transporter shall accept tire materials unless that shipment is accompanied by a manifest prepared by the person offering the tire materials for shipment.

1. If the transporter places tire materials from more than one person offering the tire materials for shipment on a permitted vehicle, the transporter shall maintain individual manifests from each person and shall not combine scrap tires from different persons on one manifest except as provided in 335-4-4-.05(d)5.

2. Each shipment of tire materials shall be delivered to the next designated person or facility indicated on the manifest, or to an alternate person or facility designated on the manifest.

3. If the transporter is unable to deliver the tire materials to the next designated person or facility or the alternate person or facility, the transporter shall contact the person originating the shipment who shall either designate another facility or instruct the transporter to return the tire materials.

4. If the person originating the shipment of tire materials does not indicate on the manifest another designated person or facility to accept the tire materials from the transporter, the transporter may utilize the same manifest when selecting the next person or facility to accept the shipment. The person or facility to which the transporter delivers the tire materials shall complete the manifest according to 335-4-4-.05.

5. If a transporter removes used tires from a shipment accompanied by a manifest, then they shall generate a new manifest to accompany the shipment of the remaining scrap tires. If the shipment of scrap tires contains commingled scrap tires from more than one person or facility, all remaining scrap tires in that shipment are considered to be generated by the transporter. The transporter shall complete an original manifest or manifests according to 335-4-4-.05.

(e) SWDF Requirements.

1. A SWDF shall not accept tire materials from a receiver or transporter unless accompanied by a manifest.

2. A SWDF may accept scrap tires from an individual scrap tire generator without a manifest, provided the individual is transporting his own scrap tires and delivers no more than eight (8) tires at a time. The SWDF shall maintain records of receipt of tire materials from individuals in the Operating Record and shall report those receipts separately when submitting semi-annual reports to ADEM.

3. A SWDF may receive scrap tires without a manifest from recognized non-profit civic organizations, associations, or clubs and state, county or municipal governments who deliver scrap tires resulting from roadside, steam or other cleanup programs. The SWDF shall maintain records of receipt of tire materials from these groups in the Operating Record and shall report those receipts separately when submitting semi-annual reports to ADEM.

(f) Use of the Manifest.

1. All signatures required on the manifest shall be a handwritten signature in ink.

2. The person originating a manifest shall obtain the printed name and signature of the next person accepting the shipment of tire materials on the manifest and retain one copy of the manifest. The remaining copies of the manifest shall accompany the shipment.

3. All subsequent persons accepting shipment of the tire materials shall print their name and sign the manifest and the previous person offering the shipment of tire materials shall retain a copy of the manifest. The original manifest shall accompany the subsequent shipment to its ultimate destination.

4. Once the shipment of tire materials has reached the final designated facility or SWDF, the manifest shall be signed with their printed name and a copy of the manifest retained by the person accepting the shipment.

5. The manifest shall be made available to ADEM for review upon request.

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes.

Statutory Authority: Code of Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Published ~~_____~~; ~~effective _____~~ June 28, 2024;
effective August 12, 2024.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION -
SCRAP TIRE PROGRAM
ADMINISTRATIVE CODE

CHAPTER 335-4-5
SCRAP TIRE RECEIVERS

TABLE OF CONTENTS

335-4-5-.01	General Requirements For Receivers
335-4-5-.02	Requirements For Storage
335-4-5-.03	Reporting
335-4-5-.04	Recordkeeping Requirements

335-4-5-.01 General Requirements For Receivers.

(1) A receiver shall not store tire materials in excess of the accumulation limit approved by ADEM. If the excess amount has not been eliminated within thirty (30) days of the date the accumulation limit was exceeded, the receiver shall notify ADEM as described in 335-4-1-.03, and shall begin to remove the tire materials from the facility to a permitted processor or SWDF.

(2) No receiver may expose scrap tires to the elements for more than thirty (30) days. If scrap tires are exposed to the elements for more than seven (7) days, a Vector Control Plan shall be prepared and implemented.

(3) Receivers are required to use a permitted transporter to transport scrap tires for further evaluation by another business, except as provided in 335-4-5-.01(4).

(4) Neither Class One nor Class Two receivers are not required to use a permitted transporter for purposes of transporting their tires or their customers' tires between their business locations, between a customer site and the receiver, or to a permitted processor or SWDF permitted to accept scrap tires or scrap tire materials. Customer tires refer only to scrap tires for which replacement tires are sold by that Class One Receiver to the customer. Each vehicle operated by the receiver to transport scrap tires shall have a decal issued by ADEM, in accordance with 335-4-7-.02.

(5) Receivers shall utilize manifests and comply with requirements of 335-4-4-.05 for shipment of tire materials.

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Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes.
Statutory Authority: Code of Ala.-Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Filed February 23, 2010; effective March 30, 2010. **Amended:** Published ; effective .

335-4-5-.02 Requirements For Storage.

All receivers shall comply with storage requirements in accordance with 335-4-4-.02. Facilities located in urbanized areas or other business locations with limited area may be exempt by ADEM from some siting and location requirements for storage if approved by ADEM on a case-by-case basis.

Author: James L. Bryant. Adam N. Rhodes.
Statutory Authority: Code of Ala.-Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Published ; effective .

335-4-5-.03 Reporting.

A receiver shall electronically submit a scrap tire semi-annual report, utilizing ADEM Form 539, for each six (6)-month period of the calendar year (January through June, July through December). All reports shall be submitted electronically to ADEM by the 28th day following the end of each reporting period. ~~submit a scrap tire quarterly report, utilizing ADEM Form 539, for each quarter of the calendar year (January through March, April through June, July through September, and October through December). All reports shall be submitted to ADEM by the 28th day following the end of each reporting period.~~

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes.
Statutory Authority: Code of Ala.-Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 23, 2010; effective March 30, 2010. **Amended:** Published ; effective .

335-4-5-.04 Recordkeeping Requirements.

An operating record for the receiver shall be maintained at the facility or in an alternate location approved by ADEM.

(a) The following information shall be placed in the operating record as it becomes available:

1. Copies of the ADEM registration approval.

2. Registration application.

3. Appropriate information on all vehicles transporting tire materials, to include vehicle identification number, make/model, and license number, and decal numbers assigned to those vehicles.

4. Reports or documentation generated during the normal operation of the receiving facility including, but not limited to:

(i) Manifests of tires or tire materials received and/or shipped.

(ii) ~~Quarterly Reports~~ Semi-Annual reports utilizing ADEM Form 539.

(iii) Arrangement for fire protection services, if applicable.

(iv) Vector Control Plan as referenced in 335-4-1-.045(5).

~~(i)~~

(v) Any other report or document generated in the normal operation of the facility that is submitted to ADEM.

