

**335-13-16-.01 Purpose.** The purpose of this chapter is to establish procedures to encourage and regulate the land application of eligible non-hazardous by-product materials within the State.

**Author:** S. Scott Story

**Statutory Authority:** Code of Alabama 1975, §22-27-9 and §22-27-12

**History:** Proposed: November 18, 2019.

**335-13-16-.02 Definitions.** For the purpose of this chapter, the following terms have the meaning given below:

(1) “Agronomic Rate” means the land application of by-products at rates of application which provide the crop or forage growth with needed nutrients for optimum health and growth in accordance with acceptable industry technical standards and guidelines to ensure the protection of human health and the environment.

(2) “Applicator or End User” means the person, organization, or business that will utilize a by-product material in a manner consistent with these regulations.

(3) “Beneficial Use” means the use of a by-product material as a soil amendment or fertilizer, where the by-product material replaces a natural or other resource material by its utilization.

(4) “By-Product” means a material that is generated as a result of water or wastewater treatment or residual materials from industrial or manufacturing processes that, barring any form of alternate or beneficial use of that material, would otherwise be discarded at a landfill or other solid waste disposal facility.

(5) “Class A Biosolids” is a designation for dewatered and heated sewage sludge that meets U.S. EPA guidelines for land application with no restrictions.

(6) “Distributor or Supplier” means the person, organization, or business who provides or resells by-product material to an applicator or end user.

(7) “Generator” means the person, organization, business, industry, agency or institution whose activities or business results in the generation of a by-product material.

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**History:** Proposed: November 18, 2019.

### **335-13-16-.03 Specific Requirements for Land Application of By-Product Materials.**

(1) By-product materials may be eligible for consideration for land application under this rule, where such materials meet the following requirements:

(a) The material, proposed for beneficial use, must be a “by-product” as defined in 335-13-16-.02.

(b) The by-product material proposed for beneficial use must be adequately characterized to confirm that the proposed use is adequately protective of the human health and the environment and that the by-product possesses physical and/or chemical properties which make the material suitable for the intended agronomic rate as defined in 335-13-16-.02.

(c) The by-product material proposed for beneficial use must not be a hazardous waste as defined in 335-14-1-.02.

(2) The proposed beneficial use must conform to the following use-specific standards.

(a) The proposed beneficial use must utilize a by-product in such a manner that the by-product serves as a suitable replacement for a raw material or other feedstock and, through its use, provides a benefit comparable to the material it is proposed to replace.

(b) The beneficial use must not serve the purpose of discarding or disposing of the by-product, as determined by the Department.

(c) An Operations Plan and a Nutrient Management Plan are required for the site or sites where by-product materials will be applied. These plans are to be updated as application site locations or conditions change. Class A biosolids, and industrial by-products approved by the Department on a case-by-case basis, are exempt from the requirements to develop a Nutrient Management Plan.

1. An industrial by-product proposed to be exempted from the development of a nutrient management plan pursuant to the citation above, must not contain food processing waste material nor sewage sludge that is generated or treated by publically owned or privately owned treatment works treating domestic sewage and municipal wastewater. Industrial by-products may include materials from privately owned industrial facilities which treat domestic sewage along with industrial wastewater.

(d) Applicators and end users who do not own the property on which the by-product material is proposed to be utilized shall obtain written consent from the landowner prior to the land application of by-product material.

(e) These rules and regulations do not supersede any other state or federal regulations regarding beneficial use or waste disposal. Generators, distributors, and end users of beneficially used by-product materials shall comply with this chapter and any other applicable state and federal rules and regulations.

(3) Land application of by-product materials regulated under ADEM Admin. Code div. 335-6 Volume 1 is exempt from the requirements of this chapter.

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**History:** Proposed: November 18, 2019.

### **335-13-16-.04 Notification and/or Registration Application Requirements.**

(1) Initial Notification. In order for the Department to develop the universe of potentially regulated entities, the Department requires the following information.

(a) All generators and distributors or suppliers that handle and/or use by-product material for beneficial use, and are not exempt from the requirements of this chapter, must within 90 days of the effective date of these rules, notify the Department in writing of the following information:

1. The quantity of by-product materials in dry tons handled during the previous calendar year;

2. Type(s) of by-product materials land applied in the past calendar year; and

3. Counties within the State where the land application has occurred within the past calendar year.

(b) All generators and distributors or suppliers desiring to handle and/or use by-product material for beneficial use after the effective date of this chapter shall notify the Department in writing with the following information at least forty-five (45) days prior to handling and/or using by-product material for beneficial use:

1. The expected quantity of by-product materials in dry tons to be handled during a calendar year; and,

2. The expected type(s) of by-product materials to be applied in a calendar year; and

3. The counties within the State where the land application is expected to occur in a calendar year.

(2) Registration Application Requirements.

(a) Generators that handle 100 dry tons per year or more of eligible by-product material for beneficial use must submit the following items to the Department:

1. A completed application form with the applicable fees, and;

2. A list of distributors or suppliers that handle the by-product materials.

(b) Distributors or Suppliers subject to the requirements of this chapter that handle 100 dry tons per year or more of eligible by-product material for beneficial use must submit the following items to the Department:

1. A completed application form with the applicable fees,

2. A Nutrient Management Plan(s) prepared and signed by a person certified by the Natural Resources Conservation Service (NRCS) for nutrient management planning or prepared, signed and sealed by a professional engineer licensed in the State of Alabama, or prepared and signed by other certified professionals approved by the Department.

