

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
PLAN FOR THE CONTROL OF LANDFILL GAS
EMISSIONS AT EXISTING MUNICIPAL SOLID
WASTE LANDFILLS**

~~2017~~2021

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT PLAN FOR THE CONTROL OF LANDFILL GAS EMISSIONS AT EXISTING MUNICIPAL SOLID WASTE LANDFILLS

Executive Summary

On March 12, 1996, the USEPA promulgated New Source Performance Standards (NSPS) for Municipal Solid Waste Landfills (MSWLFs) and Emission Guidelines for Existing MSWLFs. The Emission Guidelines (EG) implement §111(d) of the Clean Air Act (the Act). USEPA finalized updates to the EG and the NSPS on August 29, 2016. The EG require a State to submit a plan that will establish emission standards for existing sources when an NSPS have been promulgated for a designated pollutant, such as landfill gas (LFG). Landfill gas is composed of many constituents, including methane and nonmethane organic compounds (NMOC). Since it would be difficult to measure all compounds in LFG, the EPA has specified NMOC as a surrogate for LFG.

An existing MSWLF is a landfill for which construction, modification, or reconstruction commenced on or before July 17, 2014. An existing landfill may be active; i.e., currently accepting waste, or have additional capacity available to accept waste, or may be closed; i.e., no longer accepting waste nor having available capacity for future waste deposition. The designated facility for which this plan applies is each existing MSWLF that has accepted waste since November 8, 1987.

The final rules require affected and designated MSWLFs having design capacities below 2.5 million megagrams (or 2.5 million cubic meters) to file a design capacity report. Those existing landfills having design capacities greater than 2.5 million megagrams or (2.5 million cubic meters) are subject to the EG and those that emit more than 34 megagrams/year (37.5 tons/year) are required to install controls. The EG requires the reduction of LFG from the affected existing MSWLFs by: (1) installing a well-designed and well-operated gas collection system and (2) routing those gases to a control device capable of reducing NMOC in the collected gas by 98 weight-percent, or to 20 parts per million.

[The final rules also allow the affected and designated MSWLFs the option to comply with the operating, compliance, and monitoring requirements of either 40 CFR 60, Subpart Cf or 40 CFR 63, Subpart AAAA.](#)

Subpart B [\(with the exception of § 60.23\)](#) of 40 CFR 60, [and Subpart Ba § 60.23a of 40 CFR 60](#) ~~specifies~~ [specify](#) the contents of the state plan. The Department's plan provides for proposed regulations that will provide for the incorporation of the EG requirements into the Air Division Administrative Code. The plan demonstrates the Department's determination of the regulated universe, as well as the legal authority for implementing this plan.

CONTENTS OF STATE PLAN

Contents	Reference
Certification that a public hearing was held prior to adoption of the State Plan.	§60.23 (f)(1) <u>a</u>
A list of attendees at the hearing and their affiliation; summary of their presentation and handouts.	§60.23 (f)(2) <u>a</u>
Emission Standards and compliance schedules.	§60.24(a)
Test methods and procedures used for determining compliance with the emission standards.	§60.24(b)(2)
Legally enforceable increments of progress for facilities to achieve compliance.	§60.24(e)(1)
May provide that compliance schedules for individual facilities will be formulated after plan submittal, if certain procedures are followed.	§60.24(e)(2)
For particular facilities, a case-by-case basis for less stringent standards or compliance times.	§60.24(f)
An inventory of all designated facilities, including emission data for the designated pollutants and information related to emissions.	§60.25(a)
Provide for monitoring a facility's compliance status as follows:	§60.25(b)
1. Legally enforceable procedures for requiring the maintenance of records and periodic reporting to the State for the determination of compliance, and	
2. Periodic inspections and testing	
Information obtained under 60.25(b) shall be correlated with applicable emission standards and made available to the public.	§60.25(c)
Show that the State has legal authority to carry out the plan.	§60.26
<u>Indicate the State's non-delegated authority.</u>	<u>§60.30f</u>

§60.23a Adoption and Submittal of State Plans; Public Hearings

The Alabama Administrative Procedures Act (Title 41, Chapter 22, Code of Alabama 1975, as amended) prescribes the procedures for which all state agencies must adhere when filing revisions or new rules to the Administrative Code. Per §60.23(d), a legal notice is placed in the four regional newspapers of the State which describes the notice of the date, time and location of a public hearing. The notice describes the locations in which the material for review is located as well as procedures for obtaining copies. The Department places copies of the material for viewing in its four offices located in Decatur, Birmingham, Montgomery, and Mobile. Notification and copies of supporting materials are sent to the Regional Administrator and the State's two local air programs; i.e., the City of Huntsville and the Jefferson County Department of Health. The public hearing gives interested parties an opportunity to comment on the agency's proposal; however, it is not necessary for persons to be present at the hearing. Written comments are accepted during the public comment period. Pursuant to §60.23(f), the State will submit to EPA documentation certifying that proper notice and public participation procedures were followed.

§60.24 Emission Standards and Compliance Schedules

The Department proposes to adopt equivalent emission standards and compliance times to the federal Emission Guidelines [40 CFR 60, Subpart Cf] in the proposed ADEM Admin. Code Chapter 335-3-19 [Appendix A].

The affected facilities are expected to fulfill the requirements of the State's rules. Compliance is expected to occur within 30 months of the effective date of the State's rules. Thus, the increments of progress would be as follows:

Milestone	Compliance Schedule
1. Design Capacity Report	Within 30-90 days after the effective date of the State standard
2. NMOC Emission Rate Report	Within 30-90 days after the effective date of the State standard, and then annually
3. Collection and Control System Design Plan	Within 1 year after reporting NMOC emissions ≥ 34 Mg/yr
4. Installation of Collection and Control System Completed	Within 30 months after the effective date of the State standard or the date of the first annual NMOC emission rate is ≥ 34 Mg/yr
5. Initial Performance Test of Collection and Control System to Document Compliance	Within 180 days of control system startup

As early as possible within the first twelve months following the reporting of NMOC emissions ≥ 34 MG/yr, the MSWLF owner/operator should submit to the Department, the collection and control system design plan. Within ninety (90) days of receipt, the Department shall review and evaluate the design plan. Within this same period, the Department will provide the owner/operator written notification of deficiencies or final design approval, as applicable. The owner/operator should correct deficiencies within 60 days of receipt of notice.

The test methods and procedures for determining compliance are specified in the proposed rules which reference the Methods found in Appendix A of 40 CFR, Part 60. These test methods were previously incorporated by reference into the ADEM Code which were effective November 21, 1996.

§60.25 Emission Inventories, Source Surveillance, Reports.

An initial inventory of MSWLFs was performed in 1996, when the original NSPS and EG were promulgated. A review of that inventory, and of the permitting of new facilities since 1996 was performed to determine the facilities which would be subject to the proposed regulations. A table illustrating the regulated universe and the estimated emissions of NMOCs is included in Appendix B of this document. If there are significant changes, a revised emission inventory will be submitted after the initial design capacity and NMOC emission rate reports are received.

Compliance status is generally accomplished by providing the following:

1. Legally enforceable procedures for requiring the maintenance of records and periodic reporting to the State for the determination of compliance; and
2. Periodic inspections, and when applicable, testing of designated facilities.

The EG contains provisions for testing, monitoring, reporting, and recordkeeping that fulfill these requirements. The State's proposed Rules adopt these specifications from the EG thus fulfilling the requirements. State plans must include provisions that allow information obtained from testing, monitoring, reporting, and recordkeeping requirements of §60.25(b) to be made available to the general public. Any emission data must be correlated with applicable emission standards. ADEM Admin. Code R. 335-1-1-.06 (Availability of Records and Information), as well as the Department's E-File system, provides for the public inspection of the Department's records.

States are required under §60.25(e) and (f) to submit annual progress reports. These reports are to inform the Administrator of the progress in plan enforcement. The first report is due one year after plan approval or promulgation of a plan by EPA. The following is a list of the contents of these reports taken from §60.25(f):

1. Enforcement actions initiated against a facility during the reporting period;
2. Increments of progress,
3. Identification of facilities that have ceased operation;
4. Emission inventory data for facilities that were not in operation at the time of plan development;
5. Updated information or emission data on facilities; and
6. Copies of technical reports on all performance testing with concurrent process data.

In general, the first two items of the list apply to landfills affected by the EG. The State must report any enforcement action and any increments of progress made by landfills such as submittal of a final control plan or initiation of on-site construction.

The third item is most applicable to emission sources that cease to emit air pollutants upon ceasing operation. Landfills may continue to emit NMOC after the facility has ceased to accept MSW; however, the landfill must continue to operate control equipment after closure. The State will list landfills that have removed control devices

after closure and after their emissions have decreased to less than the emission rate cutoff. The fourth item does not apply to landfills affected by the EG since by definition these landfills were existing during plan development.

The fifth and sixth items are clearly applicable to landfills. Updated facility information or emission data will be reported. The EG and the proposed rules require that facilities above the minimum size exemption limit submit NMOC emission rate reports if not controlled or annual reports if controlled. Therefore, the requirements of the fifth item can be met. Regarding the sixth item, the EG requires that the initial performance test be submitted with the initial annual report. However, State progress reports are to include concurrent process data with performance test reports. Since landfill emissions are not generated by a manufacturing process, the concurrent process data is not applicable. Control device operating conditions during the tests will be reported.

§60.26 LEGAL AUTHORITY

The following is a discussion of the State's authority to carry out this plan. Copies of Alabama's statutes referenced are found in Appendix C.

Authority to adopt emission standards and compliance schedules applicable to designated facilities.

The Department is authorized to adopt emission requirements through regulation that are necessary to prevent, abate or control air pollution¹. See §22-28-11, Code of Alabama 1975, as amended. Section 22-28-14 specifically gives the Department the authority to adopt regulations that prescribe emissions standards. That same section generally grants the Department the authority to adopt compliance schedules to implement new or additional standards. Furthermore, §22-22A-5(10) states that the Department can issue orders citations, notices of violation, licenses, certifications or permits. Consequently, the Department may develop compliance schedules in orders

¹ Air pollution is defined in § 22-28-2(1) as follows: "The presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life or property or would interfere with the enjoyment of life or property throughout the state and in such territories of the state as shall be affected thereby." An air contaminant is defined as "any solid, liquid or gaseous matter, any odor or any combination thereof, from whatever source." See § 22-28-2(2).

or permits it is authorized to issue. Section 22-22A-5(20) states that the Department may perform any other duty that is necessary to implement and enforce the Environmental Management Act (§22-22A-1 et seq.) which incorporates the Alabama Air Pollution Control Act (§22-28-1 et seq.).

Authority to enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief.

Section 22-22A-5(12) states that the Department may “enforce all provisions” of the Environmental Management Act (including the Alabama Air Pollution Control Act) including the ability to file legal actions in the name of the Department for that purpose. Furthermore, § 22-22A-5(18) grants the Department the authority to issue administrative orders or initiate legal actions that assess civil penalties for the violation of any rule, regulation or standard promulgated by the Department and for the violation of any order, permit, etc. that has been issued by the Department.

Section 22-22A-5(19) states that the Department may commence a civil action in state circuit court so as to enjoin threatened or continuing violations of the Alabama Air Pollution Control Act or any rule, regulation or standard promulgated by the Department and any provision of any order, permit etc. issued by the Department.

Furthermore, § 22-28-22(a) states that any person who knowingly violates or fails or refuses to comply with the Alabama Air Pollution Control Act or any regulation adopted pursuant thereto or submits false information may be convicted for said violation and be subject to imprisonment or a monetary penalty.

Authority to obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require recordkeeping and to make inspections and conduct tests of designated facilities.

Section 22-28-18 states that the Department may require owners and operators of air contaminant sources to maintain records and make reports to the Department as it prescribes. See also ADEM Admin. Code R. 335-3-1-.04. Section 22-28-19(b) and ADEM Admin. Code R. 335-3-1-.05 also authorize the Department to conduct tests and take samples of air contaminants, etc. from any source.² Section 22-28-19(a) states that the Department's inspectors are authorized to enter and inspect any property or premises on, or at, which an air contaminant source is located or being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with the Alabama Air Pollution Control Act and the regulations adopted pursuant to that Act.

Authority to require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such facilities; also authority for the State to make such data available to the public as reported and as correlated with applicable emissions standards.

The Department is authorized, pursuant to § 22-28-18, to require owners and operators of air contaminant sources to install, use and maintain monitoring equipment as it may prescribe. Furthermore, as stated above, § 22-28-18 gives the Department the authority to require owners and operators of air contaminant sources to maintain records and make reports to the Department as it prescribes. Again, see also ADEM Admin. Code R. 335-3-1-.04.