5. Electronic versions of records listed in 335-4-5-.04 may be maintained in the operating record as allowed in 335-4-1-.045(7).

(b) Information contained in the operating record shall be retained for at least three (3) years. Records relating to a violation or enforcement action shall not be removed from the operating record for at least three (3) years and until these matters are resolved.

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes.

Statutory Authority: Code of ~~Ala.~~ Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 23, 2010; effective March 30, 2010. Amended: Published ; effective .

APA-3

**CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR**

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on Friday, June 14, 2024, and filed with the agency secretary on Tuesday, June 18, 2024.

AGENCY NAME: Alabama Department of Environmental Management Land Division - Scrap Tire Program

INTENDED ACTION: Amend

RULE NO.: Chapter 335-4-6
(If amended rule, give specific paragraph, subparagraphs, etc., being amended) **335-4-6-.01(2)**

RULE TITLE: Scrap Tire Processors

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

Adopted with changes. A comment was made in reference to 335-4-6-.01(2) "to add clarifying language to make it clear that a facility shall only cease receiving tire material if the inoperable equipment impacts their ability to process tires as described in their permit or impacts their ability to comply with existing code."

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XLII, ISSUE NO. 4, AAM, DATED WEDNESDAY, JANUARY 31, 2024.

STATUTORY RULEMAKING AUTHORITY: Ala. Code §§ 22- 22A- 5, 22- 22-A 6, 22- 22A-8, 22 -28 -14, (as amended) and Ala. Code §§ 41-22-4 and 41-22-5 (as amended)

(Date Filed)
(For LRS Use Only)

Certifying Officer or his or her
Deputy

APA-3

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.)

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION -
SCRAP TIRE PROGRAM
ADMINISTRATIVE CODE

CHAPTER 335-4-6
SCRAP TIRE PROCESSORS

TABLE OF CONTENTS

335-4-6-.01	General Requirements For Processors
335-4-6-.02	Requirements For Storage
335-4-6-.03	Reporting
335-4-6-.04	Recordkeeping Requirements
335-4-6-.05	Mobile Processing Facilities
335-4-6-.06	Closure Of Facilities

335-4-6-.01 General Requirements For Processors.

(1) A processor shall not store tire materials in excess of the accumulation limit approved by ADEM. If the excess amount has not been eliminated within thirty (30) days of the date the accumulation limit was exceeded, the processor shall notify ADEM as described in 335-4-1-.03 and shall begin to remove the tire materials from the facility to a permitted processor or SWDF.

(2) A processor shall have all necessary processing equipment in operating condition prior to receiving scrap tires for processing. ~~Equipment must be maintained in an operable condition for the duration of the permit. If equipment is inoperable for more than fourteen days, - no other comparable equipment is available, and the ability of the facility to continue to process tire materials is interrupted,~~ the facility shall cease receiving tire material until the equipment is repaired.

(3) Processors shall utilize manifests and comply with requirements of 335-4-4-.05 for shipment of tire materials.

(4) Processors are required to maintain financial assurance in accordance with 335-4-8.

(5) Fuel users and processors exempt in 335-4-3-.02 are subject to the requirements for processors in accordance with 335-4-6-.02, 335-4-6-.03, and 335-4-6-.04.

Author: James L. Bryant. Adam N. Rhodes
Statutory Authority: Code of Alabama 1975, §§22-40A-1 et seq.
History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Published ~~_____~~; ~~effective _____~~ June 28, 2024; effective August 12, 2024.

335-4-6-.02 Requirements For Storage.

A processor shall comply with storage requirements in 335-4-4-.02. Tire materials piles shall not be stored on asphalt pavement or in such a manner that creates a fire hazard.

Author: James L. Bryant. Adam N. Rhodes
Statutory Authority: Code of Alabama 1975, §§22-40A-1 et seq.
History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Published ~~_____~~; ~~effective _____~~ June 28, 2024; effective August 12, 2024.

335-4-6-.03 Reporting.

A processor shall submit a scrap tire semi-annual report in accordance with 335-4-1-.03, utilizing ADEM Form 539, for each six (6)-month period of the calendar year (January through June and July through December). All reports shall be submitted to ADEM no later than the 28th day following the end of the reporting period.

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes
Statutory Authority: Code of Alabama 1975, §§22-40A-1 et seq.
History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 23, 2010; effective March 30, 2010. **Amended:** Published ~~_____~~; ~~effective _____~~ June 28, 2024; effective August 12, 2024.

335-4-6-.04 Recordkeeping Requirements.

An operating record for the processor shall be maintained at the facility or in an alternate location approved by ADEM.

(a) The following information shall be placed in the operating record as it becomes available:

1. Permit or exemption as issued by ADEM.

2. Permit or exemption application, operational narrative, and other documentation submitted to ADEM during the permitting process.

3. Closure Plan with cost estimates to implement the Closure Plan.

4. Financial Assurance documentation.

5. Reports or documentation generated during the normal operation of the processing facility including, but not limited to:
 - (i) Manifests of tire materials received and/or shipped.

 - (ii) Receipt of scrap tires without a manifest.

(iii) Semi-annual reports utilizing ADEM Form 539.

(iv) Arrangement for fire protection services, if applicable.

(v) Vector Control Plan as referenced in 335-4-1-.05(5).

(vi) Any other report or document generated in the normal operation of the facility that is submitted to ADEM.

6. Electronic versions of records listed in 335-4-6-.04 may be maintained in the operating record as allowed in 335-4-1-.05(7).

(b) All information contained in the operating record shall be retained for at least three (3) years. Records relating to a violation or enforcement action shall not be removed from the operating record for at least three (3) years from the date record and until these matters are resolved.

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes
Statutory Authority: Code of Alabama 1975, §§22-40A-1 et seq.
History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 23, 2010; effective March 30, 2010. **Amended:** Published ~~_____~~; ~~effective _____~~ June 28, 2024; effective August 12, 2024.

335-4-6-.05 Mobile Processing Facilities.

(1) A person operating mobile processing equipment shall obtain a permit from ADEM unless exempt in accordance with 335-4-2-.04(3)
(a).

(2) An owner/operator utilizing equipment that is moved between sites or receivers shall notify ADEM, as described in 335-4-1-.03, at least three (3) days prior to movement of the processing equipment to a different location. Each location where mobile processing occurs shall meet the minimum siting requirements found in the owner or operator's permit.