(i) The Nutrient Management Plan, at a minimum, should include the following:

(I) Property description;

(II) Brief description of the operation;

(III) Crops and soils information;

(IV) Yield goal information;

(V) The recommended nitrogen application rates for the crops to be grown on each application zone;

(VI) Timing and method of applications; and,

(VII) Best management practices to protect human health and the environment.

3. An Operations Plan for handling and transportation of the by-product material which shall include best management practices for minimizing the following:

(i) Vectors and birds;

(ii) Odors and fugitive air-borne dust;

(iii) Spills; and,

(iv) The amount of time in transit.

(c) All entities subject to 335-13-16-.04(2)(a) or (2)(b) shall submit a registration application to the Department within one hundred eighty (180) days of the effective date of 335-13-16. New entities desiring to begin operation after the effective date of 335-13-16 must submit a completed registration application to the Department prior to beneficially using a by-product as required by 335- 13-16-.04(2)(a) or (2)(b).

(3) Upon the review and determination that an application is consistent with these regulations, the Department shall issue a registration to the applicant, subject to the following conditions:

(a) Registrations issued by the Department are only valid for uses conducted within the state of Alabama.

(b) Upon utilization of the material, a by-product for which a Registration has been issued shall no longer be subject to 335-13-1 through 335-13-15 regulations provided the by-product is utilized in a manner consistent with the terms and conditions of the Registration.

(c) The placement, dumping or other use of a by-product material in a manner inconsistent with the Registration may be considered an unauthorized dump as defined in under 335-13-1-.03 and the responsible party may be subject to revocation of the Registration and/or enforcement action by the Department under 335-13-1-.13.

(d) The issuance of a Registration does not exempt the generator, distributor, nor end user from compliance with other applicable regulatory requirements when managing or beneficially using a by-product under these regulations.

(e) If an applicant is determined to be in significant noncompliance with the requirements of this chapter, the registration may be revoked or the application for registration denied by the Department.

(4) All generators and distributors or suppliers that handle less than 100 dry tons per year of eligible by-product material for beneficial use along with all applicators and end users must maintain records on-site as contained in paragraphs (2)(b)2. and 3. of this section.

(a) The placement, dumping or other use of a by-product material in a manner inconsistent with the requirements of this chapter may be considered an unauthorized dump as defined in under 335-13-1.-03 and the responsible party may be subject to enforcement actions by the Department under 335-13- 1-.13.

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**History:** Proposed: November 18, 2019.

**335-13-16-.05 Operating Criteria for Land Application of By-Product Materials.**

(1) The by-product material storage and land application areas shall be located a minimum of five hundred (500) feet from any inhabited building. The Department may require larger buffer zones at its discretion. Exclusions to this requirement are made for on-site structures occupied by the landowner or farm operator, Class A biosolids, and industrial by-products as defined under 335-13-16-.03(2)(c)1.

(2) The by-product storage and land application areas shall be located a minimum of one hundred (100) feet from surface waters of the State, as defined in ADEM Admin. Code ch. 335-6-10, measured from the ordinary high water mark. The Department may require larger buffer zones at its discretion.

(3) The by-product storage and land application areas shall be located a minimum of one hundred (100) feet from the property boundary.

(4) Limitations may be placed on the agronomic application rates by the Department when determined necessary to protect human health and the environment.

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**History:** Proposed: November 18, 2019.



### **335-13-16-.06 Recordkeeping and Reporting Requirements.**

(1) Registrations issued under 335-13-16-.04 of these regulations are subject to annual reporting and re-registration requirements, which are as follows:

(a) The applicant to whom a Registration is issued shall be required to submit an annual report with the applicable re-registration fee to the Department. All annual reports and fees shall be submitted to the Department no later than February 28<sup>th</sup> of each year, for activity conducted during the previous calendar year. At a minimum, the report must contain the following information:

1. The quantity of the by-product materials handled during the previous calendar year;

2. An updated list of all the counties in which by-product materials were used and or/distributed for use during the previous calendar year;

3. A signed certification from the generator stating that the physical and chemical characteristics of the by-product materials are consistent with the information submitted in the approved application along with documentation of inconsistencies; if applicable and,

4. Compliance Certification. The applicant shall submit a complete and accurate compliance certification that shall include the following:

(i) The identification of each term or condition that is the basis of the certification and method for determining compliance status;

(ii) The applicant's compliance status related to each term or condition and documentation of whether the compliance has been continuous or intermittent; and,

(iii) Such other facts as the Department may require to determine the compliance status of the entity.

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**335-13-16-.07 Variances.** The Department may grant individual variances only from specific provisions of this chapter that are in addition to or more stringent than any applicable federal regulations. The individual variances must be granted based upon the procedures of 335-13-8-.02 through 335-13-8-.05 whenever it is found by the Department, upon presentation of adequate proof, that non-compliance with one or more of these provisions will not threaten the public health or unreasonably create environmental pollution.

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