Section 22-28-20 states that all records, reports or information obtained pursuant to the Alabama Air Pollution Control Act must be available to the public. The only exception to this requirement is if the information in the Department's possession

² Source is defined in ADEM Admin. Code R. 335-3-1-.02(qqq) as follows: "[A]ny building, structure, facility, installation, article, machine, equipment, device, or other contrivance which emits or may emit any air contaminant. Any activity which utilizes abrasives or chemicals for cleaning or any other purpose (such as cleaning the exterior or buildings) which emits air contaminants shall be considered a source."

would divulge production or sales figures or methods, processes or productions unique to the particular entity about which the information is requested or would tend to affect adversely the competitive position of the entity by revealing trade secrets. In those instances, the information can be considered confidential by the Department. However, emission data is not subject to the exception and the exception does not apply to federal state or local representatives that request the information for the purpose of administering federal, state or local air pollution control laws.

Authority of the State to permit a local agency to carry out a plan or portion thereof, within the local agency's jurisdiction if the local agency has the legal authority necessary to implement the plan or portion thereof, and that the State is not relieved of its responsibility for carrying out the plan or portion thereof.

Section 22-28-23 specifically authorizes certain local agencies the ability to establish and administer local air pollution control programs. In doing so, those local agencies that elect to establish and administer a local air pollution control program must craft their programs so as to be consistent with, or ~~more strict~~stricter, than the air pollution control program that is administered by the Department. The afore-referenced statutory provision [specifically §22-28-23(b)(2)] also affords local programs the same enforcement power for issuing administrative orders with penalties that the Department is authorized to exercise. Finally, the statutory provision also provides that in the event the local program is, or becomes, inadequate, the Department may preempt the local enforcement authority of said program. The local air programs in the Jefferson County Department of Health and the City of Huntsville will be delegated authority to carry out the State's plan upon promulgation of equivalent Rules in their jurisdiction.

§60.30f Scope and delegated authorities.

Under §60.30f(c)(1) of Subpart Cf of 40 CFR 60, the State does not have the delegation of authority for approving alternative methods for determining the site-specific NMOc concentrations or methane generation rate constants.

**APPENDIX A
PROPOSED RULES**

APPENDIX B INVENTORY

Active Sanitary Landfills

	LANDFILL DATA (ACTIVE)	4/9/1997		landfilo.xls								
					NMOC			Date	Date	Date	Waste	
	LANDFILL NAME	LOCATION	DESIGN	Units	Mg/yr	Status	constructed	modified	first Waste	Acc Rate	NSPS	
			CAPACITY		(by facility)	Tier				tpd		
1	Cedar Hill MSWLF	St. Clair	52,372,187	m3	31.63	II existing	before 1990	1995	unknown	600	X	
2	Arrowhead MSWLF	Perry	51,076,967	Mg	3.25	II existing	June 2007		Oct 2007	15000	X	
3	Three Corners MSWLF	Cherokee	32,789,459	Mg	28.73	II existing			1998		X	
4	Star Ridge MSWLF	St. Clair	32,040,585	m3	26.88	II existing	1983	aft 1991	unknown	1500	X	
5	Brundidge MSWLF	Pike	28,289,064	m3	3.01	II existing	Oct. 1993		no waste	1500	X	
6	North Montgomery MSWLF	Montgomery	25,000,000	Mg	4.38	II existing	July 1995		Oct.1995	1165	X	
7	Turkey Trot MSWLF	Washington	19,829,621	m3	22.34	II existing				4000	X	
8	Stone's Throw MSWLF	Tallapoosa	19,749,068	Mg	144.49	II existing		2015		1500	X	
9	Chastang MSWLF	Mobile	19,600,000	Mg	10.50	II existing	1976		1976	1725	X	
10	Sand Valley MSWLF	Dekalb	19,458,810	Mg	29.56	II existing				1500	X	
11	Salem MSWLF	Lee	19,402,857	m3	21.37	II existing	1985	1994	1985	1500	X	
12	Pineview MSWLF	Walker	12,000,000	Mg	15.22	II existing	1993		Oct.1993	1500	X	
13	Decatur/Morgan County	Morgan	10,127,000	m3	29.75	II existing	Sept. 1980	1996 cell	Sept. 1980	700	X	
14	Black Warrior MSWLF	Tuscaloosa	8,913,263	Mg	15.27	II existing	1987	1996 cell	unknown	300	X	
15	City of Dothan Sanitary Landfill	Houston	8,913,,263	Mg	7.11	II existing		2019		400	X	
16	Morris Farms MSWLF	Lawerence	7,700,000	Mg	11.33	II existing	1995		Oct. 1996	1500	X	
17	Magnolia MSWLF	Baldwin	7,542,100	m3	34.66	II existing	1972	1997	new 10/97	1500	X	
18	Coffee County MSWLF	Coffee	6,136,363	Mg	3.76	II existing	Feb. 1993		Oct. 1993	1200	X	
19	Timberlands MSWLF	Escambia	4,300,000	Mg	46.98	II existing	1993		1994	2500	X	
20	Shelby County MSWLF	Shelby	3,174,500	Mg	46.08	II existing	1982		1982	1500	X	
					536.30							

**APPENDIX C
LEGAL AUTHORITY**

Chapter 28 ALABAMA AIR POLLUTION CONTROL ACT.

- [Section 22-28-1](#) Short title.
- [Section 22-28-2](#) Definitions.
- [Section 22-28-3](#) Declaration of policy; purpose of chapter.
- Section 22-28-4 through 22-28-8 Repealed.
- [Section 22-28-9](#) Authority of commission to hire consultants, assistants and other employees.
- [Section 22-28-10](#) Powers of commission generally; advisory committees.
- [Section 22-28-11](#) Emission control requirements.
- [Section 22-28-12](#) Motor vehicle emissions.
- [Section 22-28-13](#) Variances.
- [Section 22-28-14](#) Regulations — Authority of commission.
- [Section 22-28-15](#) Regulations — Hearings; procedure for adoption.
- [Section 22-28-16](#) Permits.
- [Section 22-28-17](#) Review of plans and specifications.
- [Section 22-28-18](#) Providing of information.
- [Section 22-28-19](#) Right of entry for inspection; tests and samples.
- [Section 22-28-20](#) Availability of records, reports or information.
- [Section 22-28-21](#) Air pollution emergencies.
- [Section 22-28-22](#) Proceedings upon violation of chapter; penalties; subpoenas; injunctions.
- [Section 22-28-23](#) Local air pollution control programs.

Section 22-28-1

Short title.

This chapter shall be known and may be cited as the "Alabama Air Pollution Control Act of 1971."

(Acts 1971, No. 769, p. 1481, §1.)

Section 22-28-2

Definitions.

For the purposes of this chapter, the following terms shall have the meanings respectively ascribed to them by this section:

(1) Air pollution.

The presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life or property or would interfere with the enjoyment of life or property throughout the state and in such territories of the state as shall be affected thereby.

(2) Air contaminant.

Any solid, liquid or gaseous matter, any odor or any combination thereof, from whatever source.

(3) Commission.

The Alabama Department of Environmental Management.

(4) Person.

Any and all persons, natural or artificial, including, but not limited to, any individual, partnership, association, society, joint stock company, firm, company, corporation, institution, trust, estate, or other legal or other business organization or any governmental entity, and any successor, representative, agent or agency of the foregoing.

(5) Emission.

A release into the outdoor atmosphere of air contaminants.

(6) Director.

The Director of the Alabama Department of Environmental Management.

(7) State Health Officer.

The Director of the Alabama Department of Environmental Management.

(8) Chairman.

The director of the Alabama Department of Environmental Management.

(9) State Air Pollution Control Commission.

The Alabama Department of Environmental Management.

(10) Environmental Management Commission.

The Environmental Management Commission of the Alabama Department of Environmental Management.

(Acts 1971, No. 769, p. 1481, §3; Acts 1982, No. 82-612, p. 1111, §11(g).)

Section 22-28-3

Declaration of policy; purpose of chapter.

(a) It is hereby declared to be the public policy of this state and the purpose of this chapter to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the social development of this state and facilitate the enjoyment of the natural attractions of this state.

(b) It is also declared that local air pollution control programs are to be provided for to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

(c) To these ends, it is the purpose of this chapter to provide for a coordinated statewide program of air pollution prevention, abatement and control; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions and to provide a framework within which all values may be balanced in the public interest.

(Acts 1971, No. 769, p. 1481, §2.)

Sections 22-28-4 through 22-28-8 Repealed by Acts 1982, No. 82-612, p. 1111, §14(a)(1), effective October 1, 1982.

Section 22-28-9

Authority of commission to hire consultants, assistants and other employees.

The commission may employ and compensate, within appropriations available therefor, consultants and such assistants and employees as may be necessary to carry out the provisions of this chapter and may prescribe their powers and duties. Employees of the commission shall be employed in accordance with the State Merit System.

(Acts 1971, No. 769, p. 1481, §4.)

Section 22-28-10

Powers of commission generally; advisory committees.

In addition to other powers conferred on it by law, the commission shall have power to:

(1) Hold hearings relating to any aspect of or matter in the administration of this chapter and, in connection therewith, compel the attendance of witnesses and the production of evidence through subpoena, as provided in this chapter;

(2) Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings;

(3) Require access to records relating to emissions which cause or contribute to air contamination;

(4) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;

(5) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution in this state;

(6) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(7) Encourage and conduct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control;

(8) Determine by means of field studies and sampling the degree of air contamination and air pollution in the state and the several parts thereof;

(9) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state, and the several parts thereof, and make recommendations to appropriate public and private bodies with respect thereto;

(10) Collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(11) Advise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government and with interested persons or groups;

(12) Consult, upon request, with any person proposing to construct, install or otherwise acquire an air contaminant source or device or system for the control thereof concerning the efficacy of such device or system or the air pollution problem which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this chapter, rules and regulations in force pursuant thereto or any other provision of law;

(13) Accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this chapter. Such funds received by the commission pursuant to this section shall be deposited in the State Treasury to the account of the commission. In addition to the authority to accept, receive and administer grants or other funds from the federal government, the commission is hereby designated as the State Air Pollution Control Agency for the purposes of the Federal Clean Air Act, as amended;

(14) Provide for the performance by its officers and employees, in the name of the commission, of any act or duty necessary or incidental to the administration of this chapter; and

(15) Provide for the establishment of advisory committees, appointment of the membership of such committees, scope of investigation and other duties of such committees. The period of duration of such committees and the terms of members of such committees shall be established by the commission. No salary or compensation shall be allowed any member of such committees for services thereon. Travel, subsistence and other expenses incurred by members of such committees in the discharge of their official duties as members of such committees, and when approved by the chairman or the director, by direction of the commission shall be paid at the rate allowed other state employees as provided by Article 2 of Chapter 7 of Title 36 of this Code from any funds which are, or may become, available for the purpose of this chapter.

(Acts 1971, No. 769, p. 1481, §6.)

Section 22-28-11

Emission control requirements.

The commission may establish such emission control requirements, by rule or regulation, as in its judgment may be necessary to prevent, abate or control air pollution. Such requirements may be for the state as a whole or may vary from area to area, as may be appropriate, to facilitate accomplishment of the purposes of this chapter and in order to take account of varying local conditions.

(Acts 1971, No. 769, p. 1481, §10.)

Section 22-28-12

Motor vehicle emissions.

(a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of this chapter, the commission may provide by rules and regulations for the control of emissions from any class or classes of motor vehicles. Such rules and regulations may, in addition, prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and of such vehicles.

(b) (1) The commission may establish standards and requirements providing for periodic inspections and testing of motor vehicles by the commission to enforce compliance with this section.

(2) The commission may establish reasonable fees for the inspection and testing of motor vehicles and provide by rules and regulations for the payment and collection of such fees.

(3) If, after inspecting and testing any motor vehicle, the commission determines that such motor vehicle complies in every respect with rules, regulations, standards and requirements issued by the commission pursuant to this section, the commission shall attach to such vehicle in a clearly visible location a certificate of inspection and approval.

(c) (1) The commission may suspend or revoke the certificate of inspection and approval of any motor vehicle not equipped with an air pollution control system or mechanism in good working order and adjustment as required by the rules and regulations of the commission. The vehicle shall not thereafter be eligible for such certificate until all parts and equipment constituting operational elements of the motor vehicle have been restored, replaced or repaired and are in good working order.

(2) No motor vehicle shall be issued an official certificate of inspection and approval as required pursuant to this section unless all features or equipment required in or on the motor vehicle for the purpose of controlling emissions therefrom have been inspected in accordance with the standards and testing techniques required by the commission pursuant to subsection (b) of this section and have been found to meet these standards.