(3) All processed tire material shall be removed from the location for recycling, further processing, or disposal in a SWDF within thirty (30) days of processing. The owner or operator of the mobile processing equipment shall provide ADEM the name and address of each facility or SWDF that will receive the processed tire material for further use or disposal. Shipments of processed tire material shall be manifested in accordance with 335-4-4-.05, unless the processed tire material is placed in a solid waste container that is routinely emptied by a Solid Waste Collector permitted by a County Health Department. If the processed tire material is to be placed in a solid waste container, the processor shall provide the name of the SWDF that will receive the processed tire material for disposal and shall provide a letter from the SWDF stating acceptance of the processed tire material.

(4) Mobile processors shall maintain an operating record as required in 335-4-6-.04 at a location approved by ADEM.

(5) Owners or operators of mobile processing equipment shall report to ADEM each location where the equipment operated, and the number of tires processed. The report shall be submitted by the twentieth (20th) day of each month for the previous month's operations. A report shall be filed as described in 335-4-1-.03, even if the equipment was not utilized during the reporting month.

(6) If mobile processing equipment is operated at a location for more than one hundred-eighty (180) consecutive days, that location shall be considered a scrap tire processing facility and shall be subject to the requirements in 335-4-6-.01 and 335-4-6-.02.

Author: James L. Bryant. Adam N. Rhodes

Statutory Authority: Code of Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Published ~~_____~~; ~~effective _____~~ June 28, 2024;
effective August 12, 2024.

335-4-6-.06 Closure Of Facilities.

Processors discontinuing their operations or those not meeting the requirements of 335-4-6 shall discontinue receiving tire materials and shall close the facility.

(a) The processor shall submit a Closure Plan to ADEM as a part of the permit application.

(b) The Closure Plan shall provide for the following if applicable:

1. A narrative description of the closure process to be implemented and a schedule for closure.
2. Removal of all tire materials to a permitted processor, end user, or SWDF.
3. Removal of all other regulated solid waste accumulated at the facility for disposal through a permitted solid waste transfer station or in a SWDF.
4. A Vector Control Plan.
5. Restriction of access to preclude delivery of additional tire materials.

6. A plan for site remediation if a contaminant or other threat to public health or the environment resulting from routine operations, or a fire or other emergency is identified.

7. An estimate of the cost for closure of the facility according to the Closure Plan.

(c) The Closure Plan shall be updated every three (3) years or when conditions change at the processor that may affect the current closure plan. The updated plan, the new closure cost estimate based on the revised closure plan, and an updated financial assurance instrument shall be submitted to ADEM for review.

(d) The processor shall notify ADEM, as described in 335-4-1-.03, when all closure requirements have been implemented. If ADEM determines closure has been completed according to the Closure Plan as required by 335-4-6-.06, the financial assurance instruments shall be released within thirty (30) days.

Author: James L. Bryant. Adam N. Rhodes

Statutory Authority: Code of Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Published ~~_____~~; ~~effective _____~~ June 28, 2024;
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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION -
SCRAP TIRE PROGRAM
ADMINISTRATIVE CODE

CHAPTER 335-4-7
SCRAP TIRE TRANSPORTERS

TABLE OF CONTENTS

335-4-7-.01	General Requirements For Transporters
335-4-7-.02	Decal Requirements
335-4-7-.03	Reporting
335-4-7-.04	Recordkeeping Requirements

335-4-7-.01 General Requirements For Transporters.

(1) A transporter shall only accept scrap tires or processed tire material from a registered receiver, a permitted processor, a SWDF or other persons approved by ADEM.

(2) Transporters may transport scrap tires or processed tire material to a registered receiver, a permitted or registered processor, a retreader or a SWDF.

(3) Transporters may only accept scrap tires or processed tire material manifested in accordance with 335-4-4-.05.

(4) Scrap tire transporters are required to maintain financial assurance in accordance with 335-4-8.

Author: James L. Bryant

Statutory Authority: Code of ~~Ala.~~Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Published ; effective .

335-4-7-.02 Decal Requirements.

Vehicles operated by the transporter or receiver shall exhibit a decal issued by ADEM. The transporter or receiver shall maintain a list of decal assignments to specific vehicles, ~~and may request new decals~~ and may request new decals via the Department-approved electronic system, when additional vehicles are added.

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(a) The decal shall be placed on each vehicle in the fleet and be clearly visible at all times. The decal shall be placed on the left side of the vehicle, either on the windshield or the side of the vehicle immediately behind the driver's side door and/or in accordance with U.S. Department of Transportation requirements.

(b) Numbered decals shall be provided by ADEM to the transporter who shall assign the decals to their vehicles. The transporter or receiver shall maintain a list of decals and the vehicle to which that decal is assigned. Decals are not transferable to another vehicle.

(c) The transporter or receiver may paint or scribe in some manner the decal information of the side of the vehicle immediately behind the driver's side door if the information placed on the vehicle clearly provides all information on the ADEM decal. Letters and numbers placed on the vehicle in this manner shall be at least one (1) inch in height. Letters and numbers shall be enduring and not change appearance with time.

Author: James L. Bryant, M. Gavin Adams, Adam N. Rhodes
Statutory Authority: Code of ~~Ala.~~Alabama 1975, §§22-40A-1 et seq.

History: **New Rule:** Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Published _____; effective _____.

335-4-7-.03 Reporting.

(1) A transporter shall submit a scrap tire ~~quarterly report, utilizing ADEM Form 539, for each quarter of the calendar year (January through March, April through June, July through September, and October)~~ semi-annual report as described in 335-4-1-.03, utilizing ADEM Form 539, for each six (6)-month period of the calendar year (January through June, July through December). All reports shall be submitted to ADEM no later than the 28th day following the end of the reporting period.-

(2) If a permitted vehicle of the transporter is involved in a motor vehicle accident while transporting tire materials and tire materials are spilled, the transporter shall notify ADEM, as described in 335-4-1-.03, -in writing within seventy-two (72) hours of the accident. The notification shall provide the following information:

(a) Date, time, and location of the accident.

(b) Amount of tire materials spilled from the vehicle involved in the accident.

(c) The disposition of spilled tire materials and tire materials remaining in or on the vehicle.

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes

Statutory Authority: Code of ~~Ala.~~Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 23, 2010; effective March 30, 2010. **Amended:** Published ; effective .

335-4-7-.04 Recordkeeping Requirements.

An operating record for the transporter shall be maintained at a facility located in Alabama or in an alternate location approved by ADEM.

(a) The following information shall be placed in the operating record as it becomes available:

1. The permit application and permit as issued by ADEM.

2. Financial Assurance or insurance documentation.

3. Appropriate information on all vehicles transporting tire materials, to include vehicle identification number, make/model, and license number, and decal numbers assigned to those vehicles.

4. Reports or documentation generated during the normal operation of the transporter including, but not limited to:

(i) Manifests of tire materials transported.

(ii) ~~Quarterly Reports~~Semi-annual reports utilizing ADEM Form 539.

(iii) Arrangement for fire protection services, if applicable.

(iv) Accident reports.

(v) Vector Control Plan as referenced in 335-4-1-.045(5).

(vi) Any other report or document generated in the normal operation of the facility that is submitted to ADEM.

5. Electronic versions of records listed in 335-4-7-.04 may be maintained in the operating record as allowed in 335-4-1-.04⁵(7).

(b) All information contained in the operating record shall be retained for at least three (3) years. Records relating to a violation or enforcement action shall not be removed from the Operating Record for at least three (3) years and, until all these matters are resolved.

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes

Statutory Authority: Code of ~~Ala.~~Alabama 1975, §§22-40A-1 et seq.

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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION -
SCRAP TIRE PROGRAM
ADMINISTRATIVE CODE

CHAPTER 335-4-8
FINANCIAL ASSURANCE

TABLE OF CONTENTS

335-4-8-.01	Applicability
335-4-8-.02	Transporters
335-4-8-.03	Processors
335-4-8-.04	Financial Assurance Instruments For Closure
335-4-8-.05	Financial Assurance Instruments for Remediation
335-4-8-.06	Use Of Multiple Financial Assurance Instruments
335-4-8-.07	Release Of Financial Institution

335-4-8-.01 Applicability.

(1) Financial assurance shall be provided by the following persons:

(a) Permitted scrap tire transporters.

(b) Permitted Class One, Class Two and Class Three scrap tire processing facilities.

(c) If a permitted processor is also a permitted transporter, a separate and appropriate financial assurance instrument shall be posted for each permit and each separate facility for which the ~~permittee~~owner/operator applies.

(2) A fuel user may be subject to 335-4-8 if ~~it stores tire material~~tire materials are stored in excess of the accumulation limits in its registration approval.

(3) Owners or operators of scrap tire facilities that are state or federal government entities, whose debts and liabilities are the debts and liabilities of the state or the United States, are not required to provide financial assurance.

(4) If financial assurance instruments utilized by persons to comply with 335-4-8 provide that monies shall be directed to

ADEM to use ~~to close or remediate~~for closure or remediation of a scrap tire site or facility, those monies shall be deposited to the STF which shall be used for closure or remediation of the site or facility. If these funds are inadequate ~~to close or remediate~~for closure or remediation of the site or facility, ADEM may recover costs as provided in 335-4-2-.03(g). Excess funds may be retained by the STF in 335-4-2-.03(g).

(5) The form of financial assurance instruments shall be approved by ADEM.

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes.

Statutory Authority: Code of ~~Ala.-Alabama~~ 1975, §§22-22A-5, 22-40A-1 et seq.

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335-4-8-.02 Transporters.

(1) Any person proposing to transport scrap tires or processed tire material shall submit with its permit application ~~evidence~~documentation of financial assurance using one of the following:

(a) A surety bond in which the applicant is the principal obligor and ADEM is the obligee.

1. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury or be a corporate surety licensed to do business in the State of Alabama.

2. The amount of the surety bond for environmental cleanup and restoration resulting from a transportation-related accident or event shall be established as follows:

(i) Transporters proposing to transport tire materials shall be required to provide a surety bond in an amount equal to \$10,000.

(ii) If the surety bond is drawn upon, the transporter shall notify ADEM within twenty-four (24) hours, and shall acquire additional financial assurance in the amount of \$10,000 within five (5) days of the surety bond being drawn. If the ~~permitter~~owner/operator fails to provide the additional

assurance as required, ADEM may terminate the permit as prescribed in 335-4-3-.06(c).

(b) A person proposing to transport tire materials may submit ~~evidence satisfactory to ADEM of a net worth equal to ten times the value of the a surety bond required in 335-4-8-.02(1)(a).~~ The evidence documentation satisfactory to ADEM of a net worth equal to ten (10) times the value of a surety bond required in 335-4-8-.02(1)(a). The documentation shall be submitted with a letter from the chief financial officer of the applicant or Certified Public Accountant.

(c) Proof of insurance in a minimum amount of \$1,000,000 to abate any problems created as a result of the transporter's failure to properly manage scrap tires, exclusive of legal defense costs. The insurance may not include a pollution exclusion clause. Proof of insurance shall be provided on a Certificate of Insurance form naming ADEM as the certificate holder and giving at least thirty (30) days written Notice of Cancellation to the certificate holder.

(2) A transporter shall demonstrate to the satisfaction of ADEM that the financial instrument submitted with their application as required in 335-4-3-.04 is in force for the duration of the permit. Nothing in 335-4-8-.02 shall be construed to allow a transporter to operate in violation of the U.S. Department of Transportation rules governing financial assurance.

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes.

Statutory Authority: Code of ~~Ala.~~ Alabama 1975, §§22-40A-1 et seq.

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335-4-8-.03 **Processors.**

(1) The owner or operator of a scrap tire processing facility shall provide financial assurance equal to the sum of the amounts required in 335-4-8-.03(2) and (3) for the following:

(a) Closure of the scrap tire processing facility.

(b) Remediation of the facility if impacted by an incident, such as a fire or a catastrophic natural event, such as a flood, that may affect human health and the environment.

—

(2) Cost Estimate for Closure. The owner or operator shall have a detailed written estimate, in current dollars, of the cost to utilize a third party to complete closure of the processing facility during the active life in accordance with the Closure Plan described in 335-4-6-.06. The owner or operator shall electronically submit a copy of the estimate to ADEM as a part of the permit application for approval and retain the estimate in the operating record.

(a) The cost estimate shall equal the cost to remove, transport and process the largest volume of tire materials present and the cost to remove the contents and cleanup tanks, process equipment or other appurtenances during the active life of the facility when the extent and manner of its operation may make closure the most expensive.

(b) During the active life of the facility, the owner or operator shall annually adjust the closure cost estimate for inflation.

(c) The closure cost estimate and the amount of financial assurance provided shall be increased if changes to the facility or its operation increase the maximum cost of closure.

(d) The owner or operator of a processing facility shall establish financial assurance for closure in compliance with 335-4-8-.04 and shall maintain continuous coverage until released from financial assurance requirements by ADEM.

(e) The minimum financial assurance for closure of a permitted scrap tire processing facility shall be \$20,000.

(3) The owner or operator shall provide financial assurance for remediation of an incident, such as a fire or flood or other catastrophic natural event that impacts public health and the environment, based on the following:

(a) An amount equal to two dollars (\$2) per whole tire for the maximum number of tires allowed to be stored at the facility. ADEM may require a higher amount per whole tire if ~~it determines~~ the types of tires being processed are larger than typical passenger and light truck tires.