(3) No person shall drive or move and no owner shall cause or knowingly permit to be driven or moved on any highway any motor vehicle unless the vehicle is equipped with an air pollution control system or mechanism in good working order and adjustment as required by rules and regulations of the commission.

(4) When, and if, the commission shall establish standards and requirements for periodic inspections and testing of motor vehicles pursuant to subsection (b) of this section, no person shall drive or move and no owner shall cause or knowingly permit to be driven or moved on any highway any motor vehicle unless there is attached to such vehicle by the commission a valid certificate of inspection and approval which has not been suspended or revoked.

(5) Failure to comply with subdivisions (3) and (4) of this subsection shall subject the driver or owner to a penalty as provided in this chapter.

(d) The commission, in its discretion, is hereby authorized to delegate any, or all, of the authority vested in it by this section to any agency or instrumentality of the state now or hereafter authorized to inspect motor vehicles for any purpose.

(e) As used in this section, "motor vehicle" shall mean every self-propelled device in, or upon, or by which any person or property is or may be transported or drawn upon a public highway.

(Acts 1971, No. 769, p. 1481, §16.)

Section 22-28-13

Variances.

(a) The commission may grant individual variances beyond the limitations prescribed in this chapter whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the commission would impose serious hardship without equal or greater benefits to the public and the emissions occurring, or proposed to occur, do not endanger or tend to endanger human health or safety, human comfort and aesthetic values. In granting or denying a variance, the commission shall file and publish a written opinion stating the facts and reasons leading to its decision.

(b) In granting a variance, the commission may impose such conditions as the policies of this chapter may require. If the hardship complained of consists solely of the need for a reasonable delay in which to correct a violation of this chapter or of the commission regulations, the commission shall condition the grant of such variance upon the posting of sufficient performance bond or other security to assure the correction of such violation within the time prescribed.

(c) Any variance granted pursuant to the provisions of this section shall be granted for such period of time, not exceeding one year, as shall be specified by the commission at the time of the grant of such variance and upon the condition that the person who receives such variance shall make such periodic progress reports as the commission shall specify. Such variance may be extended from year to year by affirmative action of the commission, but only if satisfactory progress has been shown.

(d) Any person seeking a variance shall do so by filing a petition for variance with the commission, which shall promptly give notice of such petition in a newspaper of general circulation in the county in which the installation or property for which variance sought is located. The director shall promptly investigate such petition, consider the views of persons who might be adversely affected by the grant of a variance and make a recommendation to the commission as to the disposition of the petition. If the commission, in its discretion, concludes that a hearing would be advisable, or if any person files a written objection to the grant of such variance within 21 days, then a hearing shall be held, under the rules prescribed in subsection (b) of Section 22-28-15, and the burden of proof shall be on the petitioner.

(e) If the commission fails to take final action upon a variance request within 90 days after the filing of the petition, the petitioner may deem the request denied under this chapter.

(f) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the commission; however, any person adversely affected by a variance or renewal granted by the commission may obtain judicial review by filing notice of appeal with the register or clerk of the circuit court in the county where the pollution source is located within 20 days from the action of the commission thereon. The case shall be heard by the court under the same rules and with the same requirements as a petition for injunction would be heard. On appeal, the circuit court shall grant said variance unless it finds the operation of the air contamination source in the manner allowed in the variance would amount to a private or public nuisance or unless it finds that the commission acted arbitrarily and capriciously.

(Acts 1971, No. 769, p. 1481, §12.)

Section 22-28-14

Regulations — Authority of commission.

The commission, pursuant to procedures prescribed in Section 22-28-15, may adopt regulations to promote the purposes of this chapter. Without limiting the generality of this authority, such regulations may among other things prescribe:

- (1) Ambient air quality standards specifying the maximum permissible short-term and long-term concentrations of various air contaminants in the atmosphere;
- (2) Emission standards specifying the maximum amounts or concentrations of air contaminants that may be discharged into the atmosphere;
- (3) Standards and conditions regarding the sale, offer or use of any fuel or other article determined to constitute an air pollution hazard or which could constitute an air pollution hazard;
- (4) Alert and abatement standards relative to air pollution episodes or emergencies constituting an acute danger to health or to the environment;
- (5) Requirements and procedures for the inspection of any equipment, facility, vehicle, vessel or aircraft that may cause or contribute to air pollution;
- (6) Requirements for making reports containing information as may be required by the commission concerning location, size and height of contaminant outlets, processes employed, fuels used and the nature and time periods or duration of emissions and such other information as is relevant to air pollution; and
- (7) Effective and application dates; however, unless otherwise specified by the commission, all rules, regulations, standards, requirements, procedures, orders, resolutions, prohibitions, amendments thereto or repeal thereof shall become effective and applicable upon adoption by the commission.

(Acts 1971, No. 769, p. 1481, §5.)

Section 22-28-15

Regulations — Hearings; procedure for adoption.

(a) No substantive regulations shall be adopted, amended or repealed until after a public hearing. At least 20 days prior to the scheduled date of the hearing, the commission shall give notice of such hearing by public advertisement in a newspaper of general circulation in the area of the state concerned of the date, time, place and purpose of such hearing and make available to any person upon request copies of the proposed regulations, together with summaries of the reasons supporting their adoption.

(b) Repealed by Acts 1982, No. 82-612, p. 1111, §14(a)(1).

(c) After such hearing, the commission may revise the proposed regulations before adoption in response to testimony made at the hearing without conducting a further hearing on the revisions.

(d) Any such regulations may make different provisions, as required by circumstances, for different contaminant sources and for different geographical areas; may apply to sources outside this state causing, contributing to or threatening environmental damage in Alabama and may make special provision for alert and abatement standards and procedures respecting occurrences or emergencies of pollution or on other short-term conditions constituting an acute danger to health or to the environment. In promulgating regulations under this chapter, the commission shall take into account the purpose of the chapter.

(e) Nothing in this section shall be construed to require a hearing prior to the issuance of an emergency order pursuant to Section 22-28-21.

(Acts 1971, No. 769, p. 1481, §13; Acts 1982, No. 82-612, p. 1111, §14(a)(1).)

Section 22-28-16

Permits.

(a) The commission, by regulation, shall prohibit the construction, installation, modification or use of any equipment, device or other article which it finds may cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants unless a permit therefor has been obtained from the director.

(b) The commission may require that applications for such permits shall be accompanied by plans, specifications and such other information as it deems necessary.

(c) The commission shall provide for the issuance, suspension, revocation and renewal of any permits which it may require pursuant to this section.

(d) No person shall construct, install, modify or use any equipment, device or other article designated by regulations capable of causing, or contributing to, air pollution or designated to prevent air pollution without a permit from the director or in violation of any conditions imposed by such permits.

(Acts 1971, No. 769, p. 1481, §18.)

Section 22-28-17

Review of plans and specifications.

(a) The commission may require that notice be given to the director prior to the undertaking of the construction, installation or establishment of particular types or classes of new air contamination sources specified in its rules and regulations. Within 15 days of its receipt of such notice, the director may require, as a condition precedent to the construction, installation or establishment of the air contaminant source or sources covered thereby, the submission of plans, specifications and such other information as it deems necessary in order to determine whether the proposed construction, installation or establishment will be in accord with applicable rules and regulations in force pursuant

to this chapter. If, within 60 days of the receipt of plans, specifications or other information required pursuant to this section, the director determines that the proposed construction, installation or establishment will not be in accord with the requirements of this chapter or applicable rules and regulations, he shall issue an order prohibiting the construction, installation or establishment of the air contaminant source or sources. Failure of such an order to issue within the time prescribed in this section shall be deemed a determination that the construction, installation or establishment may proceed, provided that it is in accordance with the plans, specifications or other information, if any, required to be submitted.

(b) In addition to any other remedies available on account of the issuance of an order prohibiting construction, installation or establishment, and prior to invoking any such remedies, the person or persons aggrieved thereby shall, upon request in accordance with rules of the commission, be entitled to a hearing on the order. Following such hearing, the order may be affirmed, modified or withdrawn.

(c) For the purposes of this chapter, addition to, or enlargement or replacement of an air contaminant source, or any major alteration therein, shall be construed as construction, installation or establishment of a new air contaminant source.

(d) Any features, machines and devices constituting parts of, or called for by, plans, specifications or other information submitted pursuant to subsection (a) of this section shall be maintained in good working order.

(e) Nothing in this section shall be construed to authorize the commission to require the use of machinery, devices or equipment from a particular supplier or produced by a particular manufacturer if the required performance standards may be met by machinery, devices or equipment otherwise available.

(f) The absence or failure to issue a rule, regulation or order pursuant to this section shall not relieve any person from compliance with any emission control requirements or with any other provision of law.

(g) The commission, by rule or regulation, may prescribe and provide for the payment and collection of reasonable fees for the review of plans and specifications required to be submitted pursuant to this section. All such fees, when collected, shall be deposited in the State Treasury to the account of the Division of Air Pollution Control of the State Department of Health.

(Acts 1971, No. 769, p. 1481, §8.)

Section 22-28-18

Providing of information.

The commission may require the owner or operator of any air contaminant source to establish and maintain such records, make such reports, install, use and maintain such monitoring equipment or methods, sample such emissions in accordance with such methods, at such locations, intervals and procedures as the commission shall prescribe, and provide such other information as the commission reasonably may require.

(Acts 1971, No. 769, p. 1481, §7.)

Section 22-28-19

Right of entry for inspection; tests and samples.

(a) Any duly authorized officer, employee or representative of the department may enter and inspect any property, premises or place on, or at, which an air contaminant source is located or is being constructed, installed or established, at any reasonable time, for the purpose of ascertaining the state of compliance with this chapter and rules and regulations in force pursuant thereto. No person shall refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such inspection. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

(b) The department may conduct tests and take samples of air contaminants, fuel, process material or other material which affects, or may affect, emission of air contaminants from any source. Upon request of the department, the person responsible for the source to be tested shall provide necessary holes in stacks or ducts and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices as may be necessary for proper determination of the emission of air contaminants. If an authorized employee of the department during the course of an inspection obtains a sample of air contaminant, fuel, process material or other material, he shall give the owner or operator of the equipment or fuel facility a receipt for the sample obtained.

(Acts 1971, No. 769, p. 1481, §9.)

Section 22-28-20

Availability of records, reports or information.

(a) Any records, reports or information obtained under this chapter shall be available to the public; except, that upon a showing satisfactory to the commission by any person that records, reports or information, or particular part thereof, other than emission data, to which the commission has access if made public would divulge production or sales figures or methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, the commission shall consider such record, report or information, or particular portion thereof, confidential in the administration of this chapter.

(b) Nothing in this section shall be construed to prevent disclosure of such report, record or information to federal, state or local representatives as necessary for purposes of administration of any federal, state or local air pollution control laws or when relevant in any proceeding under this chapter.

(Acts 1971, No. 769, p. 1481, §14.)

Section 22-28-21

Air pollution emergencies.

(a) Any other provisions of law to the contrary notwithstanding, if the director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the director shall order persons causing or contributing to the air pollution to reduce or discontinue immediately

the emission of air contaminants, and such order shall fix a place and time, not later than 24 hours thereafter, for a hearing to be held before the Environmental Management Commission. Not more than 24 hours after the commencement of such hearing, and without adjournment thereof, the Environmental Management Commission shall affirm, modify or set aside the order of the director.

(b) In the absence of a generalized condition of air pollution of the type referred to in subsection (a) of this section, but if the director finds that emissions from the operation of one or more air contaminants sources is causing imminent danger to human health or safety, he may order the person or persons responsible for the operation or operations in question to reduce or discontinue emissions immediately, without regard to the provisions of Section 22-28-19. In such event, the requirements for hearing and affirmance, modification or setting aside of orders set forth in subsection (a) of this section shall apply.

(c) Nothing in this section shall be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision or inheres in the office.

(d) In addition to, and without in any way limiting the foregoing, if the State Health Officer, determines, at any time, that air pollution in any county, locality, place or other area in the state constitutes an emergency risk to health of those present within said area of the state and that the resources of the commission are not sufficient to abate said air pollution, such determination shall be communicated in writing, with the factual findings on which such determination is based, to the Governor; the State Health Officer may delegate in writing to any employee of the commission the power to make such determination and deliver the same to the Governor in the absence of the State Health Officer from the state. Upon being so advised, the Governor shall, by proclamation, declare, as to all or any part of said area mentioned in the aforesaid determination, that an air pollution emergency exists, and, upon making such declaration, the Governor shall have the following powers which he may exercise, in whole or in part, by the issuance of an order or orders:

(1) To prohibit, restrict or condition motor vehicle travel of every kind, including trucks and buses, in the area;

(2) To prohibit, restrict or condition the operation of retail, commercial, manufacturing, industrial or similar activity in the area;

(3) To prohibit, restrict or condition operation of incinerators in the area;

(4) To prohibit, restrict or condition the burning or other consumption of any type of fuel in the area;

(5) To prohibit, restrict or condition the burning of any materials whatsoever in the area; and

(6) To prohibit, restrict or condition any, and all, other activity in the area which contributes or may contribute to the air pollution emergency.