(b) An amount equal to two hundred (\$200) per ton of processed tire material allowed to be stored at the facility.

(4) If whole tires and processed tire material are stored at a facility at the same time, the amount of financial assurance

required shall equal the total as described in 335-4-8-.03(3)(a) and (b).

(5) The minimum financial assurance required for remediation at a permitted scrap tire processor shall be \$20,000.

Author: James L. Bryant. Adam N. Rhodes

Statutory Authority: Code of ~~Ala.~~Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. Amended: Published ; effective.

335-4-8-.04 Financial Assurance Instruments For Closure.

The following instruments may be used to provide financial assurance for closure. The instruments selected shall ensure that the funds necessary to meet the costs of closure will be available whenever needed. The instruments must be in effect for a new facility at least sixty (60) days prior to receiving tire materials for processing, and must be in effect for an existing facility when ~~it submits~~submitting a permit application in accordance with 335-4-3-.04.

(a) Trust Fund. An owner or operator may establish a trust fund that conforms to the following requirements:

1. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are examined by the State of Alabama.

2. Payments into the Trust.

(i) The owner or operator shall make a payment into the trust fund each year during the pay-in period.

(ii) The pay-in period is five (5) years. The pay-in period commences on the date the facility first receives scrap tires or processed tire material.

(iii) Annual payments are determined by the following formula:

$$\text{Annual payment} = (CE - CV) / Y$$

where:

CE = Current cost estimate

CV = Current value of the trust fund

Y = Number of years remaining in the pay-in period.

(iv) The owner or operator shall make the first annual payment prior to the beginning of the pay-in period. Prior to the beginning of the pay-in period, the owner or operator shall submit to ADEM, electronically as provided by the Department, a receipt from the trustee for the first annual payment.

(v) Subsequent annual payments shall be made no later than thirty (30) days after each anniversary of the first payment.

(vi) The owner or operator may accelerate payments into the trust fund, or deposit the full amount of the current cost estimate at the time the fund is established.

(vii) If the owner or operator establishes a trust fund after having used one or more alternative instruments, the first payment shall be at least equal to the amount the fund may contain if the trust fund were established initially and payments made as provided in 335-4-8-.04(a)3.

3. The trustee shall evaluate the trust fund annually, as of the day the trust was created. The trustee shall notify the owner or operator and ADEM of the value within thirty (30) days after the evaluation date.

(i) Whenever the current closure cost estimate exceeds the amount of the trust fund, the owner or operator, within sixty (60) days after the new estimate, shall either cause the amount of the trust fund to be increased to equal the current closure cost estimate and submit ~~evidence~~documentation of the increase to ADEM, or obtain other or additional financial assurance as specified in 335-4-8-.04 to meet the current closure cost estimate.

(ii) Whenever the current closure cost estimate is less than the trust fund amount, the trust fund may be reduced accordingly with ADEM approval.

4. Release of Excess Funds.

(i) If the value of the financial assurance is greater than the current cost estimates for closure, the owner or operator may submit a written request to ADEM for a release of the amount in excess of the current cost estimate.

(ii) Not later than sixty (60) days after receiving a request from the owner or operator for a release of funds for which the value of the financial assurance instrument is greater ~~than~~than the current closure cost estimate, ADEM shall instruct the

trustee in writing to release to the owner or operator the funds to be in excess of the current cost estimates.

5. Reimbursement for Closure Expenses.

(i) After initiating closure, an owner or operator, or another person allowed to perform closure, may request reimbursement electronically as provided by the Department, for work performed by submitting itemized invoices to ADEM.

(ii) Not later than sixty (60) days after receiving the itemized invoices, ADEM shall determine if the expenditures are consistent with the approved Closure Plan. If the expenditures are in accordance with the approved Closure Plan, ADEM shall instruct the trustee electronically or in writing to make reimbursement in the amounts specified for work performed.

(iii) If ADEM determines that the cost of closure will be greater than the value of the trust fund, it shall withhold reimbursement of the amount it determines is necessary to preserve the trust corpus in order to accomplish closure until it determines that the owner or operator is no longer required to maintain financial assurance for closure.

(iv) If the owner or operator is named as a debtor in a voluntary or involuntary proceeding under the U.S. Bankruptcy Code, the trustee shall release all trust fund monies to ADEM for the purpose of completing required closure activities. In the event the bankruptcy proceeding results in the liquidation or dissolution of the assets of the owner or operator, any funds so released which remain upon completion of all required closure activities may be used by ADEM at other STF sites in the state.

(b) Letter of Credit. An owner or operator may obtain an irrevocable standby letter of credit which conforms to the following requirements:

1. The issuing institution shall be an entity that has the authority to issue letters of credit and whose operations are regulated and examined by a federal or state agency.

2. An owner or operator who uses a letter of credit shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by ADEM will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from ADEM. This standby trust fund shall meet the requirements in 335-4-8-.04(a), except:

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(i) An originally signed duplicate of the trust agreement shall be submitted to ADEM with the letter of credit; and

(ii) The initial payment and subsequent annual payments specified in 335-4-8-.04(a)3. are not required.

3. The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution and date, and provide the ADEM Permit Number, name, and address of the facility, and the amount of funds assured for closure of the facility.

4. The letter of credit shall be irrevocable and issued for a period of at least one (1) year in an amount at least equal to the current closure cost estimate. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and ADEM by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator and ADEM have received the notice, as evidenced by return receipts.

5. Whenever the current closure cost estimate exceeds the amount of the credit, the owner or operator, within sixty (60) days after the new estimate, shall either cause the amount of the credit to be increased to equal the current closure cost estimate and submit ~~evidence~~documentation of the increase to ADEM, or obtain other or additional financial assurance as specified in 335-4-8-.04. Whenever the current closure cost estimate is less than the amount of the credit, the letter of credit may be reduced following approval by ADEM.

6. After all administrative and judicial remedies have been exhausted in which a determination has been made that the owner or operator has failed to perform in accordance with the approved Closure Plan and other permit requirements when required to do so, ADEM may draw on the letter of credit.

7. If the owner or operator does not establish alternate financial assurance as specified in 335-4-8-.06 and obtain approval of the alternate assurance from ADEM within ninety (90) days after receipt by both the owner or operator and ADEM of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, ADEM will draw on the letter of credit. ADEM may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of an

extension ADEM will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in 335-4-8-.04 and obtain approval of the assurance from ADEM.

8. ADEM will return the letter of credit to the issuing institution for termination when one of the following is accomplished:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-4-8-.06; or

(ii) ADEM releases the owner or operator from the requirements in accordance with 335-4-8-.07.

(c) Closure Insurance. An owner or operator may obtain closure insurance which conforms to the following requirements:

1. The insurer shall be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer in the State of Alabama.

(i) The use of insurance to demonstrate financial assurance for closure pertains exclusively to those insurance policies underwritten by commercial property and casualty insurers (primary or excess and surplus lines), each having a Standard and Poor's Insurer Financial Strength Rating of 'BBB' or higher, through which, in the insurance contract, the financial burden for closure is transferred to the third-party insurer. Except as provided in 335-4-8-.07, the third-party insurer shall assume financial responsibility for this accepted risk, using its own pool of resources that is independent, separate, and unrelated to that of the insured owner or operator.

(ii) The use of insurance policies underwritten by captive insurers is prohibited.

2. The closure insurance policy shall be issued for a face amount equal to the current closure cost estimate. There shall be no policy deductible. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

3. The closure insurance policy shall guarantee that funds will be available to close the facility whenever closure occurs. The policy shall also guarantee that once closure begins, the insurer will be responsible for paying out funds, up to an

amount equal to the face amount of the policy, upon the direction of ADEM, to the party or parties as ADEM specifies in writing.

4. After beginning closure, an owner or operator or another person allowed to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to ADEM. Within sixty (60) days after receiving itemized invoices, ADEM shall determine if the expenditures are consistent with the approved closure plan. ADEM shall instruct the insurer in writing to make reimbursements in the amounts ADEM specifies. If ADEM believes that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, ADEM may instruct the insurer to withhold reimbursements of the amounts as the insurer considers prudent until ADEM determines in accordance with 335-4-8-.07 that the owner or operator is no longer required to maintain financial assurance for closure of the facility. If ADEM does not instruct the insurer to make the reimbursements, ADEM will provide the owner or operator with a statement of reasons.

5. The owner or operator shall maintain the policy in full force and effect until ADEM consents to termination of the policy in accordance with 335-4-8-.07. Failure to pay the premium without substitution of alternate financial assurance as specified in 335-4-8-.06 will constitute a violation of 335-4. The violation will be considered to begin upon receipt by ADEM of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

6. Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. The assignment may be conditional upon consent of the insurer, provided the consent is not unreasonably refused.

7. The policy shall provide that the insurer may not terminate, cancel or not renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to terminate, cancel or not renew the policy by sending notice by certified mail to the owner or operator and ADEM. Cancellation, termination, or non-renewal may not occur, however, during the 120 days beginning with the date of receipt of the notice by both ADEM and the owner or operator, as evidenced by return receipts. Cancellation, termination, or non-renewal may not occur and the

policy will remain in full force and effect in the event that, on or before the date of expiration:

(i) ADEM considers the facility abandoned; or

(ii) The permit is terminated or revoked or a new permit is denied; or

(iii) Closure is ordered by ADEM or a court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

8. Whenever the current closure cost estimate exceeds the face amount of the policy, the owner or operator, within sixty (60) days after the new estimate, shall either cause the face amount to be increased to the current closure cost estimate and submit evidence documentation of the increase to ADEM, or obtain other or additional financial assurance as specified in 335-4-8-.06. Whenever the current closure cost estimate is less than the face amount, the policy face amount may be reduced following approval by ADEM.

9. ADEM will give consent to the owner or operator that it may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-4-8-.06; or

(ii) ADEM releases the owner or operator in accordance with 335-4-8-.07.

(d) Surety Bond Guaranteeing Payment or Performance. An owner or operator may obtain a performance or surety bond which conforms to the following requirements:

1. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. The penal sum of the bond shall be in an amount equal to the current closure cost estimate and shall guarantee that funds will be available to close the facility whenever closure occurs.

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3. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond or when ADEM determines that the bond amount is necessary to pay for closure.

4.- If the bond is called, the owner or operator shall establish a standby trust fund that meets the requirements of 335-4-8-.04(a) except the requirements for initial payment and subsequent annual payments specified in 335-4-8-.04(a)3. Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund in accordance with instructions from ADEM. Payments from the trust fund shall be approved by the trustee and ADEM. Any forfeiture money remaining after completion of closure shall be returned to the surety.

5. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to ADEM 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator shall obtain alternate financial assurance as specified in 335-4-8-.06.

6. The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in 335-4-8-.06 or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with 335-4-8-.07.

7. Whenever the current closure cost estimate exceeds the penal sum of the bond, the owner or operator, within sixty (60) days of the new estimate, shall cause the penal sum of the bond to be increased to the current closure cost estimate and submit evideneedocumentation of the increase to ADEM or obtain other financial assurance as specified in 335-4-8-.06 to meet the current closure cost estimate.

8. Failure of the owner or operator to report an increase in the current closure cost estimate shall be grounds for revocation of the processor permit.

9. ADEM may decrease the penal sum of the bond if the owner or operator adequately demonstrates to ADEM that the penal sum exceeds the current closure cost estimate. Penal sum reduction is not mandatory if the sum exceeds the estimate. ADEM shall consider the following to determine the penal sum of the bond:

(i) The current closure cost estimate submitted by an applicant for a scrap tire processor permit.

(ii) The 30-day supply capacity submitted as part of an application for a scrap tire processor permit.

(e) For transporters and processors of scrap tires permitted or licensed under the authority of Code of ~~Ala.~~Alabama 1975, §§22-40-01 to 22-40A-11 (promulgated pursuant to Act 1999-597 and 2001-976 and repealed by Act 2003-332) on the effective date of 335-4, financial assurance instruments shall be in effect on the date a permit application is submitted to ADEM in accordance with 335-4-3-.04.

(f) Self-insurance. Only agencies of the State of Alabama or the U.S. Government may qualify for self-insurance.

Author: James L. Bryant. Adam N. Rhodes

Statutory Authority: Code of ~~Ala.~~Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. Amended: Published ; effective .

335-4-8-.05 Financial Assurance Instruments for Remediation.

The owner or operator of a scrap tire processing facility may utilize the following instruments to provide financial assurance for remediation. The instruments used to demonstrate financial assurance shall ensure that the level of financial assurance in 335-4-8-.03(3) will be available whenever they are needed.

(a) Trust Fund. An owner or operator may establish a trust fund conforming to the requirements of 335-4-8-.04(a).

(b) Letter of Credit. An owner or operator may obtain an irrevocable standby letter of credit conforming to the requirements of 335-4-8-.04(b).

(c) Insurance. An owner or operator may obtain remediation insurance conforming to the requirements of 335-4-8-.04(c).

(d) Surety Bond. An owner or operator may obtain a surety bond conforming to the requirements of 335-4-8-.04(d).

Author: James L. Bryant

Statutory Authority: Code of ~~Ala.~~Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. Amended: Published ; effective .