(e) The declaration by proclamation of the Governor of an air pollution emergency, and any order issued by the Governor pursuant to such declaration, shall be given maximum publicity throughout the state.

(f) Any gubernatorial order may be amended or modified by further gubernatorial orders. Said order or orders shall not require any judicial or other order or confirmation of any type in order to become immediately effective as the legal obligation of all persons, firms, corporations and other entities within the state. Said order shall remain in effect for the duration of the time set forth in same, and if no time limit is specified in said order, same shall remain in effect until the governor declares by further proclamation that the emergency has terminated.

(g) The aforesaid orders of the Governor shall be enforced by the state and county departments of health, the state and local police, commission personnel, the Alabama National Guard, if same is authorized in the Governor's order, and such other persons or agencies as may be designated by the Governor. Those enforcing any Governor's order shall require no further authority or warrant in executing same than the issuance of the order itself. Those authorized to enforce said orders may use such reasonable force as is required in the enforcement thereof and may take such reasonable steps as are required to assure compliance therewith, including, but without limiting the generality of the foregoing, the following:

(1) Entering any property or establishment whatsoever, commercial, industrial or residential, believed, on reasonable cause, to be violating said order, excepting single or double family homes or any dwelling unit within a multiple-dwelling unit larger than a double family home, and, if a request does not produce compliance, causing compliance with said order;

(2) Stopping, detouring, rerouting and prohibiting motor vehicle travel and traffic;

(3) Disconnecting incinerator or other types of combustion facilities;

(4) Terminating all burning activities;

(5) Closing down or restricting the use of any business, commercial, retail, manufacturing, industrial or other establishment.

Where any person authorized to enforce such an order believes, on reasonable cause, that same is being violated in a single or double family residence or within the dwelling portion of a larger multiple-dwelling unit, said residence, or dwelling portion thereof, may be entered only upon obtaining a search warrant from any magistrate having power to issue same.

(h) Any person, firm or corporation or other entity aggrieved by any gubernatorial order, upon application to the State Health Officer, shall be granted a public hearing on the question of whether or not the continuance of any such order, in whole or in part, is unreasonable in the light of the then prevailing conditions of air pollution, the contribution to the same of any particular activity and the purposes of this chapter. Said public hearing shall be conducted as quickly as possible by said State Health Officer or his delegate who shall give public notice of same. The State Health Officer or his delegate shall have the power to compel attendance, testimony and the production of documents by the use of subpoena powers. The number of witnesses and the extent of testimony shall be within his control. If the State Health Officer, upon conclusion of such hearing, determines that any such order should be terminated or modified in any way whatsoever, he shall report such findings and recommendations to the Governor for such action as he deems appropriate.

(Acts 1971, No. 769, p. 1481, §11; Acts 1982, No. 82-612, p. 1111, §11(g).)

Section 22-28-22

Proceedings upon violation of chapter; penalties; subpoenas; injunctions.

(a) Any person who knowingly violates or fails or refuses to obey or comply with this chapter, or any rule or regulation adopted thereunder, or knowingly submits any false information under this chapter, or any rule or regulation thereunder, including knowingly making a false material statement, representation, or certification, or knowingly rendering inaccurate a monitoring device or method, upon conviction, shall be punished by a fine not to exceed ten thousand dollars (\$10,000) for the violation and an additional penalty not to exceed ten thousand dollars (\$10,000) for each day thereafter during which the violation continues and may also be sentenced to hard labor for the county for not more than one year.

(b) Any local air pollution control program operating pursuant to subsection (b) of Section 22-28-23 may enforce violations of the local air pollution control program and its rules and regulations in the same manner described in subsection (a) of this section.

(c) Any duly designated employee of the commission, including any hearing officer, may administer oath to witnesses and may conduct hearings or investigations, and any such duly designated employee of the commission may sign and issue subpoenas requiring persons to appear before him or her or the commission to give testimony and requiring the production of any papers, books, accounts, payrolls, documents, or records. The commission, through its designated officers, shall have the power to serve subpoenas upon any person by sending a copy of the subpoena through the United States mail, postage prepaid, registered or certified, with return receipt attached, and the service shall be complete when the registered or certified mail is delivered to the person and the receipt is returned to the commission or its designated employee, signed by the person being subpoenaed. Obedience to a subpoena issued by the commission or any person authorized and designated by the commission to issue a subpoena may be enforced by application to any judge of the circuit court of the county in which the subpoena was issued or to the judge of any circuit court in which the person subpoenaed resides in the same manner as is provided by law for the grand jury of a county to enforce its subpoenas and with the same penalty as provided for the failure of any person failing or refusing to comply with a subpoena.

(Acts 1971, No. 769, p. 1481, §17; Acts 1982, No. 82-612, p. 1111, §14(a)(1); Acts 1986, No. 86-542, p. 1053, §6; Acts 1996, No. 96-516, p. 660, §1.)

Section 22-28-23

Local air pollution control programs.

(a) Except as provided in this section, it is the intention of this chapter to occupy by preemption the field of air pollution control within all areas of the State of Alabama. However, nothing in this section shall be construed to limit or abrogate any private remedies now available to any person for the alleviation, abatement, control, correction, or prevention of air pollution or restitution for damage resulting therefrom.

(b) Subject to the provisions of this section, each municipal governing body which had municipal ordinances in effect on, or before, July 1, 1969, which pertain to air pollution control and which provide for the creation and establishment of an air pollution control board and each county board of health shall have the authority to establish, and thereafter administer, within their jurisdictions, a local air pollution control program which:

(1) Provides, subject to subsection (d) of this section, by ordinance, regulation, or resolution, for requirements for the control or prevention of air pollution consistent with, or more strict than, those imposed by this chapter or the rules, regulations, and standards promulgated by the commission under this chapter;

(2) Provides for the enforcement of such requirement by appropriate administrative and judicial process, including a process for the administrative assessment of penalties substantially equivalent to that provided in subdivision (18) of Section 22-22A-5, provided however, that no person subject to the jurisdiction of the municipal or county program shall be subject to the administrative assessment of penalties by the municipal or county program if the department has issued an order that assesses a penalty or if the department or Attorney General has commenced a civil action to recover a penalty for the same violation pursuant to subdivision (18) of Section 22-22A-5. Each municipal governing body and each county board of health establishing a program under this section may advertise and adopt all rules and regulations in accordance with the same procedure provided in this chapter for the adoption of rules, regulations, and standards by the commission, and all judicial remedies provided by this chapter and Chapter 22A of this title shall be available and enforceable by the municipal governing body and by the county board of health; and

(3) Provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program. The county commission of each county and the council or other governing body of each municipal governing body within the jurisdiction of a local air pollution control program established by a county board of health may appropriate such sums as they may determine necessary and desirable for the establishment, administration, and enforcement of the program.

(c) No county board of health shall have the authority to exercise air pollution control jurisdiction within the bounds of any incorporated municipality or the police jurisdiction thereof having an air pollution control program as authorized. Provided further, however, that no municipal governing body having an air pollution control program as authorized shall have the authority to exercise air pollution control jurisdiction over any agricultural and farming operations conducted within the corporate limits or police jurisdiction of the municipality.

(d) Any municipal governing body and each county board of health may adopt and enforce any ordinance, regulation, or resolution requiring the control or prevention of air pollution as follows:

(1) Where any ordinance, regulation, or resolution is identical in substance to requirements for the control or prevention of air pollution imposed by this chapter, or the rules, regulations, and standards promulgated by the commission under this chapter, then the ordinance, regulation, or resolution may be adopted and enforced without further approval of the commission.

(2) Where any ordinance, regulation, or resolution provides for the control or prevention of air pollution regarding classes or types of sources or classes or types of air contaminants for which the commission has not promulgated rules, regulations, or standards applicable to such sources of air contaminants within the area of

jurisdiction of the local air pollution control program of the municipal governing body or county board of health, then the ordinance, regulation, or resolution may be adopted and enforced without further approval of the commission.

(3) Where any ordinance, regulation, or resolution is adopted which provides for requirements for the control or prevention of air pollution for particular classes or types of sources or classes or types of air contaminants, which requirements are more strict than those imposed by this chapter, or the rules, regulations, and standards promulgated by the commission under this chapter, which are applicable within the area of jurisdiction of the local air pollution control program of the municipal governing body or county board of health, then the ordinance, regulation, or resolution may not be enforced unless the commission finds within 60 days of the adoption that the ordinance, regulation, or resolution is compatible with the purposes of this chapter and with any comprehensive plan adopted by the commission pursuant to Section 22-28-10.

(4) Each municipal governing body or county board of health shall notify the commission of the adoption of any ordinance, regulation, or resolution requiring the control or prevention of air pollution and provide to the commission a certified copy of the ordinance, regulation, or resolution within 15 days of adoption.

(e)(1) If the commission has reason to believe that a local air pollution control program established pursuant to subsection (b) of this section is inadequate to prevent and control air pollution in the jurisdiction to which the program relates or that the program is being administered in a manner inconsistent with the requirements of this chapter, the commission shall, on due notice, conduct a hearing on the matter; and

(2) If, after such hearing, the commission finds that the program is inadequate to prevent and control air pollution in the jurisdiction to which the program relates, that the program is not accomplishing the purposes of this chapter, that the program is not adhering to the requirements of subsection (f) of this section or that the program is being administered in a manner inconsistent with requirements of this chapter, the commission may preempt the local enforcement authority of that program.

(f)(1) Each municipal governing body or county board of health which has established and administers a local air pollution control program pursuant to this section shall submit to the commission a detailed report of its activities during the previous year. The annual report shall be submitted as of October 1, of each year. The reports shall include, but not be limited to, information regarding:

- a. Ordinances and resolutions adopted or under consideration requiring control or prevention of air pollution and administrative procedures followed in the adoption;
- b. Administrative organization;
- c. Staff, financial, and other resources;
- d. Enforcement activities;
- e. Emission inventories;
- f. Air quality monitoring systems and data;
- g. Progress and problems related to administration of the local air pollution control programs; and
- h. Any other information which the commission may reasonably require.

(2) The commission may also require special interim reports by the municipal governing body or county board of health regarding activities of its local air pollution control program.

(g) Any municipal governing body and any county board of health establishing a program under this section may, upon receipt of authorization from the commission, issue permits for the construction, installation, modification, or use of categories of equipment, devices, or articles specifically included in that authorization, provided however, that the commission may require the municipal governing body or county board of health to notify the commission of any permit proposed to be issued. Such permits shall be in lieu of those required by Section 22-28-16. The commission may enforce, suspend, or revoke any permit issued by a municipal governing body or county board of health pursuant to this subsection. Criteria for granting authorization and for suspension or revocation of that authorization, or permits issued pursuant to that authorization, whether in whole or in part, shall be established by the commission by regulation. No fee charged by a local air pollution control program shall exceed the fee charged by the commission for emissions and/or the review of plans and specifications for the same category of permit, except any county or municipality having a population of 55,000 or less according to the most recent federal census, which counties or cities may charge a higher fee.

(h) Nothing in this section shall be construed to prohibit the commission from enforcing any provision of this chapter or any rule or regulation issued thereunder, nor to supersede or oust the jurisdiction of the commission in any matter.

(Acts 1971, No. 769, p. 1481, §15; Acts 1980, No. 80-439, p. 666; Acts 1986, No. 86-542, p. 1053, §7; Act 2000-798, p. 1896 §1.)

Chapter 22A ENVIRONMENTAL MANAGEMENT.

- [Section 22-22A-1](#) Short title.
- [Section 22-22A-2](#) Legislative intent and purposes of chapter.
- [Section 22-22A-3](#) Definitions.
- [Section 22-22A-4](#) Department of Environmental Management created; principal office; director; deputy director; divisions and division chiefs; transfer of functions; designation as State Environmental Control Agency, etc.; contract with Health Department for routine bacteriological analyses.
- [Section 22-22A-5](#) Powers and functions of department; representation of department by Attorney General in legal actions.
- [Section 22-22A-6](#) Environmental Management Commission; powers and duties; composition; appointments; vacancies; qualifications; terms; chairman; quorum; regular and special meetings; effect of failure to attend three consecutive meetings; record of proceedings; compensation; expenses; ethical requirements.
- [Section 22-22A-7](#) Hearings and procedures before commission; appeal and review.[Section 22-22A-8](#) Adoption of rules, regulations and standards; review by director; public notice and hearing.
- [Section 22-22A-9](#) Transfer of functions, personnel, equipment, funds, etc., to Department of Environmental Management.
- [Section 22-22A-10](#) Transfer of functions, personnel, equipment, etc., of coastal area board to Office of State Planning and Federal Programs; exception.
- [Section 22-22A-11](#) Alabama Department of Environmental Management Fund.
- [Section 22-22A-12](#) Coastal Resources Advisory Committee; composition; terms; chairman; meetings.
- [Section 22-22A-13](#) Effect of chapter on powers of Attorney General.
- .
- [Section 22-22A-15](#) Chapter does not repeal Section 22-30-5.1.
- [Section 22-22A-16](#) Pollution Control Grant Fund.

Section 22-22A-1

Short title.

This chapter shall be known and may be cited as "the Alabama Environmental Management Act."

(Acts 1982, No. 82-612, p. 1111, §1.)

Section 22-22A-2

Legislative intent and purposes of chapter.

The Legislature finds the resources of the state must be managed in a manner compatible with the environment, and the health and welfare of the citizens of the state. To respond to the needs of its environment and citizens, the state must have a comprehensive and coordinated program of environmental management. It is therefore the intent of the Legislature to improve the ability of the state to respond in an efficient, comprehensive and coordinated manner to environmental problems, and thereby assure for all citizens of the state a safe, healthful and productive environment.

(1) To this end an Alabama Department of Environmental Management is created by this chapter within the Executive Branch of State Government in order to effect the grouping of state agencies which have primary responsibility for administering environmental legislation into one department, to promote economy and efficiency in the operation and management of environmental programs, to eliminate overlapping or duplication of effort within the environmental programs of the state, to provide for timely resolution of permitting actions, to improve services to the citizens of the state, to protect human health and safety, to develop and provide for a unified environmental regulatory and permit system, to provide that the responsibility within the Executive Branch for the implementation of environmental programs and policies is clearly fixed and ascertainable, and to insure that government is responsive to the needs of the people and sufficiently flexible to meet changing conditions.

(2) It is also declared to be the intent of the Legislature to retain for the state, within the constraints of appropriate federal law, the control over its air, land and water resources and to secure cooperation between agencies of the state, agencies of other states, interstate agencies and the federal government in carrying out these objectives.

(3) It is the intent of the Legislature to recognize the unique characteristics of the Alabama coastal region and to provide for its protection and enhancement through a continued coastal area program.

(4) It is not the intent of the Legislature to abrogate any of the powers or duties of the State Board of Health which are found in Sections 22-2-1 through 22-2-14.

(Acts 1982, No. 82-612, p. 1111, §2.)

Section 22-22A-3

Definitions.

For the purposes of this chapter, the following words and phrases, unless a different meaning is plainly required by the context or by legislation governing functions transferred by this chapter, shall have the following meanings:

(1) Department.

The Alabama Department of Environmental Management, established by this chapter.

(2) Director.

The director of the Alabama Department of Environmental Management.

(3) Division.

A subdivision of the Alabama Department of Environmental Management, which may be headed by a division chief. Such divisions may be divided into sections where appropriate.

(4) Environmental Management Commission.

The Environmental Management Commission of the Alabama Department of Environmental Management.

(5) Function(s).

A duty, power or program exercised by or assigned to a commission, board or the State Health Department, including all positions and personnel relating to the performance of such function, unless otherwise provided by this chapter.

(6) Hearing officer.

An attorney licensed to practice law in the State of Alabama, designated by the Environmental Management Commission to hear appeals for the Environmental Management Commission and to make findings of fact, conclusions of law and recommendations to the Environmental Management Commission for its final decision.

(7) Person.

Any and all persons, natural or artificial, including, but not limited to, any individual, partnership, association, society, joint stock company, firm, company, corporation, institution, trust, estate, or other legal entity or other business organization or any governmental entity, and any successor, representative, agent or agency of the foregoing.

(8) Administrative action(s).

The issuance, modification, repeal or denial of any permit, license, certification, or variance, or the issuance, modification or repeal of any order, notice of violation, citation, rule or regulation by the department.

(9) All definitions of the Alabama Water Pollution Control Act, Section 22-22-1, shall be the definitions of the department for its Water Pollution Control Program.

(10) All definitions found in Section 22-23-31, relating to safe drinking water, shall be the definitions of the department for its Safe Drinking Water Program.

(11) All definitions of the Alabama Air Pollution Control Act, Section 22-28-2, shall be the definitions of the department for its Air Pollution Control Program.

(12) All definitions found in Section 22-24-1, relating to water well standards, shall be the definitions of the department for its Water Well Standards Program.

(13) All definitions found in Section 22-25-1, relating to water and wastewater systems and treatment plants, shall be the definitions of the department for its Water and Wastewater Systems and Treatment Plant Operator Program.

(14) All definitions found in Section 22-27-2, relating to solid wastes, shall be the definitions of the department for its Solid Waste Program.

(15) All definitions found in Section 9-7-10, relating to the coastal area Management Program, shall be the definitions of the Department and the Office of State Planning and Federal Programs for their Coastal Area Program.

(16) All definitions found in Section 22-30-3, relating to hazardous wastes, Shall be the definitions of the department for its Hazardous Waste Program.

(Acts 1982, No. 82-612, p. 1111, §3.)

Section 22-22A-4

Department of Environmental Management created; principal office; director; deputy director; divisions and division chiefs; transfer of functions; designation as State Environmental Control Agency, etc.; contract with Health Department for routine bacteriological analyses.

(a) There is hereby created and established the Alabama Department of Environmental Management to carry out the purposes of this chapter and to administer and enforce the provisions of this chapter and all functions transferred to the department by this chapter. The department shall maintain its principal office in the City of Montgomery, Montgomery County, Alabama.

(b) The department shall be under the supervision and control of an officer who shall be designated as the director of the Alabama Department of Environmental Management. The director shall be an individual knowledgeable and experienced in environmental matters. The director shall employ such officers, agents and employees as he deems necessary to properly administer and enforce the programs and activities of the department and to fully implement the requirements of this chapter and the intent of the Legislature. All powers, duties and functions transferred to the department by this chapter, except those specifically granted to the Environmental Management Commission, shall be performed by the director; provided that the director may delegate the performance of such of his powers, duties and functions, to employees of the department, wherever it appears desirable and practicable in fulfilling the policies and purposes of this chapter. The director shall be appointed by and serve at the pleasure of the Environmental Management Commission. The director shall be exempt from Chapter 26 of Title 36. The pay of the director shall be set by the Environmental Management Commission and shall be consistent with that of cabinet level appointees.

(c) There shall be a deputy director of the department who shall be a Merit System employee. The deputy director shall assist the director and shall have charge and general supervision of the department in the absence or disability of the director. In the case of a vacancy in the office of director, the deputy director shall become the acting director of the department and shall have the full powers of the office of director until the Environmental Management Commission appoints a successor to the director.

(d) The department shall be divided into such divisions as the director deems appropriate. Each division shall be supervised by a division chief who shall be selected by the director and shall be a Merit System employee.

(e) The functions of the Air Pollution Control Commission and of the Division of Air Pollution Control in the State Health Department as set forth in Sections 22-28-1 through 22-28-23 are transferred to the department on October 1, 1982.

(f) The functions of the Water Improvement Commission, as set forth in Sections 22-22-1 through 22-22-14 are transferred to the department on October 1, 1982.

(g) The functions of the State Health Department with respect to public water systems, as set forth in Sections 22-23-30 through 22-23-53 are transferred to the department on October 1, 1982.

(h) The functions of the Alabama Water Well Standards Board, as set forth in Sections 22-24-1 through 22-24-12 are transferred to the department on October 1, 1982.

(i) The functions of the State Health Department with respect to solid waste collection and disposal, as set forth in Sections 22-27-1 through 22-27-7, which are specified below, are transferred to the department on October 1, 1982. Specifically, those functions of Section 22-27-3 relating to the location and control of solid waste disposal by sanitary landfill, incineration, or composting; and the burning of solid wastes are transferred to the department. Those provisions of Section 22-27-4 relating to the control of unauthorized dumping are transferred to the department. Those provisions of Section 22-27-5 relating to the issuance of permits to individuals or corporations engaging in the disposal of solid wastes are transferred to the department. Those provisions of Section 22-27-7 relating to the supervision and regulation of solid waste management are transferred to the department. Nothing in this chapter shall be construed to limit or curtail the authority of the State Health Department in the realm of sanitation or disease control and prevention, or in any matters relating to the public health which are not specifically transferred to the department by this chapter on October 1, 1982. Nothing in the chapter should be construed to transfer any function relating to collection of solid waste to the department. Such functions shall remain with the State Health Department or county health department as appropriate.

(j) Any permitting, regulatory and enforcement functions of the Coastal Area Board, as set forth in Sections 9-7-10 through 9-7-22, are transferred to the department on October 1, 1982.

(k) The functions of the State Health Department, with respect to hazardous waste management, as set forth in Sections 22-30-1 through 22-30-24, are transferred to the department on October 1, 1982.

(l) The functions of the Environmental Health Administration Laboratory of the State Health Department are transferred to the department on October 1, 1982.

(m) The functions of the Board of Certification of Water and Wastewater Systems Personnel and the functions of the State Health Officer as set forth in Sections 22-25-1 through 22-25-15 are transferred to the department on October 1, 1982.

(n) Beginning October 1, 1982, the department is hereby designated as the State Environmental Control Agency for the purposes of federal environmental law. Specifically, the department is designated as the State Air Pollution Control Agency for

the purposes of the Federal Clean Air Act, 42 U.S.C. §7401 et seq., as amended; as the State Water Pollution Control Agency for the purposes of the Federal Clean Water Act, 33 U.S.C. § 1251 et seq., as amended; the State Agency responsible for the promulgation and enforcement of drinking water regulations in accordance with the Federal Safe Drinking Water Act, 42 U.S.C. § 201 et seq., as amended; the State Agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the Solid Waste Disposal Act, 42 U.S.C. § 3251 et seq., as amended, including 42 U.S.C. § 6901 et seq., as amended; and is hereby authorized to take all actions necessary and appropriate to secure to this state the benefits of federal environmental laws.

(o) Beginning October 1, 1982, the State Health Department shall provide certain routine bacteriological analyses to the Alabama Department of Environmental Management and the department shall reimburse the State Health Department for the reasonable costs and expenses incurred in providing such analyses. For an appropriate period of time, the department shall contract with the State Health Department to provide the routine bacteriological analyses necessary to the department in its Public Water Systems Program.

(Acts 1982, No. 82-612, p. 1111, §4.)

Section 22-22A-5

Powers and functions of department; representation of department by Attorney General in legal actions.

In addition to any other powers and functions which may be conferred upon it by law, the department is authorized beginning October 1, 1982 to:

(1) Administer appropriate portions of Sections 9-7-10 through 9-7-20, which relate to permitting, regulatory and enforcement functions; administer and enforce the provisions and execute the functions of Chapter 28 of this title; Chapter 22 of this title; Article 2 of Chapter 23 of this title; Chapter 30 of this title; appropriate portions of Article 1 of Chapter 27 of this title; Sections 22-24-1 through 22-24-11; Sections 22-25-1 through 22-25-15; and Sections 22-36-1 through 22-36-10.

(2) Acting through the Environmental Management Commission, promulgate rules, regulations and standards in order to carry out the provisions and intent of this chapter; provided, however, that prior to the promulgation of any state primary or secondary drinking water standard governed by Sections 22-23-30 through 22-23-53 or any regulations dealing with hazardous wastes governed by Sections 22-30-1 through 22-30-24, the department shall receive the approval of the State Board of Health. The State Board of Health shall provide the department a response to its request for approval within 60 days of receipt of such request unless such other time is mutually agreed upon by the department and the State Board of Health.

(3) Acting through the Environmental Management Commission, adopt and promulgate rules, regulations and standards for the department, and to develop environmental policy for the state.

(4) Consistent with the provisions in subsection 22-22A-4(n), serve as the State Agency responsible for administering federally approved or federally delegated environmental programs.

(5) Serve as the state's clearinghouse for environmental data. The clearinghouse shall be developed in coordination and cooperation with other governmental data collection and record keeping systems to provide for an inventory, and for the cataloguing and dissemination of environmental information.

(6) Report, as appropriate, to the Governor and to the Legislature on the programs and activities of the department and to recommend needed changes in legislation or administrative practice.

(7) Develop, conduct and disseminate education and training programs. Pursuant to this authority, the department shall establish a citizens' advisory committee to provide input into such education and training programs.

(8) Enter into agreements and contracts, where appropriate, with other state agencies, the federal government or private individuals, in order to accomplish the purposes of this chapter.

(9) Establish and maintain regional or field offices in order to provide more effective and efficient services to the citizens of the state.