335-4-8-.06

**Use Of Multiple Financial Assurance
Instruments.**

An owner or operator may satisfy the requirements of 335-4-8-.03 to .05 by establishing more than one (1) financial instrument per site. These instruments are limited to trust funds, letters of credit and surety bonds.

Author: James L. Bryant. Adam N. Rhodes

Statutory Authority: Code of Ala.-Alabama 1975, §§22-22A-5, 22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Published ; effective .

335-4-8-.07

Release Of Financial Institution.

ADEM shall release a trustee, bank, surety or other financial institution when either of the following occur:

(a) An owner or operator substitutes alternative financial assurance so that the total financial assurance for the facility is equal to or greater than the current cost estimate for closure and remediation, without counting the amounts to be released.

(b) ADEM releases the owner or operator from the requirements of 335-4-8-.02 and .03 following completion of closure or remediation.

Author: James L. Bryant

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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION -
SCRAP TIRE PROGRAM
ADMINISTRATIVE CODE

CHAPTER 335-4-9
DELEGATION OF COUNTY ENFORCEMENT PROGRAMS

TABLE OF CONTENTS

335-4-9-.01	Delegation Procedures
335-4-9-.02	Duties

335-4-9-.01 Delegation Procedures.

A County Commission may request delegation for enforcement of the Act and 335-4.

(a) The application for delegation shall include a resolution adopted by the County Commission in a regularly scheduled meeting of the County Commission stating the Commission's desire for delegation.

(b) Execution or approval of a delegation agreement by ADEM does not entitle the County to receive STF monies dedicated to county enforcement activities.

(c) The delegation application shall provide information on how the County Commission will enforce the Act and the requirements of 335-4. ADEM shall provide the information 335-4. ADEM shall provide the information it has to the County Commission on all registered receivers, ~~registered sites containing more than 100 scrap tires~~, known illegal tires sites, permitted transporters and processors. The application shall include:

1. A County Scrap Tire Enforcement Plan, which includes:

(i) Number of Class One and Class Two Receivers in the county.

(ii) Number of scrap tire processors in the county.

(iii) Location of known illegal scrap tire piles and an estimate of the total number of scrap tire sites in the county.

(iv) Estimated personnel to conduct the enforcement program, position descriptions of these persons, and estimated man-hours committed per year per person.

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(v) Estimated annual cost of scrap tire enforcement activities.

(vi) Procedures to perform the duties listed in 335-4-9-.02.

(vii) Procedures for tracking and reporting scrap tire enforcement activities to ADEM.

2. A list of personnel who will act as county enforcement officers and their qualifications to act in this manner.

3. A description of all County scrap tire activities and how the County will conduct independent inspections of its operations.

(d) ADEM shall review the delegation application and provide comments or questions to the County Commission. The County Commission will have thirty (30) days to respond to ADEM. Once ADEM has determined that a delegation agreement can be prepared, it shall submit a draft of the agreement to the County Commission for review.

(e) The delegation agreement shall specify the following, at a minimum:

1. Investigation and reporting procedures to be utilized, and duties of the county enforcement program.

2. ADEM activities to audit performance and success of the county enforcement program.

3. The term of the delegation agreement shall not exceed three (3) years from the date of execution by ADEM of the final Delegation Agreement.

(f) The County Commission shall provide comments on the draft delegation agreement to ADEM within thirty (30) days of receipt. Upon resolution of all comments, ADEM shall submit the final Delegation Agreement to the County Commission for approval and execution in a regularly scheduled meeting of the County Commission. Once executed the agreement shall be returned to ADEM for signature by the Director.

(g) If the County Commission desires to extend the Delegation Agreement, it shall submit an application to extend at least ninety (90) days prior to the expiration of the agreement. The application to extend shall update information or data that may be different from the original delegation application.

(h) If ADEM determines through an audit of the county enforcement program that there are deficiencies in the program,

ADEM shall notify the County Commission of its findings and methods for the county to return to an acceptable enforcement program. If the County Commission does not address the findings of deficiency, ADEM may revoke the Delegation Agreement. ADEM shall notify the County Commission of its intention to revoke the Delegation Agreement at least thirty (30) days prior to revoking the Delegation Agreement. Actions by ADEM to revoke the Delegation Agreement are subject to appeal in accordance with ~~ADEM Admin. Code~~ 335-2.

Author: James L. Bryant, M. Gavin Adams. Adam N. Rhodes.

Statutory Authority: Code of Ala. Alabama 1975, §§22-40A-1 et seq.

History: New Rule: Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Published ; effective .

335-4-9-.02 Duties.

Enforcement officers of delegated counties shall be accorded the authority to implement the provisions of 335-4 when conducting inspections or reviewing records for compliance with the requirements of 335-4 and the Act. County enforcement officers shall perform all of the following duties:

(a) Investigate illegal dumping of scrap tires.

(b) Investigate reports and complaints regarding scrap tires in the county.

(c) Inspect tire dealers, receivers, and transporters, to include:

1. Manifests of scrap tire shipments.

2. Registration of the receiver with ADOR for payment of the Scrap Tire Environmental Fee.

3. Scrap tire accumulation and storage areas.

4. Transporter decals as prescribed by ADEM.

5. Operating record.

(d) Inspect permitted scrap tire processors, to include:

1. Manifests of scrap tire shipments.

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2. Scrap tire accumulation and storage areas.

3. Operating record.

(e) Provide comprehensive investigation reports to ADEM within ten (10) days of the initial investigation or inspection.

(f) Take legal actions to enforce the requirements of 335-4 as allowed in the Act.

~~(g) Provide Quarterly Reports to ADEM on all scrap tire activities within that quarter on a form provided by ADEM. The Quarterly Report shall be submitted to ADEM not later than the twenty eighth day of the month following the end of the quarter.~~ Provide semi-annual reports electronically to ADEM on all scrap tire activities within that six month period of the calendar year (January through June, July through December) on a form provided by ADEM. The semi-annual

~~(h) Investigation reports and Quarterly Reports~~ report shall be submitted electronically to ADEM by the 28th day following the end of each reporting period.

(h) Investigation reports and semi-annual reports shall be completed and submitted to the Department electronically to TireMail@adem.alabama.gov ~~TireMail@adem.state.al.us~~ by the county enforcement program.

Author: James L. Bryant, Adam N. Rhodes.

Statutory Authority: Code of ~~Ala.~~Alabama 1975, §§22-40A-1 et seq.

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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION-
SCRAP TIRE PROGRAM
ADMINISTRATIVE CODE

CHAPTER 335-4-10
END-USE MARKET DEVELOPMENT PROGRAM

TABLE OF CONTENTS

335-4-10-.01	Purpose
335-4-10-.02	Definitions
335-4-10-.03	Grant Application Requirements
335-4-10-.04	Disbursement of Funds
335-4-10-.05	Grant Recordkeeping

335-4-10-.01 Purpose.

These regulations establish the procedures for the disbursement of scrap tire marketing funds for use in developing, implementing, and enhancing the beneficial use of scrap tires.

Author: Adam N. Rhodes

Statutory Authority: Code of Alabama 1975, § 22-40A-1 et seq.

History: New Rule: Published _____; effective _____.

335-4-10-.02 Definitions.

When used in this chapter, the following terms have the meaning given below:

(a) "Eligibility" means the standard or criteria by which an applicant qualifies for grant funds, as determined by the Department. These standards shall include, but are not limited to, completeness of the grant application, and plans for beneficial use of the scrap tires.

(b) "Grant Agreement" means the binding agreement between the Department and the applicant.

(c) "Grant Application" means the initial request form for a grant from the Department.

(d) "Program" means the grant program established and administered by the Department under the authority of Code of Alabama 1975, § 22-40A-13 et seq.

Author: Adam N. Rhodes

Statutory Authority: Code of Alabama 1975, § 22-40A-1 et seq.

History: New Rule: Published _____; effective _____.

335-4-10-.03 Grant Application Requirements.

(1) Requests for funding shall be submitted as described in 335-4-1-.03 to the Department on application forms specified by the Department.

(2) Applications received which have not completed their obligations under all previously awarded funds may be denied by the Department.

(3) Applications which have not met their obligations under the terms of any previous grant agreements or accounted for any unused grant funds from a previous grant awarded may be denied by the Department.

Author: Adam N. Rhodes

Statutory Authority: Code of Alabama 1975, § 22-40A-1 et seq.

History: New Rule: Published _____; effective _____.

335-4-10-.04 Disbursement of Funds.

(1) Partial reimbursement may be provided for the cost of processing scrap tire materials in the state of Alabama, which are derived from scrap tires originally generated in the state of Alabama, including those shown below with a contract for the sale of the product. Reimbursement shall not exceed 25% of monies deposited in the Scrap Tire Fund during the previous budget year and any accumulated funds in the Scrap Tire Fund with the following order of priority and decreasing reimbursement amounts for each ton of scrap tire material:

(a) Converted to an ultimate product;

(b) Beneficially used, other than as crumb rubber;

(c) Converted into chipped tire material for beneficial use;

(d) Beneficially used except; processing costs related to the creation of an ultimate product if the processing involves the use of crumb rubber as a component of the ultimate product; and the person processing, previously received partial reimbursement

under this section for processing costs related to the production of crumb rubber;

(e) Produced for beneficial use;

(f) Processed into tire derived fuel for energy recovery or production.

(g) Additional partial reimbursement may be provided at a rate set by the Department to any person engaged in beneficial use (denoted in (b) and (d) above), where scrap tires have been removed from areas underneath dirt/soil/water/other materials requiring the scrap tires to be cleaned prior to processing including but not limited to remediation of an unauthorized dump to encourage utilization of these tire materials and to recover such lands where these scrap tires were placed.

(2) The Director, or his designee, may terminate a grant award in whole or in part and demand refund of grant funds when there is substantial non-compliance with the terms of the award or with the requirements of 335-4, a determination is made by the Department that the grant was obtained by fraudulent means, it is found that grant monies have been used for non-allowable costs, or a determination is made by the Department that gross abuse or corrupt practices have been used in the administration of the grant project by the recipient.

(a) The Director, or his designee, shall afford the grant recipient an opportunity for consultation prior to any termination. After such opportunity for consultation, the Department may, in writing (via certified mail, return receipt requested), terminate the Fund grant in whole or in part.

(b) In event of such termination, the grantee shall be ineligible to make application for further participation in the grant program until the grantee complies with the terms of the grant award or with the requirements of 335-4.

(3) The amount of each grant awarded in accordance with 335-4-10 shall be at the sole discretion of the Director, or his designee.

Author: Adam N. Rhodes

Statutory Authority: Code of Alabama 1975, § 22-40A-1 et seq.

History: New Rule: Published _____; effective _____.

335-4-10-.05 Grant Recordkeeping.

Each recipient of grant funds shall maintain accurate records of all expenditures associated with the scrap tire beneficial use project funded by grants awarded pursuant to 335-4-10, and shall assure that these records are available for inspection and/or audit upon request by the Department. Records shall be kept for a period of at least five (5) years from the execution of the grant agreement.

Author: Adam N. Rhodes

Statutory Authority: Code of Alabama 1975, § 22-40A-1 et seq.

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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION - SCRAP TIRE PROGRAM
ADMINISTRATIVE CODE

CHAPTER 335-4-11
PROCEDURES FOR VARIANCES

TABLE OF CONTENTS

335-4-11-.01	Variances
335-4-11-.02	Petition for Variance
335-4-11-.03	Termination of Variance

335-4-11-.01 Variances.

The Department may grant individual variances from the specific provisions in 335-4 based upon the procedures described in 335-4-11-.02 through 335-4-11-.04 whenever it is found by the Department, upon presentation of adequate proof, that non-compliance with the requirements of 335-4 will not threaten the public health or unreasonably create environmental pollution. Variances per se are not favored by the Department.

Author: Adam N. Rhodes

Statutory Authority: Code of Alabama 1975, § 22-40A-1 et seq.

History: New Rule: Published _____; effective _____.

335-4-11-.02 Petition for Variance.

(1) Applicability. Any person may request a variance from specific provisions of 335-4 by filing a Petition for Variance with the Department at least 120 days prior to the anticipated change and shall receive approval from the Department prior to implementation of the proposed change.

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

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

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

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

(d) A concise factual statement of the reasons the petitioner believes that non-compliance with the particular provisions listed in 335-4 will not threaten the public health or unreasonably create environmental pollution.

(e) Applicable fees in accordance with 335-1.

Author: Adam N. Rhodes

Statutory Authority: Code of Alabama 1975, § 22-40A-1 et seq.

History: New Rule: Published _____; effective _____.

335-4-11-.03 Termination of Variance.

Any variance granted by the Department may be terminated by the Department whenever the Department finds, after notice to the facility, that the variance is no longer necessary or the petitioner is in violation of any requirement, condition, schedule, limitation or any other provision of the variance or that operation under the variance does not meet the minimum requirements established by the state and federal laws and regulations or is unreasonably threatening the public health.

Author: Adam N. Rhodes

Statutory Authority: Code of Alabama 1975, § 22-40A-1 et seq.

History: New Rule: Published _____; effective _____.