(10) Issue, modify, suspend or revoke orders, citations, notices of violation, licenses, certifications or permits.

(11) Hold hearings relating to any provision of this chapter or relating to the administration thereof.

(12) Enforce all provisions of this chapter and all provisions of law identified in subdivision (1) of this section and to file legal actions in the name of the department and to prosecute, defend or settle actions brought by or against the department or its agents. The Attorney General shall represent the department in any and all legal actions brought by the department to enforce any provisions of this chapter; provided however, that if, within a reasonable time after the department refers the matter to him, he fails to file any such action, then the department may commence appropriate legal action. Nothing in this subdivision shall be construed so as to impair the authority of the Attorney General to independently enforce the provisions of this chapter.

(13) When necessary to achieve conformance with Sections 9-7-10 through 9-7-20, acquire fee simple or less than fee simple, interest in land, water and other property under the procedures of Title 18 or other means; provided, however, that such power shall not apply to property and interest therein which is devoted to public use.

(14) Apply for, where appropriate, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions, purposes or provisions of this chapter or any of the functions or provisions transferred to the department by this chapter.

(15) Employ such professional, technical, clerical and other workers including attorneys and special counsel, and such consultants as are necessary and within available funds to carry out the purposes of this chapter.

(16) Adopt rules and regulations relating to charging and collecting fees sufficient to cover the reasonable anticipated costs to be incurred by the department and directly related to the issuance, reissuance, modification or denial of any permit, license, certification or variance, such fees to include, but not be limited to, the reasonable anticipated cost of the examination and processing of applications, plans, specifications or any other data and any necessary public hearings and investigations; provided, however, that nothing in this subdivision shall be construed as modifying or affecting the provisions of Section 22-24-5. A schedule of estimated reasonable anticipated costs shall be appended to rules and regulations with the understanding that fees may be higher or lower on a case-by-case basis.

(17) In addition to any other remedies provided by law, recover in a civil action from any person who has violated, or threatens to violate, any provision of this chapter, or any provision of law identified in subdivision (1) of this section, or any rule or regulation promulgated thereunder, or any order, or condition of any permit, license, certification or variance issued by the department pursuant thereto, the actual costs reasonably incurred by the department to prevent, minimize or abate any adverse effect on air, land or water resources which results or may result from such violation. Such civil actions may be filed in the circuit court of the county in which the defendant resides or does business, or in which the violation or threatened violation occurs or in which the adverse effect occurs.

(18)a. Issue an order assessing a civil penalty to any person who violates any provision of law identified in subdivision (1) of this section, any rule, regulation or standard promulgated by the department, any provision of any order, or any condition of any permit, license, certification or variance issued by the department, provided however, that no such order shall be issued to a person:

1. If a civil action to recover a penalty for such violation has been commenced against such person as provided in paragraph b. of this subdivision.
2. For any violation at a coal mining operation regulated under Sections 9-16-70 through 9-16-107 or Title V of Public Law 95-87, 30 U.S.C. §1251-1279.
3. If an order assessing a civil penalty for such violation has been issued to such person pursuant to subdivision (2) of subsection 22-28-23(b).
4. Who is a responsible corporate officer subject to a civil action for the recovery of a penalty under paragraph b. of this subdivision.

The department shall commence enforcement action under this paragraph by notifying the person subject thereto in writing of the alleged violation and affording the person an opportunity for an informal conference with the director or his or her designated representative concerning the alleged violation and any proposed order. The informal

conference shall not be subject to the procedures for hearings under Section 22-22A-7. Before issuing any consent or unilateral order under this section, the department shall cause public notice to be published for one day in a newspaper of general circulation in the area where the alleged violation occurred and on the website of the department for the duration of the comment period; provided, however, that unavailability of the website during the comment period shall not affect the validity of an order issued under this paragraph. The notice shall reasonably describe the nature and location of the alleged violation and the amount of civil penalty proposed, contain a summary of any proposed corrective measures, provide instructions for obtaining a copy of the proposed order, and indicate that persons may submit written comments to the department and request a hearing on the proposed order within 30 days of the first date of publication. The department may hold a hearing if the information submitted in support of the request is material and if a hearing may clarify one or more issues raised in the written comments. If the department grants a request for a hearing, the department shall provide written notice of the time, date, and location of the hearing by regular mail at least 20 days prior to the hearing to all persons subject to the proposed order and all persons who submitted written comments on the proposed order that contain a current return address. At any such hearing, the department shall provide a reasonable opportunity for persons subject to the proposed order and persons who submitted written comments on the proposed order to be heard and to submit information to the director or his or her designated representative, provided, however, that the hearing shall not be subject to the procedures for hearings under Section 22-22A-7, or practices or procedures governing public hearings. The department shall also accept additional written comments from any interested party that are received on or before the date of the hearing. After consideration of written comments, any information submitted at the hearing, if one was held, and any other publicly available information, the department may issue the order as proposed, issue a modified order, or withdraw the proposed order. Any order issued under this paragraph shall include findings of fact relied upon by the department in determining the alleged violation and the amount of the civil penalty and shall be served on persons subject to the order in the manner provided for service of process in the Alabama Rules of Civil Procedure. Upon issuance of an order, the department shall also provide written notice of the order by regular mail to each person who submitted written comments on the proposed order that contain a current return address. The notice shall reasonably describe the nature and location of the alleged violation and the amount of civil penalty, contain a summary of any required corrective measures, provide instructions for obtaining a copy of the order, and indicate that persons who submitted written comments on the proposed order may, within 30 days of the issuance of the order, request a hearing on the order before the Environmental Management Commission in accordance with Section 22-22A-7. Where the department has issued an order finding that a violation has occurred and assessing a civil penalty, the person subject thereto shall, unless the department and that person agree on a different schedule, pay the penalty in full within 45 days after issuance of such order unless any person has filed a timely request for a hearing to contest the issuance of such order in accordance with Section 22-22A-7, in which case the penalty assessed in the order as approved or modified by the Environmental Management Commission shall, unless the department and that person agree on a different schedule, be paid in full within 30 days after the order is approved or modified by the Environmental Management Commission or, if an appeal thereof is taken to circuit court, within 42 days after the court affirms the order as approved or modified by the Environmental Management Commission. Civil penalties assessed in an order under this paragraph and

not paid as provided herein may be recovered in a civil action brought by the department in the Circuit Court of Montgomery County or the county in which the defendant does business.

b. Commence a civil action in the circuit court of the county in which the defendant or any material defendant resides or does business or in which the violation occurred to recover a civil penalty from such person for any violation of any provision of law identified in subdivision (1) of this section, any rule, regulation or standard promulgated by the department, any provision of any order or any condition of any permit, license, certification or variance issued by the department, provided however, that no such civil action may be commenced against a person if an order assessing a civil penalty for such violation has been issued to such person under paragraph a. of this subdivision. Whenever such person is a corporation and the violation is of a provision of law in Chapter 22 of this title, or any rule, regulation or standard promulgated by the department thereunder, or any provision of any order or any condition of any permit, license, certification or variance issued by the department thereunder, the same civil penalties that may be imposed upon a person under this subdivision may be imposed upon the responsible corporate officers in a civil action. Any person having an interest which is or may be adversely affected may intervene as a matter of right in any civil action commenced under this paragraph. The Attorney General may also commence a civil action under this paragraph.

c. Any civil penalty assessed or recovered under paragraph a. or b. of this subdivision shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department under paragraph a. of this subdivision shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation for purposes of this subdivision. In determining the amount of any penalty, consideration shall be given to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Civil penalties may be assessed under this subdivision for any violation occurring within two years prior to the date of issuance of an order under paragraph a. of this subdivision or commencement of such civil action under paragraph b. of this subdivision. All civil penalties recovered under this subdivision by the department or Attorney General shall be deposited into the State Treasury to the credit of the General Fund, except that portion which represents the reasonable costs incurred by the department or Attorney General to recover such penalties which shall be deposited to the credit of the operating fund of the department or Attorney General, whichever incurred such costs.

(19) Commence a civil action in the circuit court of the county in which the defendant or any material defendant resides or does business or in which the threatened or continuing violation of any provision of law identified in subdivision (1) of this section, any rule, regulation or standard promulgated by the department, any provision of any order, or any condition of any permit, license, certification or

variance issued by the department. The Attorney General or district attorney having jurisdiction in the circuit, county or territory in which the threatened or continuing violation occurs may also commence a civil action to enjoin such violation. In any such action, any person having an interest which is or may be adversely affected may intervene as a matter of right.

(20) Perform any other duty or take any other action necessary for the implementation and enforcement of this chapter.

(Acts 1982, No. 82-612, p. 1111, §5; Acts 1984, 1st Ex. Sess., No. 84-783, p. 163, §1; Acts 1986, No. 86-542, p. 1053, §1; Acts 1988, No. 88-537, p. 823, §9; Act 2003-397, p. 1136, §1.)

Section 22-22A-6

Environmental Management Commission; powers and duties; composition; appointments; vacancies; qualifications; terms; chairman; quorum; regular and special meetings; effect of failure to attend three consecutive meetings; record of proceedings; compensation; expenses; ethical requirements.

(a) There is hereby created a seven member Environmental Management Commission of the Alabama Department of Environmental Management which shall have the following duties:

(1) To select a director for the Department of Environmental Management and to advise the director on environmental matters which are within the department's scope of authority;

(2) To establish, adopt, promulgate, modify, repeal and suspend any rules, regulations or environmental standards for the department which may be applicable to the state as a whole or any of its geographical parts;

(3) To develop environmental policy for the state; and

(4) To hear and determine appeals of administrative actions.

(b) The Environmental Management Commission shall be composed of seven members who are citizens of the State of Alabama. Initial members of the commission shall be appointed to places on the Environmental Management Commission by the Governor, Lieutenant Governor, and Speaker of the House of Representatives pursuant to the procedure set out in subsection (d) of this section with the advice and consent of the Senate. Initial appointments shall be made on or before October 1, 1982. All subsequent appointments to places on the Environmental Management Commission after the initial appointments shall be made by the Governor with the advice and consent of the Senate. No member of the Environmental Management Commission may serve more than a total of 18 years. When a vacancy occurs during a period when the Legislature is not in session to advise and consent, such appointee shall have the full power of the office until and unless the Senate, upon the reconvening of the Legislature, shall by affirmative vote refuse to consent in such appointment. Qualifications of the seven members shall be as follows:

(1) One member shall be a physician licensed to practice medicine in the State of Alabama and shall be familiar with environmental matters;

(2) One member shall be a professional engineer registered in the State of Alabama and shall be familiar with environmental matters;

(3) One member shall be an attorney licensed to practice law in the State of Alabama and shall be familiar with environmental matters;

(4) One member shall be a chemist possessing as a minimum a bachelor's degree from an accredited university or a veterinarian licensed to practice veterinary medicine in the State of Alabama and shall be familiar with environmental matters;

(5) One member that has been certified by the National Water Well Association Certification Program;

(6) One member shall be a biologist or an ecologist possessing as a minimum a bachelor's degree from an accredited university and shall have training in environmental matters; and

(7) One member shall be a resident of the state for at least two years but shall not be required to have any specialized experience.

(c) At the expiration of the terms of all members initially appointed, their successors shall be promptly appointed by the Governor for terms of six years. At the expiration of a term of office or in the event of a vacancy on the Environmental Management Commission, the Governor shall promptly make an appointment to fill the vacancy. The expiring term of an incumbent member shall be continued until an appointment is made.

(d) Provided however that the initial appointments to the Environmental Management Commission shall be made as follows notwithstanding the other provisions of this chapter:

(1) The Governor shall appoint three members of the Environmental Management Commission, two of whom shall come from the voting members of the boards or commissions abolished by this chapter. The Governor's three initial appointments shall fill the positions described in subdivisions (4), (6) and (7) of subsection (b) of this section. The terms of these initial position appointments shall be for six years.

(2) The Lieutenant Governor shall appoint two members of the Environmental Management Commission, one who shall come from the voting members of the boards or commissions abolished by this chapter. The Lieutenant Governor's appointments pursuant to this subsection shall fill the positions described in subdivisions (1) and (5) of subsection (b) of this section. The term of the initial position described in subdivision (1) of subsection (b) of this section shall be for four years. The term of the initial position described in subdivision (5) of subsection (b) of this section shall be for two years.

(3) The Speaker of the House of Representatives shall appoint two members of the Environmental Management Commission, one who shall come from the voting members of the boards or commissions abolished by this chapter. The Speaker of the House of Representatives' appointments pursuant to this subsection shall fill the positions described in subdivisions (2) and (3) of subsection (b) of this section. The

term of the initial position described in subdivision (2) of subsection (b) of this section shall be for four years. The term of the initial position described in subdivision (3) of subsection (b) of this section shall be for two years.

(e) The Environmental Management Commission shall select a chairman from among its members, and the chairman's term of office shall be determined by the Environmental Management Commission, but shall not exceed three consecutive years. The Environmental Management Commission shall not take official action unless a quorum is present. A quorum shall be any four of the seven members. Recusal of a member shall not affect the quorum.

(f) The Environmental Management Commission shall meet regularly, at least once every two months at times and places to be fixed by the Environmental Management Commission. Special meetings may be called at the discretion of the chairman of the Environmental Management Commission and special meetings shall be called by him on written request of any four members to take up any matters within the jurisdiction of the Environmental Management Commission. All members shall be notified of the time and place of any regular or special meeting in any one of the following ways: in writing or by telegram to a member's last known address as provided to the department or by telephone.

(g) Any member of the Environmental Management Commission who misses three consecutive regularly scheduled meetings, shall immediately cease to be a member of the commission and the Governor shall promptly appoint a new member with appropriate qualifications to fill the remainder of the term.

(h) The Environmental Management Commission shall keep a complete and accurate record of the proceedings of all its meetings, a copy of which shall be kept on file in the office of the director and open to public inspection.

(i)

(1) Each member shall receive \$100.00 per day for each day of attendance at an official meeting. Members of the Environmental Management Commission shall be reimbursed for expenses when attending meetings which are approved and certified by the director. Reimbursement shall be in accordance with Sections 36-7-1 through 36-7-42;

(2) All proper expenses of the Environmental Management Commission shall be paid from the appropriations to or funds of the department in the same manner as expenses of the department are paid.

(j) Members of the Environmental Management Commission shall meet all requirements of the state ethics law and the conflict of interest provisions of applicable federal laws and regulations.

(Acts 1982, No. 82-612, p. 1111, §6.)

Section 22-22A-7

Hearings and procedures before commission; appeal and review.

(a) Beginning October 1, 1982, the Environmental Management Commission, in addition to any other authority which may be conferred upon it by law, shall have the power to:

(1) Develop and prescribe its own hearing procedures, unless otherwise specified by law; and

(2) Administer oaths, certify to official acts, take and cause to be taken depositions of witnesses, issue subpoenas, and compel the attendance of witnesses and the production of papers, books, accounts, payrolls, documents and records. In the event of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to produce evidence or to testify as to any matter regarding which he may be lawfully interrogated, it shall be the duty of any court of competent jurisdiction or of the judge thereof, upon the application of the Environmental Management Commission or its designee, to compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued by such court or a refusal to testify therein. The fees of witnesses for attendance and travel shall be the same as fees of witnesses before courts of record and shall be paid from the funds of the department.

(b)(1) The Environmental Management Commission may delegate the power to hear appeals which are before it to a hearing officer. Any such hearing conducted by a hearing officer shall be in accordance with rules and regulations prescribed by the Environmental Management Commission pursuant to subdivision (1) of subsection (a) of this section, and in such case the hearing officer shall prepare findings of fact, conclusions of law and recommendations to the Environmental Management Commission for its final decision.

(2) The Environmental Management Commission may hire hearing officers to hear appeals which are before it. Such hearing officers shall be attorneys licensed to practice in the State of Alabama and shall be paid appropriately from department funds.

(c) Upon a proper request made in accordance with subdivisions (1) or (2) of this subsection and any hearing procedures prescribed by the Environmental Management Commission, any person aggrieved by an administrative action of the department shall be entitled to a hearing before the Environmental Management Commission or its designated hearing officer. To obtain a hearing on any order assessing a civil penalty issued pursuant to subdivision (18) of Section 22-22A-5, an aggrieved person shall either be subject to the order or have submitted timely written comments on the proposed order in accordance with subdivision (18) of Section 22-22A-5.

(1) Request for such hearing to contest an administrative action of the department, other than to contest the issuance of any rule or regulation or emergency order, must be filed with the Environmental Management Commission within 30 days of the contested administrative action.

(2) Request for a hearing before the Environmental Management Commission or its designated hearing officer to contest the issuance of any rule or regulation by the department must be filed with the Environmental Management Commission within 45 days of the promulgation of the rule or regulation by the department; except, that if such request is based solely on grounds arising after such forty-fifth day, then any request for a hearing under this subdivision must be filed within 45 days after such grounds arise.

(3) The Environmental Management Commission or its designated hearing officer shall within a reasonable time, not to exceed 45 days after receipt of a request in accordance with subdivisions (1) or (2) of this subsection, hold a hearing of which at least 15 days' written notice shall be given to such person requesting the hearing and any other named or necessary party. Within 30 days after such hearing, the Environmental Management Commission shall issue an appropriate order modifying, approving or disapproving the department's administrative action. A copy of the Environmental Management Commission's order shall be served upon all parties either personally, by registered mail or by certified mail return receipt requested. The notice and hearing requirements of this subsection shall not apply to emergency orders. Hearings on emergency orders shall be held before the Environmental Management Commission and notice of such hearing as may be reasonable under the circumstances shall be given to such persons as the Environmental Management Commission deems appropriate.

(4) Pending the determination by the Environmental Management Commission, and upon application therefor, the Environmental Management Commission may stay the operation of such administrative action upon such terms and conditions as it may deem proper.

(5) The parties shall not be bound by the strict rules of evidence prevailing in the courts. However, a full and complete record shall be kept of all proceedings before the Environmental Management Commission. All testimony or comments given in any hearing before the Environmental Management Commission shall be electronically or stenographically recorded, but need not be transcribed unless an appeal is taken to court or unless requested by any party who shall pay for the cost of transcription.

(6) Any order of the Environmental Management Commission made pursuant to the above procedure, modifying, approving or disapproving the department's administrative action, constitutes a final action of the department and is appealable to the Montgomery County Circuit Court or the circuit court in which the applicant does business or resides for judicial review on the administrative record provided that such appeal is filed within 30 days after issuance of such order.

(7) Administrative action with respect to which review was or could have been obtained under this section shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

(Acts 1982, No. 82-612, p. 1111, §7; Acts 1986, No. 86-542, p. 1053, §2; Act 2003-397, p. 1136, §1.)

Section 22-22A-8

Adoption of rules, regulations and standards; review by director; public notice and hearing.

(a) All rules, regulations or standards shall be adopted by and promulgated by the Environmental Management Commission. With the exception of editorial changes, no rule, regulation or standard shall be adopted, amended or repealed unless such rule, regulation or standard has been reviewed by the director and until after a public hearing has been held. Unless different notice provisions are specifically required elsewhere by law, at least 45 days prior to the scheduled date of the hearing the department shall give notice of such hearing by public advertisement in the three newspapers of this state with the largest regional circulation of the date, time, place and purpose of such hearing; and make available to any person upon request copies of the proposed rules, regulations or standards, together with summaries of the reasons supporting their adoption, amendment or repeal.

(b) Any public hearing relating to the adoption, amendment or repeal of department rules, regulations or standards under this section shall be held before a department representative, who shall be designated by the Environmental Management Commission. All such hearings shall be open to the public, and reasonable opportunity to be heard with respect to the subject of the hearing shall be afforded to any person. All testimony taken before the department representative shall be recorded and transcribed. The transcript, any exhibits or any written submissions to the department in relation to such hearings shall be open to public inspection.

(c) After such hearing, the department may revise the proposed rules, regulations or standards, before adoption in response to testimony, written submissions or exhibits introduced at the hearing, without conducting a further hearing on the revisions.

(d) Nothing in this section shall be construed to require a hearing prior to the issuance of any temporary emergency rule or regulation.

(Acts 1982, No. 82-612, p. 1111, §8.)

Section 22-22A-9

Transfer of functions, personnel, equipment, funds, etc., to Department of Environmental Management.

(a) All employees engaged in duties pertaining to the functions transferred by this chapter to the department, shall be assigned to the department on October 1, 1982, to perform their usual duties, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing personnel and employees.

(b) All files, books, papers, records, equipment, furniture, motor vehicles, any other tangible property, and any other asset employed in carrying out the powers, duties and functions transferred by this chapter to the department shall, on October 1, 1982, be transferred to the department.

(c) All reports, documents, surveys, books, records, files, correspondence, papers or other writings in the possession of any department, division, bureau, board, commission or other agency, the functions, powers and duties of which have been transferred to the department by this chapter, or which have been employed in carrying out the functions,

powers and duties transferred by this chapter to the department shall, on October 1, 1982, be transferred to the department.

(d) All funds, credits or other moneys held in connection with the functions transferred by this chapter, shall be transferred to the Alabama Department of Environmental Management Fund created by Section 22-22A-11 on October 1, 1982. Subsequent to the transfer of all funds, credits or other moneys to the department for programs whose functions are transferred by this chapter to the department, the Water Improvement Commission Fund established by Section 22-22-10; the Safe Drinking Water Fund established by Section 22-23-51; the Well Driller Licensing Fund established by Section 22-24-10; the Operator's Certification Fund established by Section 22-25-10; and the Hazardous Waste Management Fund established by Section 22-30-23 are abolished, and any funds from any source whatsoever which may accrue to any of the foregoing funds in the future shall accrue to the Alabama Department of Environmental Management.

(e) Any appropriation made for the purpose of carrying out the powers, duties and functions transferred by this chapter to the department, shall on October 1, 1982, be transferred and credited to the department for the purpose of carrying out such transferred powers, duties and functions.

(f) Except where in conflict with provisions of this chapter, on October 1, 1982, all rules, regulations, standards, comprehensive plans for the prevention, abatement and control of pollution in this state; and all orders, permits, licenses, certificates, bonds and variances of the departments, divisions, boards, commissions, or other agencies, relating to the functions transferred by this chapter to the department, are enforceable as the rules, regulations, standards, plans, orders, permits, licenses, certificates, bonds and variances of the department and shall continue to be effective until revised, amended, repealed or nullified pursuant to law.

(g) All pending business before the boards, commissions, or agencies affected by this chapter, relating to the functions transferred by this chapter to the department, shall be continued and acted upon by the department. All existing contracts, obligations and memoranda of understanding pertaining to the functions transferred by this chapter to the department, shall remain in force and effect and shall be performed by the department.

(h) All state officials required to maintain contact with or provide services to any agency, board or commission affected by this chapter shall continue to perform such services for the department unless otherwise directed by this chapter.

(i) Neither the abolition of any agency nor any of the transfers authorized by this chapter shall affect the validity of any action performed by such agency, board or commission affected by this chapter, prior to October 1, 1982.

(j) Except where required elsewhere by the chapter, on October 1, 1982, the performance of any such transferred duties or functions by the department or its respective divisions shall have the same effect as if done by the former agency, board or commission referred to or designated by law or contract. The reference to or designation of the former agency, board or commissions shall apply to the department.

(k) During an appropriate transition period after October 1, 1982, the State Health Department shall continue to assist the department in personnel and fiscal matters in order to effect the smooth transition of such functions to the department.

(Acts 1982, No. 82-612, p. 1111, §9.)

Section 22-22A-10

Transfer of functions, personnel, equipment, etc., of coastal area board to Office of State Planning and Federal Programs; exception.

(a) On October 1, 1982, all functions of the Coastal Area Board, as set forth in Sections 9-7-10 through 9-7-22, except those which relate to permitting, regulatory and enforcement functions, shall be transferred to the Office of State Planning and Federal Programs established pursuant to Sections 41-9-205 through 41-9-214.

(b) All employees engaged in duties pertaining to the functions transferred by this section, shall be assigned to the Office of State Planning and Federal Programs on October 1, 1982 to perform their usual duties, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing personnel and employees.

(c) All files, books, papers, records, equipment, furniture, motor vehicles, any other tangible property and any other asset employed in carrying out the powers, duties and functions transferred by this chapter to the Office of State Planning and Federal Programs shall, on October 1, 1982, be transferred to the Office of State Planning and Federal Programs.

(d) All reports, documents, surveys, books, records, files, correspondence, papers or other writings in the possession of the Coastal Area Board, the functions, powers and duties of which have been transferred to the Office of State Planning and Federal Programs by this chapter, or which have been employed in carrying out the functions, powers and duties transferred by this chapter to said office shall, on October 1, 1982, be transferred to the Office of State Planning and Federal Programs.

(e) All funds, credits or other moneys held in connection with the functions transferred by this chapter to the Office of State Planning and Federal Programs, shall be transferred to said office on October 1, 1982. Subsequent to the transfer of all funds, credits or other moneys to the Office of State Planning and Federal Programs, the Coastal Area Board fund established by Section 9-7-19 is abolished.

(f) Any appropriation made to the coastal area board for the purpose of carrying out the powers, duties and functions transferred by this chapter to the Office of State Planning and Federal Programs shall, on October 1, 1982, be transferred and credited to said office for the purpose of carrying out such transferred powers, duties and functions.

(g) The Office of State Planning and Federal Programs shall provide the department sufficient funds to administer the permitting, regulatory and enforcement functions of the Coastal Area Management Program from those federal funds obtained by the office for such purposes.

(h) All pending business before the Coastal Area Board, relating to the functions transferred by this chapter to the Office of State Planning and Federal Programs, shall

be continued and acted upon by said office. All existing contracts, obligations and memoranda of understanding pertaining to the functions herein transferred shall remain in force and effect and shall be performed by the Office of State Planning and Federal Programs.

(i) All State Officials required to maintain contact with or provide services to the Coastal Area Board shall continue to perform such services for the Office of State Planning and Federal Programs or as otherwise directed by this chapter.

(j) Neither the abolition of the Coastal Area Board nor any of the transfers to the Office of State Planning and Federal Programs authorized by this chapter shall affect the validity of any action performed by the Coastal Area Board, prior to October 1, 1982.

(Acts 1982, No. 82-612, p. 1111, §10.)

Section 22-22A-11

Alabama Department of Environmental Management Fund.

There is hereby created a fund known as the Alabama Department of Environmental Management Fund. This fund shall consist of: (1) all appropriations; (2) all grants, gifts, bequests or donations; (3) all money derived through any source of federal aid; (4) all fees; (5) all moneys from any program whose functions were transferred to the department by this chapter; and (6) all moneys from any other source whatsoever. However, the department may not solicit or accept any gift or donation from any person that has any official request or action pending before the Alabama Department of Environmental Management. All moneys deposited in said fund are hereby appropriated to the use of the department in addition to any other appropriations heretofore or hereafter made. The fund shall be used and expended by the department in accordance with the terms of the appropriations, gift, bequest, grant, donation or transfer from which said moneys are derived and in the absence of any such terms or stipulations, shall be expended by the department in furtherance of any of the provisions of this chapter. All necessary expenses of the department shall likewise be paid out of the fund on the requisition of the director as may be deemed advisable.

(Acts 1982, No. 82-612, p. 1111, §12; Acts 1984, 1st Ex. Sess., No. 84-783, p. 163, §2; Acts 1986, No. 86-542, p. 1053, §3.)

Section 22-22A-12

Coastal Resources Advisory Committee; composition; terms; chairman; meetings.

(a) There is hereby created a Coastal Resources Advisory Committee to advise the department and the Office of State Planning and Federal Programs on all matters concerning the coastal area. The committee shall consist of not less than seven members who shall be predominantly from Baldwin and Mobile Counties.

(b) The initial members of the Coastal Resources Advisory Committee shall be the current Coastal Area Board established by Section 9-7-14, as amended and abolished by this chapter. The terms of the initial members of the committee shall be for one year beginning October 1, 1982.

(c) The subsequent membership of the Coastal Resources Advisory Committee shall be as follows:

(1) One member shall be a member of the Mobile City Commission and shall be selected by that commission;

(2) One member shall be a member of the Mobile County Commission and shall be selected by that commission;

(3) One member shall be a member of the Baldwin County Commission and shall be selected by that commission;

(4) One member shall be an official of a municipal corporation in Baldwin County and shall be selected by the Baldwin County Mayors Association;

(5) One member shall be the Commissioner of Conservation and Natural Resources, who may designate an employee of his department to represent him on the committee;

(6) One member shall be the State Geologist who may designate an employee of his agency to represent him on the committee; and

(7) One member shall be the director of the Marine Environmental Science Consortium.

The term of each of these members of the Coastal Resources Advisory Committee shall be consistent with his elective or appointive office.

(d) Additional members of the Coastal Resources Advisory Committee may be appointed by the Governor for terms not to exceed four years and shall be eligible for reappointment.

(e) The committee shall meet initially to select a chairman and subsequent meetings of the committee shall be at the call of the chairman of the Coastal Resources Advisory Committee or the director of the Office of State Planning and Federal Programs.

(Acts 1982, No. 82-612, p. 1111, §13.)

Section 22-22A-13

Effect of chapter on powers of Attorney General.

All remedies for the prevention and abatement of pollution given to the Attorney General through the authority of this chapter are merely cumulative. Except as provided in subdivisions (12) and (15) of Section 22-22A-5 nothing in this chapter shall be interpreted as negating or destroying any common law or statutory right, duty, power or authority of the Attorney General of Alabama.

(Acts 1982, No. 82-612, p. 1111, §15.)

Section 22-22A-15

Chapter does not repeal Section 22-30-5.1.

No provision of this chapter shall be construed to repeal in whole or in part any provision of Section 22-30-5.1.

(Acts 1982, No. 82-612, p. 1111, §14(e); Acts 1983, 2nd Ex. Sess., No. 83-131, p. 137, §1.)

Section 22-22A-16

Pollution Control Grant Fund.

(a) There is hereby created a fund known as the Pollution Control Grant Fund. This fund shall consist of

(1) All appropriations made to the fund; and

(2) All grants, gifts, bequests or donations made to the fund from any source whatsoever. This fund shall be used and expended by the Alabama Department of Environmental Management in accordance with the terms of the appropriation, gift, bequest, grant or donation from which said moneys are derived and in the absence of such terms or stipulations, shall be expended by said department in accordance with the provisions of subsection (b). All necessary expenses of said department in implementing the provisions of this section shall likewise be paid out of the fund on the requisition of the director of said department as may be deemed advisable.

(b) Except as provided in subsection (a), the Alabama Department of Environmental Management is authorized to make grants to any county, municipality or public corporation, agency or instrumentality organized under the laws of the state, for the purpose of carrying out any air, land or water pollution control, prevention or abatement practices, measures, experiments or research, from the Pollution Control Grant Fund and to enter into and carry out contracts or agreements in connection therewith and include in any contract or agreement such conditions as it may deem reasonable and appropriate.

(c) Acting through the Environmental Management Commission, the Alabama Department of Environmental Management is authorized to promulgate rules, regulations and standards to carry out the provisions of this section.

(Acts 1985, No. 85-755, p. 1255.)

335-1-1-.06 Availability of Records and Information.

(1) Public inspection of records. Except as provided herein, any records, reports, rules, forms, or information obtained under the Act and the official records of the Department shall be available to the public for inspection. Requests for permission to inspect such records should be made to the Department of Environmental Management at its Montgomery, Alabama office, unless otherwise directed in published organizational, procedural, or regulatory statements pertaining to specific records or classes of records. Such requests should state the general subject matter of the records sought to be inspected to permit identification and location.

(2) Exceptions. Upon a showing satisfactory to the Director by any person that records, reports, or information, or particular parts thereof (other than emission, effluent, manifest, or compliance data) to which the Department has access, if made public, would divulge production of sales figures or methods, processes, or production unique to such person, or otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, the Director shall consider such records, reports, or information, or particular portion thereof, confidential. Any showing of confidentiality must be based on statutory authority which empowers the Department to grant confidentiality for the particular program in question and must accompany the documents, records, reports, or information provided to the Department. If a claim covering the information is received after the information itself is received, efforts, as are administratively practicable can be made, will be made to associate the late claim with the copies of the previously submitted information in the file.

(3) Requests for records and information must be made to the Office of the Director at the Department's Montgomery address. Responses to such requests shall be made within 10 working days after receipt in the Office of the Director.

(4) Creation of record. Records will not be created by compiling selected items from other documents at the request of a member of the public, nor will records be created to provide the requester with data such as ratios, proportions, percentages, frequency distribution, trends, correlations, or comparisons except as necessary to administer the Act.

(5) Denial of requests for, or non-existence of, information. If it is determined pursuant to this Part that requested information will not be provided or that, to the best knowledge of the Director, requested information does not exist, the Director shall notify in writing the party requesting the information that the request is denied and shall state the reasons for denial and shall maintain a file of such denials.

(6) Copies of documents. If it is determined that information requested may be disclosed, the requesting party shall be afforded the opportunity to obtain copies of the documents containing such information.

However, records shall not be released for copying by non-Division personnel except by permission of the Director or his designee. When a determination not to disclose a portion of information requested has been made, records shall be prepared for copying on nonexcepted portions of the information. Cost of providing copies will be the responsibility of the person requesting the copies. Charges are as follows:

(a) 30 cents per black and white page 8.5 x 11, 8.5 x 14 or 11 x 17 inches in size.

(b) \$1.50 per color page 8.5 x 11, 8.5 x 14 or 11 x 17 inches in size. \$4.00 per page for black and white and \$7.00 per page for color, wide-format documents such as maps and blue prints. Compact discs are \$15.00 each for files retrievable from electronic data bases.

(c) 50 cents per page for certified documents.

(d) 10 cents per page rounded to the nearest dollar for paper copies of each Division of the regulations. Compact discs of a Division of the regulations are \$15.00.

(e) The Department will not invoice unless the charges exceed \$10.00.

(7) Requests which do not reasonably describe records sought. The Department may communicate with the requester to clarify records sought and with a view toward reducing the administrative burden of processing a broad request and minimizing the fees payable by the requester.

(8) Public distribution. Any written request for records prepared by the Department for routine public distribution, e.g. pamphlets, copies of speeches, press releases, and education materials, shall be honored.

(9) Disclosure of information to other agencies. Nothing in these rules and regulations shall be construed to prevent disclosure of any report, record, or information obtained under the Act, or any of the official records of the Commission to federal, or state, agencies, or when relevant in any proceedings under the Act.

Author: Marilyn Elliott, Russell A. Kelly.

Statutory Authority: Code of Alabama 1975, § 22-22A-5, 22-22A-6, 22-22A-8, 41-22-4, 41-22-5.

History: August 1, 1988.

Amended: January 28, 2004; July 11, 2006.

335-3-1-.04 Monitoring, Records, and Reporting.

(1) The Director may require the owner or operator of any air contaminant source to establish and maintain such records; make such reports; install, use, and maintain such monitoring equipment or methods; sample such emissions in accordance with such methods at such locations, intervals, and procedures as the Director may prescribe; and provide such periodic emission reports as required in paragraph (2) of this rule below.

(2) Reports. Records and reports as the Director may prescribe on air contaminants or fuel shall be recorded, compiled, and submitted on forms furnished by the Director or when forms are not so furnished, then in formats approved by the Director. These may include but not be limited to any of the following:

(a) Emissions of particulate matter, sulfur dioxide, and oxides of nitrogen shall be expressed as follows: in pounds per hour and pounds per million BTU of heat input for fuel-burning equipment; in pounds per hour and pounds per 100 pounds of refuse burned for incinerators; and in pounds per hour and in pounds per hourly process weight or production rate or in terms of some other easily measured and meaningful process unit specified by the Director.

(b) Sulfur dioxide and oxides of nitrogen emission data shall be averaged over a 24-hour period and shall be summarized monthly. Daily averaged and monthly summaries shall be submitted to the Director biannually. Data should be calculated daily and available for inspection at any time.

(c) Particulate matter emissions shall be sampled and submitted biannually.

(d) Visible emissions shall be measured continuously, and records kept indicating total minutes per day in which stack discharge effluent exceeds 20 percent opacity. Data should be summarized monthly and submitted monthly and biannually. Current daily results shall be available for inspection at any time.

(e) The sulfur content of fuels, as burned, except natural gas, shall be determined in accordance with current recognized ASTM procedures. Averages for periods prescribed by the Director shall be submitted biannually. Records shall be kept current and be available for inspection.

Author: James W. Cooper and John E. Daniel.

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

History: Effective Date: January 18, 1972.

Amended: November 21, 1996.

335-3-1-.05 Sampling and Testing Methods.

(1) Methods. All required sampling and testing shall be made and the results calculated in accordance with sampling testing procedures and methods approved by the Director. All required samples and tests shall be made under the direction of persons qualified by training and/or experience in the field of air pollution control.

(2) Standard Methods. The Director, to the extent practicable, should recognize and approve the test methods and procedures established by 40 CFR, as the same may be amended or revised.

(3) The Division may conduct tests and take samples of air contaminants, fuel, process material, or other material which affects or may affect emission of air contaminants from any source. Upon request of the Division, the person responsible for the source to be tested shall provide necessary holes in stacks or ducts and such other safe and proper sampling and testing facilities exclusive of instruments and sensing devices as may be necessary for proper determination of the emission of air contaminants. If an authorized employee of the Division during the course of an inspection obtains a sample of air contaminant, fuel, process material, or other material, he shall give the owner or operator of the equipment or fuel facility a receipt for the sample obtained.

(4) Report to Owner or Operator. At the conclusion of any inspection under Section 9 of the Act or conduction of any testing or sampling under this Part, if requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status with the Act and these rules and regulations.

Author: James W. Cooper and John E. Daniel.

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

History: Effective Date: January 18, 1972.

Amended: