ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

WATER DIVISION – WATER QUALITY PROGRAM

VOLUME I

DIVISION 335-6

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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER DIVISION – WATER QUALITY PROGRAM

VOLUME I

DIVISION 335-6

TABLE OF CONTENTS

Chapter 335-6-1 — **Page No.**

General Provisions

335-6-1-.01 General Definitions 1-1
335-6-1-.02 Adoption of Rules and Standards 1-2
335-6-1-.03 [Repealed] .....

Chapter 335-6-2

State Certification of Water Pollution Control Facilities of Small Business Concerns

335-6-2-.01 Purpose 2-1
335-6-2-.02 General Procedure 2-1
335-6-2-.03 Submission of Applications 2-1

Chapter 335-6-3

Submittal of Engineering Plans, Specifications and Other Technical Information

335-6-3-.01 Purpose 3-1
335-6-3-.02 Definitions 3-1
335-6-3-.03 Submission of Plans 3-2
335-6-3-.04 Preparation of Plans, Specifications, and Technical Data 3-2
335-6-3-.05 Direct Correspondence Between Professional Engineer and the Technical Staff 3-2
335-6-3-.06 Engineering Competency 3-2
335-6-3-.07 Engineering Seal and/or Signature 3-3
335-6-3-.08 Modifications or Alterations 3-3
335-6-3-.09 Engineer Inspection 3-3

Chapter 335-6-4 Repealed 10/04/2010

Chapter 335-6-5

Indirect Discharge Permits and Pretreatment Rules

335-6-5-.01 Purpose 5-1

335-6-5-.02 Definitions 5-2
335-6-5-.03 General Pretreatment Standards and Prohibitions and Local Limits 5-9
335-6-5-.04 Requirement for a SID Permit 5-11
335-6-5-.05 Duties of Industrial Users 5-11
335-6-5-.06 Categorical Pretreatment Standards 5-12
335-6-5-.07 Publicly and Privately Owned Treatment Works 5-15
335-6-5-.08 Request for Variances from Categorical Pretreatment Standards for Fundamentally Different Factors 5-16
335-6-5-.09 Prohibited Discharges 5-16
335-6-5-.10 Duration of Permits 5-17
335-6-5-.11 Continuation of Expiring Permits 5-17
335-6-5-.12 Confidentiality of Information 5-18
335-6-5-.13 Application Format and Procedures for New Permits, Permit Reissuance, and Permit Modification 5-19
335-6-5-.14 Signatories to Permit Applications and Reports 5-22
335-6-5-.15 Conditions Applicable to SID Permits 5-23
335-6-5-.16 Establishing Limitations, Standards, and Other Permit Conditions 5-31
335-6-5-.17 Calculating SID Permit Limitations 5-33
335-6-5-.18 Schedules of Compliance 5-34
335-6-5-.19 Transfer, Modification, Revocation and Reissuance, and Termination of Permits 5-35
335-6-5-.20 Enforcement 5-38
335-6-5-.21 SID Permit Development 5-39
335-6-5-.22 Reclassification of Significant Industrial Users 5-41

Chapter 335-6-6

National Pollutant Discharge Elimination System

335-6-6-.01 Purpose 6-1
335-6-6-.02 Definitions 6-2
335-6-6-.03 Requirement for NPDES Permit 6-9
335-6-6-.04 Prohibited Discharges 6-10
335-6-6-.05 Duration of Permits 6-11
335-6-6-.06 Continuation of Expiring Permits 6-12
335-6-6-.07 Confidentiality of Information 6-12
335-6-6-.08 Application Format and Procedures for New Permits and for Permit Reissuance 6-13
335-6-6-.09 Signatories to Permit Applications and Reports 6-17
335-6-6-.10 Requirements Applicable to Particular Discharges 6-18
335-6-6-.11 Conditions Applicable to Storm Water Discharges by Operators of Municipal Storm Sewers 6-18
335-6-6-.12 Conditions Applicable to all NPDES Permits 6-19
335-6-6-.13 Conditions Applicable to Specific Categories of NPDES Permits 6-27
335-6-6-.14 Establishing Limitations, Standards, and Other Permit Conditions 6-28

335-6-6-.15 Calculating NPDES Permit Limitations 6-35
335-6-6-.16 Schedules of Compliance 6-42
335-6-6-.17 Transfer, Modification, Revocation and Reissuance, and Termination of Permits 6-43
335-6-6-.18 Enforcement Under NPDES..... 6-48
335-6-6-.19 Tentative Determinations and Draft NPDES Permits. 6-49
335-6-6-.20 Fact Sheets..... 6-50
335-6-6-.21 Public Notice Requirements 6-51
335-6-6-.22 Variance Requests 6-55
335-6-6-.23 General Permits 6-56

Chapter 335-6-7

National Pollutant Discharge Elimination System (NPDES) Best Management Practices, Registration Requirements, Technical Standards and Guidelines, Construction and Operation Requirements, Waste/Wastewater and Waste Product Treatment, Storage, Handling, Transport, and Disposal/Land Application, Nutrient Management, and Animal Mortality Management Requirements for Owners and Operators of Animal Feeding Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs)

335-6-7-.01 Purpose 7-2
335-6-7-.02 Definitions..... 7-3
335-6-7-.03 Applicability 7-13
335-6-7-.04 General Provisions 7-14
335-6-7-.05 Reserved..... 7-16
335-6-7-.06 Compliance with NPDES Rules 7-16
335-6-7-.07 Requirement to Apply for and Obtain Coverage Under a General or Individual NPDES Permit, Termination and/or Denial of Registration 7-17
335-6-7-.08 Reserved..... 7-19
335-6-7-.09 Notice of Registration (NOR) 7-19
335-6-7-.10 Registration Requirements for Concentrated Animal Feeding Operations (CAFOs)..... 7-23
335-6-7-.11 Reserved..... 7-27
335-6-7-.12 Registration Fees for Concentrated Animal Feeding Operations (CAFOs)..... 7-27
335-6-7-.13 Schedule of Registration and Certification/Evaluation of Approved Waste Management System Plan (WMSP) 7-28
335-6-7-.14 Reporting and Record Keeping 7-30
335-6-7-.15 Reserved..... 7-32
335-6-7-.16 Access to and Availability of Records, Reports or Information 7-32
335-6-7-.17 Entry and Inspection of Facilities 7-33
335-6-7-.18 Continuing Educational and Training Requirements 7-34
335-6-7-.19 Reserved..... 7-35
335-6-7-.20 Plans, Specifications, and Technical Requirements... 7-35
335-6-7-.21 General Best Management and Housekeeping Practices 7-44

335-6-7-.22 Alternative or Innovative Technology 7-45
335-6-7-.23 Reserved..... 7-45
335-6-7-.24 Facility Closure..... 7-46
335-6-7-.25 Discharge Prohibitions and Waste Disposal Requirements..... 7-47
335-6-7-.26 Land Application and Manure Management Requirements..... 7-51
335-6-7-.27 Reserved..... 7-56
335-6-7-.28 Pollution Prevention..... 7-57
335-6-7-.29 Preventive Maintenance 7-59
335-6-7-.30 Reserved..... 7-60
335-6-7-.31 Discharge Notification..... 7-60
335-6-7-.32 Other Requirements..... 7-62
335-6-7-.33 Reserved..... 7-66
335-6-7-.34 Severability..... 7-66

Chapter 335-6-8

Ground Water – and – Underground Injection Control

335-6-8-.01 Purpose 8-2
335-6-8-.02 Definitions..... 8-2
335-6-8-.03 Underground Sources of Drinking Water (USDW) 8-11
335-6-8-.04 Exempted Operations 8-12
335-6-8-.05 Prohibited Actions 8-12
335-6-8-.06 Required Actions 8-14
335-6-8-.07 Permit Issuance Procedures 8-15
335-6-8-.08 Public Notice Requirements 8-16
335-6-8-.09 Class III Well Permit Application Requirements 8-20
335-6-8-.10 Class V Well Permit Application Requirements 8-25
335-6-8-.11 Class III Well Permit Requirements 8-28
335-6-8-.12 Class V Well Permit Requirements 8-32
335-6-8-.13 Technical Submittals and Other Reports to the Department..... 8-38
335-6-8-.14 Coordination with EPA..... 8-41
335-6-8-.15 Confidentiality 8-45
335-6-8-.16 Class VI Well Area of Review and Area of Review Corrective Action 8-45
335-6-8-.17 Class VI Well Financial Responsibility Requirements 8-48
335-6-8-.18 Class VI Well Construction Requirements 8-53
335-6-8-.19 Class VI Well Logging, Sampling and Testing Requirements Prior to Injection Well Operation 8-56
335-6-8-.20 Class VI Well Operating Requirements 8-57
335-6-8-.21 Class VI Well Mechanical Integrity Requirements 8-59
335-6-8-.22 Class VI Well Testing and Monitoring Requirements 8-60
335-6-8-.23 Class VI Well Reporting Requirements 8-63
335-6-8-.24 Class VI Well Plugging Requirements 8-65
335-6-8-.25 Class VI Well Post-Injection Site Care and Site Closure Requirements 8-66
335-6-8-.26 Class VI Well Emergency and Remedial Response Requirements 8-70

335-6-8-.27	Class VI Well Permit Requirements	8-71
335-6-8-.28	Technical Submittals and Other Reports to the Department	8-82
335-6-8-.29	Coordination with EPA	8-83
335-6-8-.30	Confidentiality	8-83

Chapter 335-6-9

Surface Mining Rules

335-6-9-.01	Purpose	9-1
335-6-9-.02	Definitions	9-1
335-6-9-.03	Pollution Abatement and/or Prevention Plan	9-2
335-6-9-.04	Acceptance of Plan	9-4
335-6-9-.05	Permit Required	9-4
335-6-9-.06	Special Limitations	9-5
335-6-9-.07	Setbacks	9-6
335-6-9-.08	Implementation	9-6
Appendix A		9-7
Appendix B		9-10

Chapter 335-6-10

Water Quality Criteria

335-6-10-.01	Purpose	10-1
335-6-10-.02	Definitions	10-2
335-6-10-.03	Water Use Classifications	10-3
335-6-10-.04	Antidegradation Policy	10-4
335-6-10-.05	General Conditions Applicable to All Water Quality Criteria	10-5
335-6-10-.06	Minimum Conditions Applicable to All State Waters	10-6
335-6-10-.07	Toxic Pollutant Criteria Applicable to State Waters	10-6
335-6-10-.08	Waste Treatment Requirements	10-11
335-6-10-.09	Specific Water Quality Criteria	10-12
335-6-10-.10	Special Designations	10-32
335-6-10-.11	Water Quality Criteria Applicable to Specific Lakes	10-33
335-6-10-.12	Implementation of the Antidegradation Policy	10-40
Table 1		10-46
Appendix A		10-53

Chapter 335-6-11

Water Use Classifications for Interstate and Intrastate Waters

335-6-11-.01	The Use Classification System	11-1
335-6-11-.02	Use Classifications	11-2

Chapter 335-6-12

National Pollutant Discharge Elimination System (NPDES) Construction, Noncoal/Nonmetallic Mining and Dry Processing Less Than Five Acres, Other Land Disturbance Activities, and Areas Associated with These Activities

335-6-12-.01	Purpose	12-2
335-6-12-.02	Definitions	12-2
335-6-12-.03	Applicability	12-7
335-6-12-.04	Chapter Modification and Public Participation	12-8
335-6-12-.05	General Provisions	12-9
335-6-12-.06	Compliance with NPDES Rules	12-10
335-6-12-.07	Requirement to Update Registration and Apply for and Obtain Coverage Under an NPDES General or Individual Permit, Termination and/or Denial of Registration	12-12
335-6-12-.08	Activities not Authorized by this Chapter	12-14
335-6-12-.09	Reserved	12-15
335-6-12-.10	Notice of Registration (NOR)	12-15
335-6-12-.11	Registration Requirements for NPDES Construction Sites	12-18
335-6-12-.12	Reserved	12-21
335-6-12-.13	Registration Fees	12-21
335-6-12-.14	Reserved	12-22
335-6-12-.15	Routine Reporting, Notification, and Record Keeping Requirements	12-22
335-6-12-.16	Reserved	12-24
335-6-12-.17	Reserved	12-24
335-6-12-.18	Entry and Inspection of Sites/Facilities	12-25
335-6-12-.19	Continuing Educational and Training Requirements	12-25
335-6-12-.20	Reserved	12-26
335-6-12-.21	CBMPPs, Other Plans, Specifications, BMPs, and Technical Requirements	12-26
335-6-12-.22	Reserved	12-31
335-6-12-.23	Reserved	12-32
335-6-12-.24	Alternative or Innovative Technology	12-32
335-6-12-.25	Site Completion, Reclamation, Effective Stormwater Quality Remediation, and Termination of Registration	12-32
335-6-12-.26	Discharge and Receiving Water Evaluation Requirements	12-34
335-6-12-.27	Reserved	12-35
335-6-12-.28	Inspection Requirements	12-35
335-6-12-.29	Reserved	12-38
335-6-12-.30	Pollution Prevention for NPDES Construction Sites	12-38
335-6-12-.31	Reserved	12-39
335-6-12-.32	Reserved	12-39

335-6-12-.33 Ineffective Compliant BMPs, Discharge Prohibitions, and Noncompliance Notification..... 12-39
335-6-12-.34 Reserved..... 12-42
335-6-12-.35 Other Requirements..... 12-42
335-6-12-.36 Reserved..... 12-45
335-6-12-.37 Severability..... 12-45

CHAPTER 335-6-13
Centralized Waste treatment Facility Financial Assurance Requirements
335-6-13-.01 Purpose..... 13-1
335-6-13-.02 Applicability..... 13-1
335-6-13-.03 Definitions 13-2
335-6-13-.04 Other Closure Requirements 13-3
335-6-13-.05 Financial Assurance Violations 13-3
335-6-13-.06 Financial Assurance Criteria 13-4
335-6-13-.07 Allowable Mechanisms for Financial Assurance ... 13-5
335-6-13-.08 Release from Financial Assurance Requirements by the Department 13-9

Chapter 335-6-14 Repealed 10/04/2010

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER DIVISION - WATER QUALITY PROGRAM

CHAPTER 335-6-1
GENERAL PROVISIONS

TABLE OF CONTENTS

335-6-1-.01 General Definitions
335-6-1-.02 Adoption of Rules and Standards
335-6-1-.03 (Repealed)

335-6-1-.01 General Definitions. The following definitions describe the meaning of certain terms used in this division, unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable only to a particular chapter within this division. Additional terms may also be defined in individual chapters.

(a) The following terms shall have the meanings set forth in the AWPCA "waters," "pollution," "sewage," "industrial wastes," "other wastes," "person," and "discharge."

(b) "AWPCA" means the Alabama Water Pollution Control Act, as amended, Code of Alabama 1975, §§ 22-22-1 to 22-22-14.

(c) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(d) "Director" means the Director of the Alabama Department of Environmental Management, appointed pursuant to Code of Alabama 1975, § 22-22A-3(4).

(e) "Department" means the Alabama Department of Environmental Management established by Code of Alabama 1975, § 22-22A-3(1).

(f) "EPA" means the United States Environmental Protection Agency or its successor.

(g) "FWPCA" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §§ 1251 et seq. and regulations listed thereunder.

(h) "Regulation" or "Rule" means each Department statement of general applicability that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the Department. The term includes the amendment or repeal of a prior rule but

does not include: Department. The term includes the amendment or repeal of a prior rule but does not include:

1. Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

2. Intra-agency memoranda; or

3. An order which is directed to a specifically named person or to a group of specifically named persons which does not constitute a general class and the order is served on the person or persons by the appropriate means applicable thereto. The fact that the named person who is being regulated serves a group of unnamed persons who will be affected does not make such order a "rule" or "regulation."

(i) "State" means the State of Alabama.

(j) "Technical Staff" means the technical staff of the Department.

Author: David Ludder.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: Unknown. **Amended:** October 10, 1984.

335-6-1-.02 Adoption of Rules and Standards. In addition to the other rule-making requirements imposed by law, the Department shall:

(1) Adopt rules establishing water quality standards and stream classifications for all waters of the State as the Department sees fit;

(2) Adopt effluent limitation guidelines; a system for issuance of permits which system shall include effluent limitations for each discharge for which a permit is issued; and, such other rules as necessary to enforce water quality standards adopted by the Department; and

(3) Adopt any other rules within the Department's authority to further the policy and purpose of the AWPCA and to control pollution in the waters of the State.

(4) No rule of the Department is valid or effective against any person or party, nor may it be invoked by the Department for any purpose until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

Author: David Ludder.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: May 9, 1972. **Amended:** January 7, 1974; January 10, 1984; October 10, 1984.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER DIVISION - WATER QUALITY PROGRAM

CHAPTER 335-6-2
STATE CERTIFICATION OF WATER POLLUTION CONTROL FACILITIES OF SMALL BUSINESS CONCERNS

TABLE OF CONTENTS

335-6-2-.01 Purpose
335-6-2-.02 General Procedure
335-6-2-.03 Submission of Applications

335-6-2-.01 Purpose. This chapter is promulgated for the purpose of establishing procedures to enable the Department to conduct a program for the issuance of statements, referred to in Section 7(g) of the Small Business Act and Section 8 of the FWPCA, certifying that additions to or alterations in the equipment, facilities, or methods of operation of small business concerns are necessary and adequate to comply with requirements established under the FWPCA.

Author: Unknown.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: November 17, 1977.

335-6-2-.02 General Procedure. In conducting the above-mentioned program, the procedures and provisions set forth in 40 C.F.R. Part 21 shall be applicable, except as otherwise provided by these rules. The Director shall be authorized to certify in accordance with 40 C.F.R. Part 21 and other rules hereafter promulgated.

Author: David Ludder.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: November 17, 1977. **Amended:** October 10, 1984.

335-6-2-.03 Submission of Applications. Applications for a "necessary and adequate" statement shall contain the information specified in 40 C.F.R. § 21.3 and shall be made to the Director, Department of Environmental Management, 1751 Cong. W.L. Dickinson Drive, Montgomery, Alabama 36130.

Author: David Ludder.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: November 17, 1977. **Amended:** October 10, 1984.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER DIVISION - WATER QUALITY PROGRAM

CHAPTER 336-6-3
SUBMITTAL OF ENGINEERING PLANS, SPECIFICATIONS AND OTHER TECHNICAL INFORMATION

TABLE OF CONTENTS

335-6-3-.01 Purpose
335-6-3-.02 Definitions
335-6-3-.03 Submission of Plans
335-6-3-.04 Preparation of Plans, Specifications, and Technical Data
335-6-3-.05 Direct Correspondence Between Professional Engineer and the Technical Staff
335-6-3-.06 Engineering Competency
335-6-3-.07 Engineering Seal and/or Signature
335-6-3-.08 Modifications or Alterations
335-6-3-.09 Engineer Inspection

335-6-3-.01 Purpose. The following rules are promulgated to establish minimum requirements governing the submission of plans, specifications, and other technical data pursuant to Code of Alabama 1975, § 22-22-9(h).

Author: David Ludder.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: January 17, 1974. **Amended:** October 10, 1984.

335-6-3-.02 Definitions. The following definitions describe the meaning of certain terms used in this chapter, unless a different meaning clearly appears from the context:

(a) "Professional Engineer" shall mean a person who by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and/or practical experience, is qualified to practice engineering according to the provisions of Title 34, Chapter 11, Code of Alabama 1975, as amended, and is presently registered by the Board of Registration for Professional Engineers and Land Surveyors.

(b) "Waste Treatment Facility" shall mean any devices or systems used in the storage, treatment, recycling or reclamation of municipal sewage, industrial waste or other waste, including but not limited to, interceptor sewers, outfall sewers, sewage collection systems; associated pumping power and other equipment and their appurtenances; extensions, improvements, remodeling,

additions or alterations thereof. In addition, "waste treatment facility" shall mean any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, industrial waste, or other waste which flows into waters of the State.

Author: David Ludder.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: January 17, 1974. **Amended:** January 10, 1981; October 10, 1984.

335-6-3-.03 Submission of Plans. The submission of plans, specifications, and other technical data pursuant to §22-22-9(h) of the AWPCA or any other order or directive of the Department relating to the construction of waste treatment facilities shall be in a form which is acceptable to the technical staff.

Author: David Ludder.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: January 17, 1974. **Amended:** October 10, 1984.

335-6-3-.04 Preparation of Plans, Specifications, and Technical Data. Unless specifically waived in writing by the technical staff, all plans, specifications, and other technical data for the construction of waste treatment facilities which are submitted to the technical staff for review shall be prepared by a professional engineer, presently registered to practice in the State and who is competent to perform work in this field of engineering.

Author: David Ludder.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: January 17, 1974. **Amended:** January 10, 1981; October 10, 1984.

335-6-3-.05 Direct Correspondence Between Professional Engineer and the Technical Staff. Discussions and correspondence involving technical aspects of construction, modification, or additions to any waste treatment facility shall be made between members of the technical staff and the professional engineer directly.

Author: David Ludder.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: January 17, 1974. **Amended:** October 10, 1984.

335-6-3-.06 Engineering Competency. Questions which relate to the competence of any engineer to design or supervise construction of any waste treatment facility shall be resolved by forwarding such questions to the State

Board of Registration of Professional Engineers and Land Surveyors for final determination.

Author: Unknown.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: January 17, 1974.

335-6-3-.07 Engineering Seal and/or Signature. Unless specifically waived in writing by the technical staff, all engineering drawings, plans, specifications, plats, and reports submitted to the technical staff for review pursuant to §22-22-9(h) of the AWPCA or submitted pursuant to any order, directive, or rule of the Department shall have affixed thereto the seal and/or signature of the professional engineer who designed such facility and for which he accepts full responsibility. The presence of such seal and/or signature should be considered evidence that the professional engineer accepts full responsibility for the waste treatment facility. Responsibility in this context is intended to include the production of a specified quality waste effluent from the facilities when constructed in accordance with plans and specifications and when such facilities are properly operated.

Author: David Ludder.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: January 17, 1974. **Amended:** January 10, 1981; October 10, 1984.

335-6-3-.08 Modifications or Alterations. Any proposed modification or alteration of plans, specifications, or technical data previously submitted to and reviewed by the technical staff must also be forwarded to the staff for review.

Author: David Ludder.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: January 17, 1974. **Amended:** October 10, 1984.

335-6-3-.09 Engineer Inspection. Upon completion of construction of a waste treatment facility and upon request of the technical staff, the professional engineer who designed such facility or assumed responsibility for its design shall furnish said staff with a letter certifying that the facility has been constructed in accordance with the plans, specifications, modifications, and alterations reviewed by the technical staff.

Author: David Ludder.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: January 17, 1974. **Amended:** October 10, 1984.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER DIVISION - WATER QUALITY PROGRAM

CHAPTER 335-6-5
INDIRECT DISCHARGE PERMIT AND PRETREATMENT RULES

TABLE OF CONTENTS

335-6-5-.01 Purpose
335-6-5-.02 Definitions
335-6-5-.03 General Pretreatment Standards and Prohibitions and Local Limits
335-6-5-.04 Requirement for a SID Permit
335-6-5-.05 Duties of Industrial Users
335-6-5-.06 Categorical Pretreatment Standards
335-6-5-.07 Publicly and Privately Owned Treatment Works
335-6-5-.08 Request for Variances from Categorical Pretreatment Standards for Fundamentally Different Factors
335-6-5-.09 Prohibited Discharges
335-6-5-.10 Duration of Permits
335-6-5-.11 Continuation of Expiring Permits
335-6-5-.12 Confidentiality of Information
335-6-5-.13 Application Format and Procedures for New Permits, Permit Reissuance, and Permit Modification
335-6-5-.14 Signatories to Permit Applications and Reports
335-6-5-.15 Conditions Applicable to SID Permits.
335-6-5-.16 Establishing Limitations, Standards, and Other Permit Conditions
335-6-5-.17 Calculating SID Permit Limitations
335-6-5-.18 Schedules of Compliance
335-6-5-.19 Transfer, Modification, Revocation and Reissuance, and Termination of Permits
335-6-5-.20 Enforcement
335-6-5-.21 SID Permit Development
335-6-5-.22 Reclassification of Significant Industrial Users

335-6-5-.01 Purpose. Section 403.10 of the Federal Water Pollution Control Act (FWPCA) provides that a state may administer its own pretreatment program for regulation of discharges of non-domestic wastewater into publicly owned treatment works within its jurisdiction. Such pretreatment program, however, must be comparable to the National Program. The Alabama Water Pollution Control Act (AWPCA) provides that the Department shall regulate and permit the discharge of sewage and industrial wastes entering a water of the state either directly or indirectly by passing through a publicly or privately owned treatment plant. It is the purpose of this chapter to establish rules and procedures which will enable the state to administer a pretreatment program for this state and to enforce the provisions of the AWPCA.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.02 Definitions. Whenever used in this chapter, unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of this chapter, the following shall mean:

(a) "Application" means forms, applicable permit fees, and additional information required by this chapter to be submitted when applying for a SID Permit.

(b) "Average Monthly Discharge Limitation" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month. Zero discharge days shall not be included in the number of "daily discharges" measured. When an EPA approved method having a detection limit lower than the permit limitation or when the EPA approved method having the lowest detection limit for a substance is used by the permittee, a value of less than detectable shall be considered zero for purposes of calculating the average monthly discharge of the substance.

(c) "Average Weekly Discharge Limitation" means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week (zero discharge days shall not be included in the number of "daily discharges" measured). When an EPA approved method having a detection limit lower than the permit limitation or when the EPA approved method having the lowest detection limit for a substance is used by the permittee, a value of less than detectable shall be considered zero for purposes of calculating the average weekly discharge of the substance.

(d) "Baseline Report" means information required by 40 CFR Section 403.12(b) (1994) to be submitted by an industrial user subject to a categorical pretreatment standard.

(e) "Best Management Practices Plan" ("BMP") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the state." BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material or product storage.

(f) "Bypass" means the intentional diversion of waste streams from any portion of an industrial user's wastewater treatment facility.

(g) "Categorical Industrial User" means any "Industrial User" to which a "categorical pretreatment standard" applies.

(h) "Categorical Pretreatment Standard" or "Pretreatment Standard" means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the FWPCA, which applies to industrial users.

(i) "Commencement of Construction" means that the owner or operator has:

1. begun, or caused to begin as part of a continuous on-site construction program:

(i) any placement, assembly, or installation of facilities or equipment or

(ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

2. entered into a binding contractual obligation for the purpose of placement, assembly, or installation of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under the paragraph.

(j) "Commercial Centralized Waste Treatment Facility" or "CWT" means a facility, other than a landfill or incinerator, which treats or stores aqueous wastes generated by facilities not located on the site of the CWT and which disposes of these wastes by introducing them into a publicly owned treatment works.

(k) "Daily Discharge" means the discharge of a pollutant measured during any consecutive 24-hour period in accordance with the sample type and analytical methodology specified by the discharge permit.

(l) "Department" means the Alabama Department of Environmental Management, established by the Alabama Environmental Management Act, Code of Alabama 1975, §§ 22-22A-1 to 22-22A-16.

(m) "Director" means the Director of the "Department" or an authorized representative.

(n) "Discharge Limitation" means any restriction imposed by the Director on quantities, discharge rates, concentrations or other characteristics of "pollutants" or volumes or flow rates of wastewater which are "discharged" into a "publicly or privately owned treatment works."

(o) "Discharge Monitoring Report" or "(DMR)" means the form approved by the Director to accomplish the reporting requirements of a SID Permit.

(p) "Domestic Discharger" means a "Discharger" which discharges only "Domestic Wastewater."

(q) "Domestic Wastewater" means wastewater from residences and other wastewaters of similar composition and strength and does not mean wastewater generated by industrial processes.

(r) "Draft Permit" means a document indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "SID permit."

(s) "General Prohibitions" means those promulgated restrictions and standards published in 40 CFR Section 403.5 (1994) and applicable to all industrial discharges.

(t) "Indirect Discharge" or "Discharge" means the addition, introduction, leaking, spilling, or emitting of non-domestic pollutants from any source, including but not limited to those regulated under Section 307(b) or (c) of the FWPCA, into a "publicly owned treatment works" or the introduction of non-domestic pollutants into a "privately owned treatment works" by a person other than the operator of the "privately owned treatment works."

(u) "Indirect Discharger" or "Discharger" means a nondomestic discharger who discharges "pollutants" to a "publicly owned treatment works" or a "privately owned treatment facility" operated by a person other than the indirect discharger.

(v) "Industrial User" means a source of "Indirect Discharge."

(w) "Interference" means inhibition or disruption of the treatment processes or operations of a "publicly or privately owned treatment works": which contributes to a violation of any requirement of its "NPDES" permit or causes damage to any part of the collection, treatment, and disposal system; and includes prevention of sewage sludge use or disposal by a "publicly owned treatment works" in accordance with Section 405 of the FWPCA, or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection, Research and Sanctuaries Act, or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the "publicly owned treatment works."

(x) "Maximum Daily Discharge Limitation" means the highest allowable "daily discharge."

(y) "Municipal Wastewater" means any wastewater discharged to a "publicly owned treatment works" and includes domestic and industrial wastewater.

(z) "National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits for the discharge of pollutants into waters of the state.

(aa) "New Discharger" means any "Significant Indirect Discharger", to whom the "Department" has not issued a "SID Permit", or any potential "Significant Industrial Discharger."

(bb) "New Source" means:

1. any building, structure, facility, or installation from which there is or may be a discharge of pollutants, for which the "commencement of construction" occurred:

(i) after promulgation of "categorical pretreatment standards" under Section 307(c) of FWPCA which are applicable to such source; or

(ii) after proposal of "categorical pretreatment standards" in accordance with Section 307(c) of the FWPCA which are applicable to such source, but only if the standards are promulgated in accordance with Section 307(c) within 120 days of their proposal.

(cc) "NPDES Permit" means a permit issued to the "Privately or Publicly Owned Treatment Works" pursuant to Section 402 of the FWPCA.

(dd) "Pass Through" means that a pollutant(s) introduced into a "publicly or privately owned treatment works" by an "industrial discharger" exits into a "water of the state" in quantities or concentrations which, alone or in conjunction with one or more other discharges, is a cause of a violation of the "NPDES Permit" issued to the treatment works or is a cause of a violation of a state water quality standard or is a cause of an increase in the duration or magnitude of a violation of the permit or water quality standard;

(ee) "Permittee" means a person to whom a permit has been issued under this chapter.

(ff) "Person" means 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, other legal entity, business organization or any governmental entity and any successor, representative, responsible corporate officer, agent or agency of the foregoing.

(gg) "Pollutant" includes but is not limited to dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or

discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water. It does not mean:

1. sewage from vessels or

2. water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state and if the Department determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(hh) "Pretreatment" means the reduction of the amount of a "pollutant(s)," the elimination of "pollutant(s)," or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a "publicly or privately owned treatment works." The reduction or alteration can be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by rule 335-6-5-.06.

(ii) "Privately Owned Treatment Works" means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works, and which is not a "publicly owned treatment works."

(jj) "Publicly Owned Treatment Works" means a treatment works as defined by Section 212 of the FWPCA, which is owned by the state, a municipality, a regional entity composed of two or more municipalities, or another entity created by state or local authority for the purpose of collecting and treating municipal wastewater. This definition does not include pipes, sewers or other conveyances not connected to a facility providing treatment. The term also means the municipality as defined in Section 502(4) of the FWPCA, which has jurisdiction over the "indirect discharges" to and the discharges from such a treatment works.

(kk) "Regional Administrator" means the Regional Administrator of the appropriate regional office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

(ll) "Schedule of Compliance" means a schedule of remedial measures, included in a permit, including an enforceable sequence of actions or operations leading to compliance with any permit requirement or water quality standard.

(mm) "Severe Property Damage" means substantial physical damage to property, damage to waste treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(nn) "Sewage" means water carried human wastes from residences, buildings, industrial establishments or other places, together with such ground, surface, storm or other waters as may be present.

(oo) "Significant Industrial Discharger" or "Significant Industrial User" means any of the following:

1. All "industrial users" subject to Categorical Pretreatment Standards under 40 CFR 403.6 (1994) and 40 CFR Chapter I, Subchapter N (1994);

2. All "industrial users" that "discharge" an average of 25,000 gallons per day or more of process wastewater (excluding sanitary wastewater, noncontact cooling water, and boiler blowdown) to a "publicly owned treatment works";

3. All "industrial users" that "discharge" an average quantity of process wastewater (excluding sanitary wastewater, noncontact cooling water, and boiler blowdown) that makes up five percent or more of the average dry weather organic or hydraulic capacity of the "publicly owned treatment works";

4. All "industrial users" that "discharge" an average organic loading that makes up five percent or more of the design capacity of the "publicly owned treatment works";

5. All "industrial users" that "discharge" to a "privately owned treatment works"; or

6. Any "industrial user" that is determined by the "Director" to have a reasonable potential to adversely affect the operation of the "publicly owned treatment works" or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)(1994);

(pp) "Sludge" means any solid, semi-solid, or viscous material or other residue resulting from treatment of wastewater or produced as a result of wastewater management;

(qq) "State Indirect Discharge Permit" or "SID Permit" means a permit issued to an "industrial user";

(rr) "Submission" when referring to the rendering of reports, applications, or other documents required to be submitted to the Department, means that the complete document(s) is received by the Department;

(ss) "Toxic Pollutant" means a "Pollutant" or combination of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organisms, either directly from the environment or indirectly through food chains, will, on the basis of information available to the Department or Director cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including

malfunctions in reproduction, or physical deformations, in such organisms or their offspring. This shall include but not be limited to pollutants listed as toxic under Section 307(a)(l) of the FWPCA.

(tt) "Trade Secret" includes but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound or procedure, as well as production data or compilation of information, financial and marketing data, which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article of trade or a service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know of it.

(uu) "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with SID permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(vv) "Waste Treatment Facility" means any devices or systems used in the storage, treatment, recycling or reclamation of municipal sewage, industrial waste, any pollutant, or other waste, including but not limited to, interceptor sewers, outfall sewers, sewage collection systems; associated pumping power and other equipment and their appurtenances; extensions, improvements, remodeling, additions or alterations thereof. In addition, "waste treatment facility" shall mean any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, industrial waste, pollutant, or other waste which flows into waters of the state, either directly or indirectly by passing through a publicly or privately owned treatment works.

(ww) "Waters of the State" means all waters of any river, stream, watercourse, pond, lake, coastal, ground or surface water, wholly or partially within the state, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership or corporation unless such waters are used in interstate commerce.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991. **Amended:** July 12, 1995.

335-6-5-.03 General Pretreatment Standards and Prohibitions and Local Limits.

(1) An industrial user, whether or not the user is subject to other categorical pretreatment standards or any national, state, or local pretreatment requirements, shall not introduce into publicly or privately owned treatment works any pollutant(s) which, alone on in conjunction with a discharge or discharges from other sources, cause pass through or interference or in any other manner adversely impact the operation or performance of the treatment works, to include the method of sludge disposal in use by the publicly or privately owned treatment works.

(2) The following pollutants may not be introduced into a publicly owned treatment works:

(a) Pollutants which create a fire or explosion hazard in the publicly owned treatment works, including, but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21 (1994);

(b) Pollutants which will cause corrosive structural damage to the treatment works, but in no case discharges with pH lower than 5.0, unless the treatment works are specifically designed to accommodate such discharges;

(c) Solid or viscous pollutants in amounts which will cause obstruction to the flow in sewers, or other interference with the operation of the treatment works;

(d) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge of such volume or strength as to cause interference in the treatment works;

(e) Heat in amounts which will inhibit biological activity in the treatment plant resulting in interference but in no case in such quantities that the temperature of the influent, at the treatment plant, exceeds 40 °C (104 °F) unless the treatment plant is designed to accommodate such heat;

(f) Pollutants which result in the presence of toxic gases, vapors, or fumes within the treatment works in a quantity that may cause acute worker health and safety problems;

(g) Any trucked or hauled pollutants, except at discharge points designated by the treatment works; and

(h) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.

(3) The Department shall develop and enforce any specific local limits required to ensure compliance with the requirements of this rule and, where

appropriate, shall include these limits in SID Permits. Ordinance limits developed by publicly owned treatment works, that are based on a technical evaluation, shall be imposed as local limits in SID Permits, provided the publicly owned treatment works submits the limit and technical evaluation to the Department for review and approval and the limit is determined to be necessary to ensure compliance with the Department's rules.

(a) Local limits shall not be developed for substances that are not present in industrial user discharges to the publicly owned treatment works or that are not limited by a SID permit issued for discharge to the publicly owned treatment works, except that local limits necessary to ensure compliance with general pretreatment standards shall be developed.

(b) Local limits may be determined using actual data from analysis of publicly owned treatment plant influent and effluent, from sludge analysis, and the characteristics of the waterbody receiving the publicly owned treatment works NPDES permitted discharge. If actual data is not available, pollutant loadings from all significant industrial discharges and best professional judgement based on literature search and/or EPA published estimates shall be used. When the publicly owned treatment works disposes of treated wastewater using an alternative, such as land application, to discharge to a surface water, local limits determinations shall consider the wastewater quality required by the disposal method when evaluating pass-through.

(c) Local limits shall prevent the creation of sludges at the treatment plant that are not compatible with the treatment works chosen method of sludge disposal and may be developed to produce a sludge compatible with a POTW's long range plan for sludge disposal. Local limits for support of long range sludge disposal plans must be developed by the POTW and submitted in accordance with this paragraph.

(d) Local limits for a substance may be equivalent to the concentration of the substance found in domestic wastewater when necessary to prevent water quality impacts, interference, or sludge problems.

(e) Public notice of the Department's intent to develop local limits shall be published in a newspaper of general circulation in the area served by the treatment works for which the limits are being developed. The notice shall include directions for obtaining a copy of the proposed limits and for commenting on the limits. The notice shall allow at least a 30-day comment period prior to final development of the local limits. All comments received during the notice period shall be considered during development of the final local limits.

(f) Procedure for Submittal of Local Limits. Any POTW wishing to participate in the initial development of local limits shall notify the Department within 30 days of the effective date of this rule and shall provide an anticipated schedule leading to the submittal of the limits and technical justification. The notification shall also state what local limits the POTW plans to develop. A

POTW may submit requested changes to local limits at any time and shall submit the technical justification concurrent with the requested change.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.04 Requirement for SID Permit.

(1) No person shall introduce pollutants, other than domestic wastewater into a privately owned treatment works operated by another person without having first obtained a valid State Indirect Discharge (SID) Permit from the Department.

(2) No significant industrial user shall introduce pollutants into publicly owned treatment works without having first obtained a valid State Indirect Discharge (SID) Permit from the Department.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.05 Duties of Industrial Users.

(1) All industrial users shall comply with the requirements of this chapter and all prohibitions listed in 40 CFR Section 403.5.

(2) All categorical industrial users shall comply with the provisions of applicable categorical pretreatment standards.

(3) All existing categorical industrial users shall submit to the Department a baseline report containing the information required by 40 CFR Section 403.12 (1994) within 180 days after the effective date of a categorical standard applying to that users process(s) or 180 days after the final decision has been made upon a category determination submittal by the industrial user. New sources shall submit the baseline report as a part of the SID Permit Application.

(4) Any holder of a SID permit shall comply with all provisions of the SID Permit.

(5) An existing significant industrial user shall apply for reissuance of an expiring SID Permit no later than 180 days prior to the expiration date of the expiring SID Permit.

(6) A new significant industrial user shall apply for a SID Permit at least 180 days prior to the date that commencement of discharge is expected.

(7) An industrial user shall notify the publicly owned treatment works, the Department, and the EPA Region IV Waste Management Division Director of any discharge into a publicly owned treatment works of a substance which is a listed or characteristic waste under Section 3001 of RCRA.

(a) Such notification must include a description of any such wastes discharged, specifying the volume and concentration of such wastes and the type of discharge (continuous, batch, or other), identifying the hazardous constituents contained in the listed wastes and estimating the volume of hazardous wastes expected to be discharged during the following twelve months. The notification must take place within 180 days of the effective date of this rule. This requirement shall not apply to pollutants already reported under the requirements of a SID Permit.

(b) Dischargers are exempt from these reporting requirements during a calendar month in which they generate no more than 100 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.5(e), (f), (g) and(j) (1994). Generation of more than 100 kilograms of hazardous wastes in any given month requires a one-time notification. Subsequent months during which the industrial user generates more than 100 kilograms of hazardous wastes do not require additional notification, except for acute hazardous wastes.

(c) In the case of new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous wastes or listing any additional hazardous waste, the industrial user must notify of the discharge of such substance within 90 days of the effective date of such regulations.

(d) In the case of any notification, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of the wastes to the degree it has determined to be economically practicable and that it has selected the method of treatment, storage, or disposal currently available which minimizes the present and future threat to human health and the environment.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.06 Categorical Pretreatment Standards.

(1) Categorical pretreatment standards, specifying quantities or concentrations of pollutants or pollutant properties which may be discharged or introduced to a publicly owned treatment works by existing or new industrial users in specific industrial subcategories, have been and will be established as separate regulations under the appropriate subpart of 40 CFR Chapter I, Subchapter N (1994). The Department shall require compliance with the requirements of those regulations and shall include the requirements in SID Permits issued to categorical dischargers. Compliance by existing sources shall

be attained within three years of the effective date of the standard or as stated in the standard, whichever is earlier. New sources shall install, have in operating condition and start-up all pollution control equipment required to comply with the standard before beginning to discharge and shall attain compliance with the standard within 90 days of beginning discharge.

(2) Category Determination Request.

(a) Within sixty days after the effective date of a categorical pretreatment standard for a subcategory under which an existing industrial user may be included, the industrial user may request that the Department provide written certification to the effect that the industrial user does or does not fall within that particular subcategory.

(b) New source industrial dischargers and existing industrial dischargers, requesting a category determination because of the addition or alteration of a process, must request a category determination prior to commencing discharge of pollutants from the process(es) included in the request.

(c) Each request shall contain a statement:

1. describing which subcategories might be applicable;

2. citing evidence and reasons why a particular subcategory is applicable and why others are not applicable; and

3. the following certification signed by a person meeting the requirements of rule 335-6-5-.14.

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

(d) The Department will notify the industrial user of any incomplete aspects of a request and give the industrial user thirty days (or longer, by written permission of the Department) to complete the request.

(e) When the request is complete, the Director will make a written determination of the applicable subcategory and state the reasons for the determination and shall forward the determination to the EPA Regional Water Management Division Director.

(f) The EPA Water Management Division Director may make a final determination. If the Water Management Division Director does not modify the Director's decision within sixty days after receipt thereof, the Director's decision is final, and shall be sent to the requester.

(g) Where the EPA Water Management Division Director elects to modify the Department's decision, the Water Management Division Director's decision will be final.

(h) If the EPA Water Management Division Director elects to modify the Department's decision, the industrial user may submit a petition to reconsider or contest the decision to the Regional Administrator within thirty days of receipt of the modified decision, in accordance with pertinent EPA regulations [40 CFR Part 403 (1994)]. If the Director's decision is final, the industrial user may appeal that decision in accordance with chapter 335-2-1.

(3) Except where expressly authorized to do so by an applicable categorical pretreatment standard, no industrial user shall ever increase the use of process water or, in any other way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a categorical pretreatment standard.

(4) Calculation of Categorical Pretreatment Standard Permit Limits.

(a) The Department may convert mass limits based on units of production to concentration units and may use the concentration limits as SID Permit limits. Mass limits will be converted to concentration units using a reasonable measure of the industrial user's long-term average daily flow, such as the average daily flow rate during a representative year or for new dischargers an engineering estimate of the average flow may be used. When a concentration limit developed from a categorical standard is applied, the flow shall be limited accordingly.

(b) The Department shall calculate mass limits by using a reasonable measure of the industrial user's actual long-term daily production, such as the average daily production for a representative year.

(c) The same flow or production figures shall be used to calculate daily and average permit limitations.

(d) Combined waste stream limits shall be calculated in accordance with the methods described in 40 CFR Section 403.6 (1994).

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991. **Amended:** July 12, 1995.

335-6-5-.07 <u>Publicly and Privately Owned Treatment Works</u>.

(1) Control of Industrial Users by Publicly Owned Treatment Works.

(a) The Department shall not process a SID Permit Application nor issue a SID Permit to a new discharger or a discharger that is requesting an increase in permit limits for any pollutant until the publicly owned treatment works has provided written approval of the connection.

(b) A publicly owned treatment works may designate any portion of its unused capacity as not available for industrial users by submitting such designation in writing to the Department. SID Permit limits will be determined on the basis of the capacity remaining after subtracting the sum of the reserved capacity and that capacity already in use from the design capacity of the treatment works. This reservation of capacity shall apply to pollutants regulated by local limits as well as to traditional substances such as organic loading, flow, ammonia, and suspended solids.

(c) If requested by the POTW the Department will require the submittal of a copy of any document or report, that is required to be submitted to the Department, to the POTW. If requested, all notifications required by the permit shall be required to be made to the POTW. The POTW may make a one-time request applicable to all permits or make individual requests during review of draft permits.

(d) Publicly owned treatment works shall report all instances of pass through or interference caused by or believed to be caused by an industrial user to the Department as soon as possible and no later than 24 hours after learning of a water quality standard violation that was or may have been caused by pass through or interference caused by an industrial user.

(e) A publicly owned treatment works may submit a written notification reducing or deleting the capacity available to a permitted industrial user. Such notification shall be signed by a representative of the publicly owned treatment works who meets the requirements of rule 335-6-5-.14 as an acceptable signatory to its NPDES permit application. The Department shall keep the notification on file and will use the modified capacity to develop any subsequent draft SID Permit.

(f) Publicly owned treatment works may pass ordinances, adopt policies, assess surcharges and regulate industrial users to the extent allowed by law. Regulatory and other requirements of the publicly owned treatment works may be more stringent than those of the Department, however the Department will enforce only requirements of the AWPCA and EPA and rules implementing the requirements of the AWPCA and EPA.

(2) Publicly owned treatment works may participate in the surveillance and monitoring functions of the pretreatment program. Copies of

all inspection reports to include sampling results that are performed by the treatment works shall be submitted to the Department.

(3) Prior to acceptance of an indirect discharge, a privately owned treatment system shall apply for a modification to its NPDES Permit identifying the additional source of wastewater. The Department shall enforce limits of SID Permits issued to industrial users of privately owned treatment systems, but noncompliance by a user with its SID Permit shall not constitute a defense for violation by the privately owned treatment works of its NPDES Permit.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.08 Request for Variances from Categorical Pretreatment Standards for Fundamentally Different Factors.

(1) Request for variances from categorical pretreatment standards for fundamentally different factors shall be prepared in accordance with the requirements under 40 CFR Section 403.13 (1994).

(2) The request for a variance shall be submitted to the Director for action. The Director may determine that fundamentally different factors do not exist and deny the request. If the Director determines that fundamentally factors exist, he shall forward the request with a recommendation that the request be approved to the Administrator.

(3) The Administrator shall deny or approve the request. If the request is approved, the Administrator shall develop alternate pretreatment standards applicable to the requester discharge.

(4) The Administrator's decision may be contested in accordance with the procedure described in 40 CFR 403.13. (1994)

(5) The Director's decision to deny may be appealed in accordance with chapter 335-2-1 of the Department's rules.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.09 Prohibited Discharges. An SID Permit shall not be issued to a person under the following circumstances:

(1) The industrial discharge contains a radiological, chemical or biological warfare agent or a high-level radioactive waste;

(2) The publicly or privately owned treatment works does not provide written agreement to accept the industrial discharge;

(3) When the imposition of permit conditions cannot reasonably ensure compliance with the general or categorical pretreatment standards applicable to the industrial discharge;

(4) For a discharge which otherwise does not comply with the AWPCA or the FWPCA; or

(5) When hydraulic or organic treatment works capacity is insufficient to accommodate the discharge.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.10 Duration of Permits.

(1) A SID Permit issued pursuant to the AWPCA and this chapter shall have a fixed term not to exceed five years. A person who wishes to continue to discharge beyond the term of such permit shall apply for reissuance of a SID Permit pursuant to rule 335-6-5-.13.

(2) A SID Permit issued for a "new discharger" or "new source" shall expire eighteen months after issuance if "construction" has not begun during that eighteen-month period.

(3) That portion of a SID Permit authorizing the discharge of increased quantities of pollutants to accommodate the modification of an existing facility shall expire eighteen months after issuance if "construction" of the modification has not begun within eighteen months after reissuance of the SID Permit or modification of the SID Permit to allow the discharge of increased quantities of pollutants.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.11 Continuation of Expiring Permits. The terms and conditions of an expiring SID Permit are automatically extended pending issuance of a new SID Permit if the permittee has submitted a timely and complete application for reissuance of the SID Permit and the delay in permit issuance has not been caused by the actions of the permittee. An application that is received by the Department less than 180 days prior to the expiration date of the existing SID Permit is not timely and, if the SID Permit is not reissued prior to expiration,

the applicant shall not have a valid permit until such time as the permit is reissued.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.12 Confidentiality of Information.

(1) Information required by this chapter to be submitted as a part of a SID Permit application may not be claimed as confidential. This includes information submitted on the approved application forms themselves and any attachments used to supply information required by the forms. Claims of confidentiality for the following information will be denied:

(a) The name and address of any permit applicant or permittee;

(b) Information required to develop the permit, permits, and effluent data;

(c) Baseline reports;

(d) Category determination request; and

(e) Requests for variances from categorical pretreatment standards.

(2) With the exception of the information specified in paragraph 335-6-5-.12(1) above, all claims of confidentiality shall be handled in accordance with rule 335-1-1-.06.

(3) Requests for confidentiality should be submitted with the material for which confidential treatment is desired and if possible the confidential material should be separated from the rest of the submittal. A request for confidentiality received more than 90 days after the Department has received the material shall be denied.

(4) A request for confidentiality shall include:

(a) A showing that making the information public will divulge unique methods, sales figures or processes, or that the divulgence of the information will otherwise adversely affect the competitive position of the requester.

(b) A showing of statutory authority such as would empower the Department to hold such information confidential.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991. **Amended:** July 12, 1995.

335-6-5-.13 <u>Application Format and Procedures for New Permits, for Permit Reissuance, and Permit Modification</u>.

(1) Applications for SID Permits shall be made in duplicate, shall be made using forms designated by the Director, shall be submitted to the Department and a copy of the application shall be submitted to the POTW, and shall consist of the following:

(a) Type of business entity, whether corporation, general or limited partnership, sole proprietorship or other;

(b) If applicable, name of applicant's parent corporation or subsidiary corporations;

(c) If a corporation, location of incorporation;

(d) A listing of corporate officers and their names and addresses; and the name and address of the agent designated by the corporation for purposes of service. If a partnership, the names and addresses of the general partners and, if a proprietorship, the name and address of the proprietor;

(e) Permit numbers and other identification of any other state environmental permits and if applicable air permits issued by approved local programs presently held by the applicant or its parent corporation or subsidiary corporations within the state;

(f) Identification of administrative complaints, notices of violation, directives, or administrative orders, or litigation concerning environmental compliance, if any, against the applicant, its parent corporation or subsidiary corporations within the state;

(g) If the discharge is to be from a new or modified process, a new facility or new waste treatment facility, the Department may require the submittal of a preliminary engineering report and/or preliminary plans and specifications prior to permitting or the Department may elect to require one or more of these documents prior to discharge or the Department may waive the requirement for one or all of these documents;

(h) A Best Management Practices (BMP) plan if required by the Director prior to permitting. BMP plans shall be developed in accordance with good engineering practices and may be required to:

1. Be documented in narrative form and shall include any necessary plot plans, drawings or maps;

2. Examine each facility component or system with respect to its potential for causing a release of significant amounts of pollutants into a waters of the state or a publicly or privately owned treatment works due to equipment failure, improper operation, natural phenomena such as rain, freezing temperatures, etc.;

3. Include a prediction of the direction, rate of flow and total quantity of pollutants which could be discharged from the facility as a result of equipment failure, natural phenomena or other circumstances;

4. Establish best management practices addressing each system capable of causing a release of significant amounts of pollutants into waters of the state or into a publicly or privately owned treatment works;

5. Reflect applicable requirements for Spill Prevention Control and Countermeasure (SPCC) plans under Section 311 of the FWPCA and 40 CFR Part 151 (1994), and may incorporate such plans into the BMP plan by reference;

6. Assure the proper management of solid and hazardous waste; and

7. Address materials storage areas, process and material handling areas, loading and unloading areas, plant site runoff, and sludge and waste disposal areas and include statements of policy, employee training, inspections, preventative maintenance; and housekeeping;

8. Provide impervious liners, dikes, or other structures sufficient to prevent the discharge of a pollutant to groundwater.

(j) A description of the wastewater to be discharged including chemical analysis, flow rates, volumes, and any other characteristics required by the Director; and

(k) All information required by the Department's SID Permit application forms.

(2) The Department may require that an application for a SID Permit provide additional reports, specifications, plans, quantitative data, bioassays, specific or general influent and effluent studies at the publicly or privately owned treatment plant, or other information reasonably required to assess the discharges of the facility and the potential impact of the discharges on the publicly or privately owned treatment works and to determine whether to issue a SID Permit.

(3) Signatory requirements for permit applications shall comply with the requirements of rule 335-6-5-.14.

(4) Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least 3 years from the date the application is signed or if the applicant is involved in litigation with the Department until such time that the litigation is resolved.

(5) Any application which is incomplete or otherwise deficient shall not be processed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency and shall not constitute

compliance with the requirements under rule 335-6-5-.10 or paragraphs 335-6-5-.05(5) and 335-6-5-.13(6), except that a request for additional information not required to be submitted with the application shall not render initial application incomplete unless the information is not submitted in accordance with the submittal date required by the request for additional information.

(6) Applications for new sources, new dischargers, and for permit modifications shall be submitted at least 180 days prior to the applicant's desired date for commencement of the new discharge and for permit reissuance at least 180 days prior to expiration of the current permit.

(7) Applications shall include baseline reports when applicable to the proposed industrial discharge.

(8) Applications for permit reissuance may reference information already submitted to the Department and state that such information is unchanged. If the information is present in the Department file it will be made a part of the application. The Department will notify the applicant of any information that could not be located and the application shall not be complete until this information is submitted to the Department by the applicant.

(9) SID Permit applications submitted for industrial discharges to privately owned treatment works may be required to provide information not identified in this rule. Submittal of information required by this rule that is not required to determine permit limits for the SID Permit for an industrial discharge to a privately owned treatment works may be waived by the Director. The applicant should determine the application requirements by consultation with the Department prior to submittal of the application.

(10) Applications for modification of a SID Permit are required to contain only that information necessary to describe the changed conditions or planned changes that are the reason for the application, except the Director may request any other information required to make a decision concerning the application.

(11) The permit writer shall determine if a permit application is complete as defined by this rule and if all the information necessary for determining permit conditions has been submitted. If additional information is required, the permit writer shall request the information from the applicant in writing and failure to respond by the applicant shall be grounds for denial of the permit application.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.14 Signatories to Permit Applications and Reports.

(1) The application for a SID Permit, a request for variance from categorical pretreatment standards, and a category determination request shall be signed by a responsible official, as indicated below:

(a) In the case of a corporation, by a principal executive officer of at least the level of vice president;

(b) In the case of a partnership, by a general partner;

(c) In the case of a sole proprietorship, by the proprietor; or

(d) In the case of a municipal, state, federal, or other public entity by either a principal executive officer, or ranking elected official.

(2) All reports required by permits and other information requested by the Department shall be signed by a person described under paragraph 335-6-5-.14(1) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in paragraph 335-6-5-.14(1);

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity and;

(c) The written authorization is submitted to the Department.

(3) If an authorization under paragraph 335-5-6-.14(2) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of said paragraph must be submitted to the Department prior to or together with any reports or information signed by the newly authorized representative.

(4) Any person signing a document under this rule shall make the following certification:

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

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.15 Conditions Applicable to SID Permits. The following requirements apply to SID Permits issued to significant industrial dischargers. Provisions implementing these requirements shall be incorporated into each permit.

(1) Duty to comply with a SID Permit.

(a) The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the AWPCA and the FWPCA and is grounds for enforcement action, for permit termination, revocation and re-issuance, suspension, modification; or denial of a permit renewal application.

(b) The permittee shall comply with applicable pretreatment categorical and general standards or prohibitions established under the FWPCA within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

(c) Any person who violates a permit condition is subject to a civil penalty as authorized by Code of Alabama 1975, § 22-22A-5(18) (1987 Cum. Supp.) and/or a criminal penalty as authorized by the AWPCA.

(2) If the permittee wishes to continue a discharge regulated by the permit after the expiration date of that permit, the permittee must apply for re-issuance of the permit at least l80 days prior to its expiration and, except as provided in rule 335-6-5-.11, must obtain a new permit prior to the expiration of the existing permit. If the permittee does not desire to continue the discharge of wastewater allowed by an expiring permit, the permittee shall notify the Department at least 180 days prior to expiration of the permit of the permittee's intention not to request reissuance of the permit.

(3) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce production or other activities in order to maintain compliance with the conditions of the permit.

(4) The permittee shall take all reasonable steps to minimize or prevent any violation of the permit or to minimize or prevent any adverse impact of any permit violation.

(5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective

performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities only when necessary to achieve compliance with the conditions of the permit.

(6) The permit may be modified, revoked and re-issued, suspended, or terminated for cause. The filing of a request by a permittee for a permit modification, revocation and re-issuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(7) The permit does not convey any property rights of any sort or any exclusive privilege.

(8) The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and re-issuing, suspending, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by the permit.

(9) The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the AWPCA, any substances or parameters at any location.

(10) Monitoring and records keeping requirements.

(a) All permits shall specify:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

2. Required monitoring, including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; and

3. Applicable reporting requirements based upon the impact of the regulated activity.

(b) To assure compliance with permit limitations, all permits may specify requirements to monitor:

1. The mass and/or other measurement for each pollutant limited in the permit;

2. The volume of effluent discharged from each outfall;

3. Whole effluent toxicity determinations;

4. Other measurements as appropriate; including pollutants in internal waste streams, pollutants in intake water for net limitations, pollutants subject to notification requirements, frequency, and rate of discharge; and

5. To determine the impact on the treatment works, any of the preceding measurements of influent and effluent from the treatment works.

(c) Samples and measurements taken for the purpose of monitoring shall be in accordance with the terms of the SID Permit.

(d) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the above reports or the application for this permit, for a period of at least three years from the date of the sample measurement, report or application. This period may be extended by request of the Director at any time. If litigation or other enforcement action, under the AWPCA and/or the FWPCA, is ongoing which involves any of the above records, the records shall be kept until the litigation is resolved.

(e) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The individual(s) who performed the sampling or measurements;

3. The date(s) analyses were performed;

4. The individual(s) who performed the analyses or under whose direct supervision the analyses were performed;

5. The analytical techniques or methods used; and

6. The results of such analyses.

(f) All records required to be kept for a period of three years shall be kept at the permitted facility or an alternate location approved by the Department in writing and shall be available for inspection.

(g) Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136 (1994), unless other test procedures have been approved by the Director or specified in the permit. Upon the establishment of a program for certifying testing laboratories which perform wastewater analyses, only a laboratory certified by the state may be used for contracting wastewater analyses used for SID Permit reporting.

(h) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained or performed under the permit shall, upon conviction, be subject to penalties as provided by the AWPCA.

(i) If sampling performed by any permittee results in a permit violation, the permittee shall repeat the sampling and analysis within 24 hours after becoming aware of the violation and shall submit the results to the Department with the discharge monitoring report for the period in which the violation occurred. If the permit requires daily sampling for the parameter found to be in noncompliance or if the parameter has been sampled for and tested again before the permittee becomes aware of the violation, this requirement shall not apply.

(11) Signatory Requirements. All applications, reports, or information submitted to the Director shall be signed and certified according to the requirements under rule 335-6-5-.14.

(12) Reporting Requirements.

(a) The permittee shall apply for a permit modification at least 180 days in advance of any planned physical alterations or additions to a facility. Application is required only when the alteration or addition could result in the discharge of additional pollutants or increase the quantity of pollutants discharged or when the alteration or additions would subject the permittee to the requirements of a categorical pretreatment standard. This notification applies to pollutants that are or are not subject to discharge limitations in the permit.

(b) The permittee shall give advance notice to the Director of any planned changes in or other circumstances regarding a facility which may result in noncompliance with permit requirements.

(c) Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or

reports of compliance or noncompliance shall, upon conviction, be punished as provided by applicable state and federal law.

(d) The permit is not transferable to any person except by modification or revocation and re-issuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the AWPCA or FWPCA. The Director may require the submittal of a complete permit application by the new operator and may issue a new permit or the Director may, in the case of a change in operator where no significant change in operations has occurred that would affect compliance with the SID Permit, where no additional discharges would be added that would require coverage by an SID Permit and where no additional requirements under the AWPCA or FWPCA are necessary, accomplish transfer of the SID Permit by the following procedure:

1. The current permittee and the prospective permittee shall apply for a transfer of the permit at least thirty days in advance of the change in operator.

2. This application shall include a written agreement between the existing and new permittees containing the specific date for transfer of permit responsibilities, coverage and liability. This application shall be signed by a representative of both the existing and new permittee, both representatives shall meet the requirements of a signatory to permit applications set forth in rule 335-6-5-.14 and shall be accompanied by the appropriate fee required under chapter 335-l-6.

(e) Discharge monitoring shall be required by all SID Permits in accordance with the following requirements.

1. Monitoring results shall be summarized for each month on a Discharge Monitoring Report form (DMR) approved by the Department and shall be submitted so that the DMR is received by the Department no later than the 28th day of the month following the reporting period specified in the permit.

2. Monitoring reports shall be submitted with a frequency dependent on the nature and effect of the discharge, but in no case less than once each six months, and as required by the SID Permit.

3. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136 (1994) or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean (zero discharge days shall not be used in these calculations) unless otherwise specified by the Director in the permit. When monitoring is in accordance with permit requirements, a less than detectable result shall be considered a zero when calculating averages.

5. The permittee shall be required to monitor for all parameters limited by the permit at least once each six months and report the results of all required monitoring at least once each six months.

(f) Noncompliance reporting shall be required by the SID Permit in accordance with the following requirements.

1. Twenty-four hour reporting. The permittee shall report to the Director within 24 hours of becoming aware of any noncompliance which has caused interference or pass through or an unpermitted direct or indirect discharge to a water of the state and shall follow up the oral report with a written submission to the Director no later than five days after becoming aware of the unpermitted discharge, interference, or pass through.

2. The permittee shall report all instances of noncompliance not reported under the preceding subparagraph, at the time monitoring reports are submitted.

3. Written noncompliance reports shall include the following information:

(i) Description of the noncompliance and its cause;

(ii) Period of noncompliance; including exact dates and times, or, if not corrected, the anticipated time it is expected to continue;

(iii) Description of the steps taken and/or being taken to reduce or eliminate the noncompliance and to prevent its recurrence;

4. Within the next 30 days after the permittee becomes aware of the exceedance of a permit limit for any parameter, the permittee shall sample and test for this parameter and submit the results of the testing to the Department. If the permit monitoring frequency requires the monitoring of the parameter more often than once every 30 days this requirement is satisfied and additional sampling is not required.

(g) Bypass.

1. Bypass Not Exceeding Limitations. The permittee may allow any bypass to occur which does not cause permit limitations, categorical pretreatment standards, nor general pretreatment standards to be violated or exceeded but only if it also is necessary for essential maintenance to assure efficient operation of the waste treatment facility. The permittee shall monitor the bypassed wastewater at least daily and at a frequency sufficient to prove compliance with permit discharge limitations and shall include the results of all such monitoring in the DMR submitted for the period(s) of bypass.

2. Notice.

(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the Department, if possible at least ten days before the date of the bypass.

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subparagraph 335-6-5-.15(12)(f).

3. Prohibition of bypass.

(i) Bypass is prohibited and the Director may take enforcement action against a permittee for bypass, unless:

(I) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(II) There were no feasible alternatives to the bypass, such as the use of auxiliary waste treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(III) The permittee submitted notices as required under subparagraph 335-6-5-.15(g)2.(i) and the bypass was approved by the Director.

(ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the conditions listed above in subparagraph 335-6-5-.15(g)3.

(13) The SID Permit shall contain the following upset requirements.

(a) An upset constitutes an affirmative defense to an action brought for noncompliance with permit limitations if the requirements of subparagraph 335-6-6-.12(n)2. are met.

(b) Conditions Necessary for Demonstration of an Upset. A permittee who wishes to establish the affirmative defense of an upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the specific cause(s) of the upset;

(ii) The wastewater treatment facility was at the time being properly operated;

(iii) The permittee submitted notice of the noncompliance caused by the upset as required under 335-6-5-.15(12)(f) and

(iv) The permittee complied with any remedial measures required under paragraph 335-6-5-.15(4).

(c) In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(14) New, reissued, modified or revoked and reissued SID Permits shall incorporate all applicable requirements of this chapter pertaining to SID Permits.

(15) A SID Permit issued for a "new discharger" or "new source" shall expire eighteen months after issuance if "construction" has not begun during the eighteen-month period.

(16) That portion of a SID Permit authorizing the discharge of increased quantities of pollutants to accommodate the modification of an existing facility shall expire if "construction" of the modification has not begun within eighteen months after issuance of the SID Permit or modification of the SID Permit to allow the discharge of increased quantities of pollutants.

(17) The SID Permit shall require the permittee to make notification of hazardous wastes discharges in accordance with rule 335-6-5-.05(7).

(18) The SID Permit shall require categorical dischargers to submit baseline reports in accordance with rule 335-6-5-.05(3).

(19) The SID Permit shall specify the physical location of the sampling point(s) to be used when performing discharge monitoring.

(20) The SID Permit shall require the permittee to notify the publicly or privately owned treatment works and the Department of any slug type discharge that may cause interference with the treatment works. Such notification shall be made to the treatment works immediately after the permittee becomes aware of the event and to the Department during the first normal business day after becoming aware of the event. The permittee shall coordinate with the operator of the treatment works and shall develop a notification procedure that is acceptable to the operator. The permit shall also provide for the establishment of a formal slug load control program if determined by the Director to be required to prevent pass through or interference.

(21) The SID Permit shall require the permittee to report on compliance with any categorical pretreatment standard applicable to the permitted discharge within 90 days following the final compliance date for the applicable standard. The report shall contain the information required by 40 CFR 403.12(d) (1994).

(22) The SID Permit shall require the permittee to comply with the requirements of any categorical pretreatment standard not later than three

years after its effective date, unless another compliance date is specified by the standard.

(23) The SID Permit shall require the permittee to provide spill prevention, control and/or management for any stored pollutant(s) that may, if spilled, be reasonably expected to enter a water of the state or the collection system for a publicly or privately owned treatment works. Any containment system used for spill control and management shall be constructed of materials compatible with the substance(s) stored and of materials which shall prevent the pollution of groundwater and shall be capable of retaining 110 percent of the volume of the largest container of pollutants for which the containment system is provided.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.16 Establishing Limitations, Standards, and Other Permit Conditions.

(1) In addition to permit conditions required under other rules, the Director shall establish permit conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements. An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit.

(2) All applicable requirements shall be incorporated into each SID Permit.

(3) Permit limitations based on applicable categorical pretreatment standards and general pretreatment standards shall be included in each SID Permit, this requirement is not applicable to SID Permits issued for indirect discharge to a privately owned treatment works.

(4) A reopener clause that allows permit modification or permit revocation and reissuance to include the requirements of any applicable categorical standard that is promulgated under the FWPCA after the permit is issued shall be included in each SID Permit, this requirement is not applicable to SID Permits issued for indirect discharge to a privately owned treatment works.

(5) A reopener clause that allows permit modification or permit revocation and reissuance to include addition of more stringent limits to prevent interference or pass-through, when the discharge is determined to cause pass through or interference and existing permit limits are not sufficient to prevent pass-through or interference shall be included in each SID Permit.

(6) Where required, SID Permits shall contain permit limits based on local limits developed to prevent pass-through, sludge disposal problems, and interference.

(7) To ensure compliance with permit limitations, the SID Permit may include requirements to monitor:

(a) The mass, concentration, or other measurement specified in the permit, for each pollutant limited in the permit;

(b) The volume of effluent discharged from each outfall; and

(c) Other measurements as appropriate; including pollutants in internal waste streams; pollutants in intake water for net limitations; frequency, rate of discharge, etc., for noncontinuous discharges; and pollutants subject to notification requirements; and

(8) The SID Permit shall require monitoring to be performed according to test procedures approved under 40 CFR Part 136 (1994) for the analyses of pollutants having approved methods under that part, and according to a test procedure specified in the permit or approved by the Director for pollutants with no approved methods, or according to a test procedure specified in the permit for alternate test methods.

(9) When more than one approved test method exists for a substance limited in the SID Permit, the SID Permit shall require the use of a method having a detection limit below the permit limit for the substance or, when no method has a detection limit as low as the permit limit, the SID Permit shall require the use of a method having the lowest detection limit.

(10) The SID Permit shall require Best Management Practices to control or abate the discharge of pollutants when the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the FWPCA and the AWPCA.

(11) An SID Permit issued to a commercial aqueous off-site waste treater shall be based upon a best professional judgement determination of best available technology economically achievable or local limits required to prevent pass-through or interference, whichever limit is most stringent, this requirement is not applicable to SID Permits issued for indirect discharge to a privately owned treatment works.

(12) An SID Permit limit shall be the most stringent of the limits required to satisfy categorical pretreatment standards, general pretreatment standards, or local limits.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.17 Calculating SID Permit Limitations.

(1) SID Permit discharge limitations, standards and prohibitions shall be established for each discharge point from the facility, except where limitations on internal waste streams are more appropriately used.

(2) General pretreatment standards shall be included in all SID Permits.

(3) Where applicable, SID Permit limits shall be calculated using categorical pretreatment standards. Such limits shall be calculated using the following methods.

(a) When the limit is production based, a reasonable measure of the applicant's long term daily production, such as the average daily production during a representative year, shall be used to calculate the permit limits. Where daily and average maximum permit limits are calculated, averages from the same production period will be used to calculate both limits.

(b) When calculating equivalent concentration or mass limits, an average daily flow based upon a reasonable measure of the applicant's actual long-term flow rate, such as the average daily flow rate during a representative year, shall be used to calculate limits.

(c) When wastewater regulated under a categorical pretreatment standard is mixed with another wastewater prior to treatment an alternative limit shall be calculated in accordance with the method provided under 40 CFR Section 403.6(e) (1994).

(d) When requested by the applicant, the categorical pretreatment standard limit may be adjusted to reflect the presence of pollutants in the applicant's intake water. Adjustments shall be calculated and applied in accordance with the method provided under 40 CFR Section 403.15 (1994). The applicant shall submit proof that the background is not metals leaching from the applicants plumbing and such proof shall consist of sampling results of water taken from as near the water meter as possible and not after contact with the applicant's plumbing.

(e) When an industrial user, to which a categorical pretreatment standard applies, uses a combination of disposal methods including discharge to a publicly owned treatment works, production based limits calculated from the standard shall be adjusted by multiplying the limit by the ratio of the quantity of wastewater discharged to the publicly owned treatment works to the quantity of wastewater generated.

(4) Where required to prevent violation of general pretreatment standards or to correct existing violations of general pretreatment standards, SID Permit limits based on local limits shall be calculated. Local limits may be determined using actual data from analysis of publicly owned treatment plant influent and effluent, from sludge analysis, and the characteristics of the

waterbody receiving the publicly owned treatment works NPDES permitted discharge. If actual data is not available, pollutant loadings from all significant industrial discharges and best professional judgement based on literature search and/or EPA published estimates shall be used. When the publicly owned treatment works disposes of treated wastewater using an alternative, such as land application, to discharge to a surface water, local limits determinations shall consider the wastewater quality required by the disposal method when evaluating pass-through. The sources of information identified above are not inclusive and any other reliable information may be considered when developing local limits.

(5) SID Permit limitations developed for permits issued to industrial users of privately owned treatment works shall be based on the quantity of wastewater and wastewater characteristics that the privately owned treatment works agrees to accept, except that a permit to discharge wastewater that is known not to be treatable to the degree necessary to comply with the treatment works NPDES Permit shall not be issued.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.18 Schedules of Compliance. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the FWPCA and the AWPCA.

(a) Any schedules of compliance shall require compliance as soon as possible, but not later than the applicable statutory deadline under the FWPCA.

(b) If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement in accordance with the following:

1. The time between interim dates shall not exceed one year;

2. Dates for compliance may be established, where applicable, as follows:

(i) Submission of pollution abatement program and preliminary plans;

(ii) Submission of final plans, specification, and drawings;

(iii) Initiation of construction;

(iv) Attainment of operational status; and

(v) Attainment of compliance with permit limitations;

3. Reporting.

(i) The permit shall be written to require that no later than fourteen days following each interim date, the final date of compliance, or other period which the Director determines, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports.

(ii) The first SID Permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For dischargers that have ceased discharge for an extended period and wish to recommence discharge, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.19 Transfer, Modification, Revocation and Reissuance, and Termination of Permits. Subject to appeal rights of the permittee, the Department may transfer, modify, or revoke and reissue any SID Permit during its term for cause, including but not limited to, the causes listed in this rule. All applicable fees required by chapter 335-1-6 shall be paid prior to permit transfer, modification, or revocation and reissuance, when the permit action is at the request of the permittee.

(a) Permit Transfers. A permit may be transferred from the permittee to a new operator only if the permit has been modified, revoked and reissued, or a minor modification made to identify the new permittee:

1. If there is to be no change in the operation of the facility which would affect the permittee's ability to comply with the permit and if there are to be no new, different, altered or increased discharges from the facility, the permit may be transferred by modification, revocation and reissuance, or by a minor modification of the permit, provided that the reporting requirements of subparagraph 335-6-5-.15(12)(d) are complied with.

2. If there are to be changes in the facility which would result in new, different, altered, or increased discharges from the facility, the transfer of ownership or operational obligations may be accomplished by complying with the reporting requirements of subparagraph 335-6-5-.15(12)(b), but no new, different, altered, or increased discharges may commence until a new application and, if required by the Department, an engineering report

describing such discharges have been submitted to the Department and the permit has been revoked and reissued or modified accordingly.

3. If the entity to which a permit is requested to be transferred, owns or operates facilities within the state which are in substantial noncompliance, as determined by the Director, the Director may refuse to transfer the permit until noncompliance is corrected or significant progress is made to achieve compliance.

(b) Modification or Revocation and Reissuance of Permits.

1. The following are causes for modification or revocation and reissuance of permits.

(i) When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a written request for modification or revocation and reissuance, by the permittee or other interested person, or conducts a review of the permit file), the Director may determine whether or not one or more of the causes for modification or revocation and reissuance exists. If cause exists, the Director may modify or revoke and reissue the permit accordingly and may request additional information, an engineering report, and/or an updated application. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, an updated application is required, additional information and/or an engineering report may be required, and the entire permit is reopened and subject to revision and the permit is reissued for a new term.

(ii) If cause exists for termination under this chapter, the Director may determine that modification or revocation and reissuance is appropriate.

(iii) If the Director has received notification, as required in the permit, of a proposed transfer of the permit, he may determine that modification or revocation and reissuance is appropriate.

2. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

(i) There are material and substantial alterations or additions to the facility or activity generating wastewater which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(ii) Permits may be modified during their terms if the Director has received new information that was not available at the time of permit issuance and that would have justified the application of different permit conditions at the time of issuance.

(iii) The pretreatment general or categorical standard(s) on which the permit was based has been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued.

(iv) A SID Permit may be modified to change a compliance schedule when the Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy; however, in no case may an SID Permit compliance schedule be modified to extend beyond an applicable statutory deadline.

(vii) Reopener. A permit shall be modified, when required by the reopener conditions in the permit.

(viii) A permit may be modified to correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

(c) Termination of Permits.

1. The following are causes for terminating a permit during its term, or for denying a permit reissuance application:

(i) Noncompliance by the permittee with any condition of the permit;

(ii) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(iii) A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure or termination of a discharge to a publicly or privately owned treatment works);

(iv) The permittee's failure to submit a complete application to include additional information requested by the Director and appropriate permit fees;

(v) The discharge endangers human health or the environment; and

(vi) The publicly or privately owned treatment works notifies the Department that the permittee is no longer authorized by the POTW to discharge industrial wastewater to the treatment works.

2. Substantial non-compliance, as determined by the Director, of another facility within the state owned or operated by the permittee requesting issuance of a permit, will be grounds for denial of permit issuance or reissuance until such non-compliance is corrected.

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

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.20 Enforcement.

(1) Any SID Permit issued or reissued by the Department is a permit for the purpose of the AWPCA and the FWPCA and any terms, conditions, or limitations of the permit are enforceable under state and federal law.

(2) Any person required to have a SID Permit pursuant to this chapter and who discharges pollutants without said permit, who violates the conditions of said permit, who discharges pollutants in a manner not authorized by the permit, or who violates this chapter or applicable orders of the Department or any applicable rule or standard under this division, is subject to any one or combination of the following enforcement actions under the AWPCA.

(a) An administrative order requiring abatement compliance, mitigation, cessation of discharge, clean up, and/or penalties;

(b) An action for damages;

(c) An action for injunctive relief; or

(d) An action for penalties.

(3) Any order issued by the Department pursuant to the AWPCA requiring compliance with the AWPCA, its implementing rules, or an SID Permit shall specify a reasonable time within which noncompliance must cease. In appropriate cases a reasonable time may be immediately. Reasonableness shall be determined based upon the severity of the violation and the complexity and availability of the measures necessary to correct the violation.

(4) If the permittee is not in compliance with the conditions of an expiring or expired permit the Director may choose to do any or all of the following provided the permittee has made a timely application for reissuance of the permit:

(a) Initiate enforcement action based upon the permit which has been continued;

(b) Deny the permit reissuance. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(c) Reissue the new permit with appropriate conditions; or

(d) Take other actions authorized by these rules and the AWPCA.

(5) At least once each twelve months the Department will issue a news release listing all significant industrial users that have been in significant noncompliance, as defined under 40 CFR Section 403.8 (1994), at any time during the previous twelve month period. A list shall be prepared for each publicly owned treatment works and shall be sent to the local newspaper and to the major newspaper serving the community where the publicly owned treatment works is located. If the significant noncompliance of a discharger has been announced as a result of enforcement action, additional notification shall not be required.

(6) The reports and other documents required to be submitted or maintained under ADEM Admin. Code, chapter 335-6-5 and permits issued under the chapter's authority may be subject to:

(a) The provisions of 18 U.S.C. section 1001 relating to fraud and false statements;

(b) The provisions of sections 309(c)(4) of the ACT, as amended, governing false statements, representation or certification; and

(c) The provisions of section 309(c)(6) regarding responsible corporate officers.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22-14, 22-22A-5.
History: April 29, 1991. **Amended:** July 12, 1995.

335-6-5-.21 SID Permit Development.

(1) Tentative Determinations. When the Department is satisfied that an application is complete it shall make a tentative determination on the application, including a tentative determination to issue or to deny a SID Permit for the discharge(s) described in the application. If the tentative determination is to issue a SID Permit, the following additional tentative determinations shall be made:

(a) Tentative discharge limitations and monitoring requirements shall be identified for the constituents proposed to be limited;

(b) A preliminary schedule of compliance for meeting the tentative discharge limitations including interim dates and requirements, if applicable; and

(c) Any other tentative restrictions or other conditions determined necessary by the Director which will significantly affect the discharge described in the application.

(2) A determination may be made by the Director to deny a permit application if the applicant operates other permitted facilities within the state which are in substantial non-compliance, as determined by the Director, until such non-compliance is corrected or if the Director determines that a permit that results in compliance with applicable pretreatment standards or local limits could not be issued or, if issued, could not be complied with.

(3) Draft Permits.

(a) If the tentative determination is to issue, reissue, or modify a SID Permit, the Department shall prepare a draft SID Permit based upon the tentative determinations made pursuant to paragraph 335-6-6-.19(l) for the SID Permit application.

(b) All effluent limitations, monitoring requirements, schedules of compliance, or other conditions determined necessary by the Director to be included in the draft permit shall be in accordance with the provisions of chapter 335-6-5 where applicable.

(c) For every draft SID Permit, the Department shall prepare a statement (rationale) of the basis of the conditions in the draft SID Permit. The rationale and draft permit shall be available to the public.

(d) If a tentative decision is made to deny the SID Permit application, the Department shall prepare a statement (rationale) of the basis for denial, which shall be available to the public.

(4) The draft permit, denial, and rationale shall be provided the publicly or privately owned treatment works and the applicant and the recipients shall be provided a minimum of 30 days to review and comment on the proposed permit. The applicant and the treatment works may waive any or all of the comment time by mutual agreement.

(5) Comments received from the treatment works and the applicant will be considered by the Director and a final decision to issue the permit as proposed, to modify the proposed permit in response to comments and to issue the modified permit, or to deny the permit will be made by the Director. Should the treatment works choose to object to issuance of the permit, the Director shall deny the permit.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

335-6-5-.22 Reclassification of Significant Industrial Users.

(1) The Director may make a finding that an industrial user meeting the definition of a significant industrial user has no reasonable potential for

adversely affecting the publicly owned treatment works operation or for violating any pretreatment standard or requirement and may at any time determine that the industrial user is not a significant industrial user. Prior to making such finding the Director shall notify the POTW receiving the industrial users discharge of his intention and shall request the POTW to submit any comments it wishes concerning the proposed action. The POTW shall be allowed at least 30 days to respond. The Director shall consider the POTW comments prior to making a final decision.

(2) A determination that an industrial user meeting the definition of a significant industrial user is not a significant industrial user shall be made in writing and shall state the reasons for the determination. Such determination may be reevaluated at any time and if justified the user shall be returned to significant industrial user status.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 29, 1991.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER DIVISION - WATER QUALITY PROGRAM

CHAPTER 335-6-6
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

TABLE OF CONTENTS

335-6-6-.01 Purpose
335-6-6-.02 Definitions
335-6-6-.03 Requirement for NPDES Permit
335-6-6-.04 Prohibited Discharges
335-6-6-.05 Duration of Permits
335-6-6-.06 Continuation of Expiring Permits
335-6-6-.07 Confidentiality of Information
335-6-6-.08 Application Format and Procedures for New Permits and for Permit Reissuance
335-6-6-.09 Signatories to Permit Applications and Reports
335-6-6-.10 Requirements Applicable to Particular Discharges
335-6-6-.11 Conditions Applicable to Storm Water Discharges by Operators of Municipal Storm Sewers
335-6-6-.12 Conditions Applicable to all NPDES Permits
335-6-6-.13 Conditions Applicable to Specific Categories of NPDES Permits
335-6-6-.14 Establishing Limitations, Standards, and Other Permit Conditions
335-6-6-.15 Calculating NPDES Permit Limitations
335-6-6-.16 Schedules of Compliance
335-6-6-.17 Transfer, Modification, Revocation and Reissuance, and Termination of Permits
335-6-6-.18 Enforcement Under NPDES
335-6-6-.19 Tentative Determinations and Draft NPDES Permits
335-6-6-.20 Fact Sheets
335-6-6-.21 Public Notice Requirements
335-6-6-.22 Variance Requests
335-6-6-.23 General Permits

335-6-6-.01 Purpose. Section 402(b) of the Federal Water Pollution Control Act (FWPCA) provides that a state may administer its own permit program for discharges into the navigable waters within its jurisdiction. Such permit program, however, must be comparable to the National Pollutant Discharge Elimination System (NPDES) permit program. It is the purpose of this chapter to establish rules and procedures which will enable the state to administer an NPDES-type permit system for this state and to enforce the provisions of the Alabama Water Pollution Control Act (AWPCA).

Author: John Poole.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16.
History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991; September 29, 2015.

335-6-6-.02 Definitions. Wherever used in this chapter, unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of this chapter, the following shall mean:

(a) "Applicable Standards and Limitations" means all state, interstate, and federal standards and limitations to which a "discharge" or a related activity is subject under the FWPCA and AWPCA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under Sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of the FWPCA and their implementing regulations and the AWPCA and its implementing rules.

(b) "Application" means forms, and additional information that are required by rule 335-6-6-.08 to be submitted when applying for an NPDES permit.

(c) "Average Monthly Discharge Limitation" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month (zero discharge days shall not be included in the number of "daily discharges" measured). When an EPA approved method is used by the permittee, a value of less than the Minimum Level (ML) shall be considered zero for purposes of calculating the average monthly discharge of the substance. For example, if a discharge is monitored on three days during a month and the results of testing for a substance on those three days are 1, 2, and less than the ML the average monthly discharge is equal to 1 + 2 + 0 divided by 3 which would equal 1.

(d) "Average Weekly Discharge Limitation" means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week (zero discharge days shall not be included in the number of "daily discharges" measured). When an EPA approved method is used by the permittee, a value of less than the Minimum Level (ML) shall be considered zero for purposes of calculating the average weekly discharge of the substance. For example, if a discharge is monitored on three days during a week and the results of testing for a substance on those three days are 1, 2, and less than the ML, the average monthly discharge is equal to 1 + 2 + 0 divided by 3 which would equal 1.

(e) "ASMC" shall mean the Alabama Surface Mining Commission.

(f) "Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management

practices to prevent or reduce the pollution of "waters of the state." BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(g) "Bypass" means the intentional diversion of waste streams from any portion of a waste treatment facility.

(h) "Construction" means that the owner or operator has:

1. Begun, or caused to begin as part of a continuous on-site construction program:

(i) Any placement, assembly, or installation of facilities or equipment; or

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

2. Entered into a binding contractual obligation for the purpose of placement, assembly, or installation of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(i) "Contiguous Zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

(j) "Continuous Discharge" means a "Discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(k) "Daily Discharge" means the discharge of a pollutant measured during any consecutive 24-hour period in accordance with the sample type and analytical methodology specified by the discharge permit.

(l) "Department" means the Alabama Department of Environmental Management, established by the Alabama Environmental Management Act, Code of Alabama 1975, §§22-22A-1 to 22-22A-16.

(m) "Director" means the Director of the Department or an authorized representative.

(n) "Discharge" means the addition, introduction, leaking, spilling, or emitting of any sewage, industrial wastes, pollutant or other wastes into waters of the state.

(o) "Discharge Limitation" means any restriction imposed by the Director on quantities, discharge rates, concentrations or other characteristics of "pollutants" which are "discharged" into "waters of the state."

(p) "Discharge Monitoring Report" or "DMR" means the form approved by the Director to accomplish reporting requirements of an NPDES permit.

(q) "Discharger" means a "person" who discharges a "pollutant(s)" into a "water of the state."

(r) "Domestic Discharger" means a "person" who discharges only "domestic wastewater."

(s) "Domestic Wastewater" means wastewater from residences and other wastewaters of similar composition and strength and does not mean wastewater generated by industrial processes.

(t) "Draft Permit" means a document indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination is not a "draft permit." A "proposed permit" is not a "draft permit."

(u) "Effluent Limitations" means any restriction imposed by the Environmental Protection Agency under Section 304(b) of the FWPCA (usually referred to as effluent limitation guidelines) on quantities, discharge rates, and concentration of pollutants which are discharged into waters of the state.

(v) "General Permit" means an NPDES Permit issued for a class of dischargers located in a defined area and meeting the requirements of rule 335-6-6-.23.

(w) "Indirect Discharger" means a nondomestic discharger who discharges "pollutants" to a "publicly owned treatment works (POTW)", or a "privately owned treatment facility" operated by another person.

(x) "Interim Minimum Level" or "Interim ML" is calculated when a method-specific ML does not exist. It is equal to 3.18 times the method-specified MDL.

(y) "Load Allocation" or "LA" means the portion of a receiving water's loading attributed to either one of its existing or future non-point sources of pollution or to natural background.

(z) "Major Facility" means any facility or activity discharging to a "water of the state" and classified as such by the Regional Administrator.

(aa) "Maximum Daily Discharge Limitation" means the highest allowable "daily discharge."

(bb) "Method Detection Limit" or "MDL" means the minimum concentration of an analyte that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero as determined in accordance with the procedure in Appendix B of 40 CFR Part 136.

(cc) "Minimum Level" or "ML" means the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method-specified sample weights, volumes, and processing steps have been followed.

(dd) "Municipal Wastewater" means any wastewater discharged to a POTW and includes domestic and industrial wastewater.

(ee) "National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits for the discharge of pollutants into waters of the state.

(ff) "New Discharger" means any person who from any building, structure, facility or installation:

1. Is discharging a pollutant(s) or may discharge a pollutant(s),

2. Who did not commence the discharge of pollutants at a particular site prior to August 13, 1979 and which is not a new source, and

3. Who has never received a final effective NPDES permit for discharges at that site.

(gg) "New Source" means:

1. A new source as defined for coal mines by 40 CFR Part 434.11 (1994); and

2. Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(i) After promulgation of standards of performance under Section 306 of FWPCA which are applicable to such source; or

(ii) After proposal of standards of performance in accordance with Section 306 of the FWPCA which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal.

(hh) "Notifiable Sanitary Sewer Overflow" means an overflow, spill, release or diversion of wastewater from a sanitary sewer system that:

1. Reaches a surface water of the State; or

2. May imminently and substantially endanger human health based on potential for public exposure including, but not limited to, close proximity to public or private water supply wells or in areas where human contact would be likely to occur.

(ii) "Operator" (for purposes of permit application) means the person who treats and discharges wastewater or in the absence of treatment the person who generates and/or discharges wastewater, sludge, or storm water.

(jj) "Permit" means any issued permit under the NPDES.

(kk) "Permittee" a person to whom a permit has been issued under this chapter.

(ll) "Person" means 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, other legal entity, business organization or any governmental entity and any successor, representative, responsible corporate officer, agent or agency of the foregoing.

(mm) "Pollutant" includes, but is not limited to, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or

2. Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state and if the Department determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(nn) "Pollutant Load Allocation" means a determination of allowable amount(s) of a specific pollutant that may be discharged to a water of the state by one or more dischargers without causing a water quality standard violation.

(oo) "Privately Owned Treatment Works" means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works, and which is not a "POTW."

(pp) "Publicly Owned Treatment Works" or "POTW" means a wastewater collection and treatment facility owned by the state, a municipality, regional entity composed of two or more municipalities, or another entity created by state or local authority for the purpose of collecting and treating municipal wastewater.

(qq) "POTW Operator" (for purposes of permit application) means a person having all of the following powers, except where a POTW is operated by a contractor who is not required to have these powers:

1. Police and land use powers, including the power to grant, deny, or condition new sewer connections and to establish and enforce sewer use ordinances and

2. Power over the design, construction, operation, and maintenance of a treatment works, including the power to select and terminate operations personnel, finance facilities construction by capital expenditures, and enact and enforce user charge systems and taxes that generate revenue for operation and maintenance.

(rr) "Regional Administrator" means the Regional Administrator of the appropriate regional office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

(ss) "Schedule of Compliance" means a schedule of remedial measures, included in a permit, including an enforceable sequence of actions or operations leading to compliance with any permit requirement or water quality standard.

(tt) "Severe Property Damage" means substantial physical damage to property, damage to waste treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(uu) "Sewage" means water carried human wastes from residences, buildings, industrial establishments or other places, together with such ground, surface, storm or other waters as may be present.

(vv) "Sludge" means any solid, semi-solid, or viscous material or other residue resulting from treatment of wastewater or produced as a result of wastewater management.

(ww) "State Indirect Discharge Permit" or "SID Permit" means a permit issued to dischargers of non-domestic pollutants to a "POTW" or a "Privately Owned Treatment Works."

(xx) “Surface Coal Mine” means a surface mining operation, as defined in paragraph 335-6-9-.02(k), used for the recovery of coal.

(yy) "Territorial Seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

(zz) "Total Maximum Daily Load" or "TMDL" means the sum of the individual wasteload allocations for point sources and load allocations for non-point sources and natural background.

(aaa) "Toxic Pollutants" means pollutants and combination of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organisms, either directly from the environment or indirectly through food chains, will, on the basis of information available to the Department or Director cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in such organisms or their offspring. This shall include, but not be limited to, pollutants listed as toxic under Section 307(a)(1) of the FWPCA.

(bbb) "Trade Secret" includes, but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound or procedure, as well as production data or compilation of information, financial and marketing data, which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article of trade or a service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know of it.

(ccc) "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(ddd) "Wasteload Allocation" or "WLA" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution.

(eee) "Waste Treatment Facility" shall mean any devices or systems used in the storage, treatment, recycling or reclamation of municipal sewage, industrial waste, any pollutant, or other waste including, but not limited to, interceptor sewers, outfall sewers, sewage collection systems; associated pumping power and other equipment and their appurtenances; extensions, improvements, remodeling, additions or alterations thereof. In addition, "waste treatment facility" shall mean any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, industrial waste, pollutant, or other waste which flows into waters of the state.

(fff) "Waters of the State" means all waters of any river, stream, watercourse, pond, lake, coastal, ground or surface water, wholly or partially within the state, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership or corporation unless such waters are used in interstate commerce.

(ggg) "Zone of Initial Dilution" or "ZID" means that area extending from the port openings of a high rate diffuser to the initial edge of the mixing zone where due to great turbulence a constant instream waste concentration (IWC) cannot be determined. For purposes of this definition a high rate diffuser is a submerged outfall in the form of a single pipe outlet or of multiport design giving rise to one or

several submerged discharge jets designed to induce mixing between the effluent and receiving stream. The diffuser will protect against surface impingement and bottom attachment of the submerged jet(s) and in general a minimum exit velocity of ten feet per second shall be provided. The length of the ZID and thereby the distance to the initial edge of the mixing zone shall not exceed the more stringent of the following requirements:

1. Fifty times the discharge length scale (DLS) in any spatial direction, where the DLS is the square root of the cross-sectional area of any discharge outlet,

2. Five times the water depth in any horizontal direction from the discharge outlet, or

3. No more than ten percent of the distance from the edge of the outfall structure to the leading edge of the mixing zone in any spatial direction.

Author: John Poole, Ed Hughes, Glenda Dean, Chip Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16.
History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991; July 12, 1995; August 1, 2002; May 27, 2008; April 3, 2012; September 29, 2015.

335-6-6-.03 Requirement for NPDES Permit.

(1) No person shall discharge pollutants into waters of the state without first having obtained a valid NPDES permit or coverage under a valid General NPDES Permit unless such discharge is:

(a) Of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to:

1. The discharge of any solid wastes, garbage, ashes, rubbish, or hazardous waste within the meaning of Code of Alabama (1975), §22-27-2 (1984 Rplc. Vol.), any other pollutant, industrial waste or other waste within the meaning of Code of Alabama (1975), §22-22-1(b) (1984 Rplc. Vol.), or any discharge in violation of rule 335-6-6-.02;

2. Waste resulting from the improper operation of a vessel, or from the improper storage or handling of a solid or liquid product on board a vessel; or

3. Any waste resulting from any operations of a vessel in use for a purpose other than a means of transportation.

(b) Of dredged or fill material which is regulated under Section 404 of the FWPCA;

(c) In compliance with the instructions of an On-Scene Coordinator pursuant to 33 CFR 153.10(e) (1994) or 40 CFR Part 300 (1994) and 40 CFR Part 122.3(d) (1994);

(d) From non-point source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands and forest lands, but not including discharges from animal feeding operations (AFO) and concentrated animal feeding operations (CAFO), discharges from concentrated aquatic animal production facilities, aquaculture projects and discharges from silvicultural sources as defined in regulations referenced in rule 335-6-6-.10;

(e) A return flow from irrigated agriculture;

(f) A discharge to a publicly owned treatment works or a privately owned treatment works that has been approved and granted a State Indirect Discharge Permit by the Department;

(g) A discharge to an injection well that has been permitted by the Department or the State Oil and Gas Board;

(2) No person, required to apply for a storm water discharge permit by 40 CFR 122.26 (2000), shall discharge pollutants into waters of the state without first having applied for a valid NPDES permit, coverage under a valid General NPDES Permit, or coverage under a valid NPDES Registration. New dischargers shall obtain a valid NPDES permit, coverage under a valid General Permit, or coverage under a valid NPDES Registration prior to conducting any activity for which application for a storm water discharge permit is required by 40 CFR 122.26 (2000).

Author: John Poole; Richard Hulcher; Truman Green.
Statutory Authority: Code of Alabama 1975, § 22-22-1, § 22-22-9, § 22-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991, July 12, 1995, March 31, 1999, August 1, 2002, January 23, 2003; September 29, 2015.

335-6-6-.04 Prohibited Discharges. An NPDES permit shall not be issued to a person proposing any of the following discharges:

(a) A discharge containing a radiological, chemical or biological warfare agent or a high-level radioactive waste;

(b) A discharge which, as determined by the Secretary of the Army, would substantially impair anchorage or navigation;

(c) A discharge in conflict with an Area Wide Waste Treatment Management Plan or amendment thereto, certified by the state and approved by EPA pursuant to Section 208(b) of the FWPCA;

(d) A discharge for which the applicant is required to obtain a certification under Section 401 of the FWPCA and that certification has not been obtained or waived;

(e) A discharge to waters of the territorial seas or the contiguous zone in the following circumstances:

1. Before the promulgation of guidelines under Section 403(c) of the FWPCA, (for determining degradation of the waters of the territorial seas or the contiguous zone) unless it is determined to be in the public interest; or

2. After promulgation of guidelines under Section 403(c) of the FWPCA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them;

(f) When the imposition of conditions cannot ensure compliance with applicable water quality requirements;

(g) A discharge to which the Regional Administrator objects in writing to the Department pursuant to any right to object provided the Regional Administrator in Section 402(d) of the FWPCA;

(h) A discharge which otherwise does not comply with the AWPCA or the FWPCA; or

(i) A discharge from the construction of a new source or the construction of a new discharger, if the discharge from its construction will cause or contribute to a violation of water quality standards.

(j) A discharge from the operation of a new source or the operation of a new discharger, if the discharge from its operation will cause or contribute to a violation of water quality standards.

Author: John Poole, Richard Hulcher.
Statutory Authority: Code of Alabama 1975, § 22-22-9, § 22-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989, August 1, 2002.

335-6-6-.05 Duration of Permits.

(1) An NPDES permit issued pursuant to the AWPCA and this chapter shall have a fixed term not to exceed five years unless a longer term is allowed by 40 CFR Part 122 and is approved by the Director. A person who wishes to continue to discharge beyond the term of such permit shall apply for reissuance of an NPDES permit pursuant to rule 335-6-6-.08.

(2) Except as provided by paragraph 335-6-6-.05(4), an NPDES permit issued for a "new discharger" or "new source" shall expire eighteen months after issuance if "construction" has not begun during that eighteen-month period. This period shall be tolled by any administrative request for hearing or an administrative or judicial stay.

(3) That portion of an NPDES permit authorizing the discharge of increased quantities of pollutants to accommodate the modification of an existing facility shall expire eighteen months after issuance if "construction" of the modification has not begun within eighteen months after reissuance of the NPDES permit or modification of the NPDES permit to allow the discharge of increased quantities of pollutants. This period shall be tolled by any administrative request for hearing or an administrative or judicial stay.

(4) An NPDES permit issued for a "new discharger" or "new source" associated with a "surface coal mine" shall expire eighteen months after issuance if "construction" has not begun during that eighteen-month period, unless the Permittee has not started "construction" pending issuance of a permit by the "ASMC" and at the time the NPDES permit was issued had complied with the application requirements of the "ASMC" Administrative Code Title 880. In such cases, the NPDES permit shall expire 18 months after issuance of the "ASMC" permit if "construction" has not begun during that eighteen-month period. This period shall be tolled by any administrative request for hearing or an administrative or judicial stay.

Author: John Poole, Richard Hulcher, Glenda Dean, Chip Crockett.
Statutory Authority: Code of Alabama 1975, § 22-22-9, § 22-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989; July 12, 1995, August 1, 2002; April 3, 2012; September 29, 2015.

335-6-6-.06 Continuation of Expiring Permits. The terms and conditions of an expiring NPDES permit are automatically extended until the effective date of a new NPDES permit if the permittee has submitted a timely and complete application for reissuance of an NPDES permit and the delay in permit issuance has not been caused by the actions of the permittee in accordance with subparagraph 335-6-6-.08(1)(k)8. and paragraph 335-6-6-.12(b).

Author: John Poole, Ed Hughes.
Statutory Authority: Code of Alabama 1975, § 22-22-9, § 22-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989; July 12, 1995, August 1, 2002; September 29, 2015.

335-6-6-.07 Confidentiality of Information.

(1) Information required under the rule 335-6-6-.08 as necessary to form a complete NPDES application may not be claimed as confidential. This includes information submitted on the approved application forms themselves and any attachments used to supply information required by the forms. Claims of confidentiality for the following information will be denied:

(a) The name and address of any permit applicant or permittee and

(b) Information required to develop the permit, permits, and effluent data.

(2) With the exception of the information specified in paragraph 335-6-6-.07(1), all claims of confidentiality shall be handled in accordance with rule 335-1-1-.06.

(3) Requests for confidentiality should be submitted with the material for which confidential treatment is desired and if possible the confidential material should be separated from the rest of the submittal. A request for confidentiality received more than 90 days after the Department has received the material shall be denied.

(4) A request for confidentiality shall include:

(a) A showing that making the information public will divulge unique methods, sales figures or processes, or that the divulgence of the information will otherwise adversely affect the competitive position of the requester.

(b) A showing of statutory authority such as would empower the Department to hold such information confidential.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, § 22-22-9, § 22-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989; July 12, 1995.

335-6-6-.08 Application Format and Procedures for New Permits and for Permit Reissuance.

(1) Applications shall be made in duplicate, shall be made using forms designated by the Director, and shall consist of the following:

(a) Information required under 40 CFR Part 122 Subpart B (2000) and 40 CFR 125 (2005) where applicable to the particular discharges;

(b) Trade name and chemical composition of all biocides and corrosion inhibitors used;

(c) Type of business entity, whether corporation, general or limited partnership, sole proprietorship or other;

(d) If applicable, name of applicant's parent corporation or subsidiary corporations;

(e) If a corporation, location of incorporation;

(f) A listing of corporate officers and their names and addresses; and the name and address of the agent designated by the corporation for purposes of service. If a partnership, the names and addresses of the general partners and, if a proprietorship, the name and address of the proprietor;

(g) Permit numbers for applicant's previously issued NPDES permits and identification of any other state environmental permits presently held by the applicant or its parent corporation or subsidiary corporations within the state;

(h) Identification of administrative complaints, notices of violation, directives, or administrative orders, or litigation concerning water pollution, if any, against the applicant, its parent corporation or subsidiary corporations within the state;

(i) If the discharge is to be from a new processing facility or new waste treatment facility, the Department may require the submittal of a preliminary engineering report and/or preliminary plans and specifications prior to permitting or the Department may elect to require one or more of these documents prior to discharge or the Department may waive the requirement for one or all of these documents. This requirement applies whether or not an existing facility is present at the same location which may possess an NPDES permit, but does not apply to mining operations regulated pursuant to the Alabama Surface Mining Control and Reclamation Act of 1981; and

(j) A best management practices (BMP) plan if required by the Director prior to permitting. BMP plans shall be developed in accordance with good engineering practices and may be required to:

1. Be documented in narrative form and shall include any necessary plot plans, drawings or maps;

2. Examine each facility component or system with respect to its potential for causing a release of significant amounts of pollutants into waters due to equipment failure, improper operation, natural phenomena such as rain, freezing temperatures, etc.;

3. Include a prediction of the direction, rate of flow and total quantity of pollutants which could be discharged from the facility as a result of equipment failure, natural phenomena or other circumstances;

4. Establish best management practices addressing each system capable of causing a release of significant amounts of pollutants into waters of the state;

5. Reflect applicable requirements for Spill Prevention Control and Countermeasure (SPCC) plans under Section 311 of the FWPCA and 40 CFR Part 112 (1994), and may incorporate such plans into the BMP plan by reference;

6. Assure the proper management of solid and hazardous waste;

7. Address the following points for materials storage areas, process and material handling areas, loading and unloading areas, plant site runoff, and sludge and waste disposal areas: statement of policy, employee training, inspections, preventative maintenance, and housekeeping; and

8. Provide impervious liners, dikes, or other structures sufficient to prevent the discharge of a pollutant to groundwater.

(k) The Department may require that an application for an NPDES permit provide additional reports, specifications, plans, quantitative data, bioassays, stream models, or other information reasonably required to assess the discharges of the facility and the potential water quality impact of the discharges and to determine whether to issue an NPDES permit; and

1. Applicable fees as required by chapter 335-1-6.

2. Signatory requirements for permit applications shall comply with the requirements of rule 335-6-6-.09.

3. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this chapter for a period of at least three years from the date the application is signed or if the applicant is involved in litigation with the Department until such time that the litigation is resolved.

4. Any application which is incomplete or otherwise deficient shall not be processed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency and shall not constitute compliance with rule 335-6-6-.12 or rule 335-6-6-.06, except that information requested under the authority of subparagraph 335-6-6-.08(1)(k) above after submittal of the initial application shall not render the initial application incomplete unless such information was requested at least 180 days prior to the expiration of an existing permit.

5. Permit applications shall be submitted by the operator of the wastewater treatment and disposal system or, in instances where wastewater is discharged without treatment, by the operator of the process or facility generating the wastewater. Permit applications for storm water discharge permits from municipalities and other governmental agencies shall be submitted by the person owning or having control over the storm sewer system.

6. Permit applications submitted for publicly owned treatment works, that have design effluent flows equal to or greater than one million gallons per day or that receive a discharge from a significant industrial discharger, shall include the results of a valid whole effluent biological toxicity test, performed within the twelve month period immediately preceding the application submittal date.

7. The permit writer shall determine if a permit application is complete as defined by this rule and if all the information necessary for determining permit conditions has been submitted. If additional information is required, the permit writer shall request the information from the applicant in writing and failure to respond by the applicant shall be grounds for denial of the permit application.

8. Applications for new sources, new dischargers, permit reissuance and for permit modifications [except as in subparagraph 335-6-6-.08(k)9.] shall be

submitted at least 180 days prior to the applicant's desired date for commencement of the new discharge and for permit reissuance at least 180 days prior to expiration of the current permit.

9. Applications for individual NPDES permits for storm water discharge shall contain the information required by 40 CFR 122 (2000) and shall be submitted in accordance with the requirements of 40 CFR 122 (2000).

(l) Except as specified in subparagraph 335-6-6-.08(1)(l)2. or 3., quantitative data provided in a permit application shall be collected in accordance with sufficiently sensitive analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N.

1. For the purposes of this requirement, a method approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N is “sufficiently sensitive” when:

(i) The method minimum level (ML) is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter; or

(ii) The method minimum ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or

(iii) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N for the measured pollutant or pollutant parameter.

2. When there is no analytical method that has been approved under 40 CFR Part 136, required under 40 CFR chapter I, subchapter N or O, and is not otherwise required by the Director, the applicant may use any suitable method but shall provide a description of the method. When selecting a suitable method, other factors such as a method's precision, accuracy, or resolution may be considered when assessing the performance of the method.

3. Consistent with 40 CFR Part 136, applicants have the option of providing matrix or sample specific minimum levels rather than the published levels. Further, where an applicant can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of “sufficiently sensitive”, the analytical results are not consistent with the QA/QC specifications for that method, then the Director may determine that the method is not performing adequately, and the applicant shall select a different method from the remaining EPA-approved methods that is sufficiently sensitive consistent with subparagraph 335-6-6-.08(1)(l)1. Where no other EPA-approved methods exist, the applicant should select a method consistent with subparagraph 335-6-6-.08(1)(l)2.

Author: John Poole, Truman Green.
Statutory Authority: Code of Alabama 1975, §22-22-9, §22-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991; July 12, 1995, August 1, 2002, January 23, 2003; September 21, 2005; September 29, 2015.

335-6-6-.09 Signatories to Permit Applications and Reports.

(1) The application for an NPDES permit shall be signed by a responsible official, as indicated below:

(a) In the case of a corporation, by a principal executive officer of at least the level of vice president, or a manager assigned or delegated in accordance with corporate procedures, with such delegation submitted in writing if required by the Department, who is responsible for manufacturing, production, or operating facilities and is authorized to make management decisions which govern the operation of the regulated facility;

(b) In the case of a partnership, by a general partner;

(c) In the case of a sole proprietorship, by the proprietor; or

(d) In the case of a municipal, state, federal, or other public entity by either a principal executive officer, or ranking elected official.

(2) All reports required by permits and other information requested by the Department shall be signed by a person described in paragraph 335-6-6-.09(1) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in paragraph 335-6-6-.09(1);

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity and;

(c) The written authorization is submitted to the Department.

(3) If an authorization under paragraph 335-6-6-.09(2) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of said paragraph must be submitted to the Department prior to or together with any reports or information signed by the newly authorized representative.

(4) Any person signing a document under this rule shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information

submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Author: John Poole, Ed Hughes.
Statutory Authority: Code of Alabama 1975, § 22-22-9, § 22-22-14, § 22-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989, August 1, 2002.

335-6-6-.10 Requirements Applicable to Particular Discharges. NPDES permits for the following categories of discharges shall comply with and be governed by pertinent regulations as specified below:

(a) Animal feeding operations (AFO) concentrated animal feeding operations (CAFO): chapter 335-6-6 (Individual Permit) and chapter 335-6-7 (Registration);

(b) Concentrated aquatic animal production facilities: 40 CFR 122.24 (1994) and 40 CFR Part 122 (1994) Appendix C;

(c) Aquaculture projects: 40 CFR Part 122.25 (1994) and 40 CFR Part 125 (1994) Subpart B;

(d) Silvicultural point sources, excluding mining operations regulated pursuant to chapter 335-6-9: 40 CFR Part 122.27 (1994);

(e) Mining operations: chapter 335-6-9; and

(f) Construction, noncoal/nonmetallic mining and dry processing less than five acres, other land disturbance activities, and areas associated with these activities: chapter 335-6-6 (Individual Permit) and chapter 335-6-12 (Registration).

(g) Facilities that employ a cooling water intake structure designed to withdraw water from waters of the state for cooling water purposes: applicable provisions of 40 CFR §§ 122.21(r), 122.44(b)(3), 123.25(a)(4), 123.25(a)(36), 124.10(d)(1)(ix), and Part 125 Subparts I and J (2005).

Author: John Poole; Richard Hulcher; Eric Sanderson.
Statutory Authority: Code of Alabama 1975, § 22-22-9, §2 2-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989; March 31, 1999, January 23, 2003; September 21, 2005; September 29, 2015.

335-6-6-.11 Conditions Applicable to Storm Water Discharges by Operators of Municipal Storm Sewers. NPDES permits issued to operators of large or medium municipal separate storm sewer system (MS4) shall include the applicable requirements of 40 CFR Part 122.42(c) (2000). NPDES permits issued to operators of small MS4's shall include the applicable requirements of 40 CFR Parts 122.30 – 122.37 (2000).

Author: John Poole, Truman Green.
Statutory Authority: Code of Alabama 1975, § 22-22-9, § 22-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991; January 23, 2003.

335-6-6-.12 Conditions Applicable to All NPDES Permits. The following requirements apply to all NPDES permits. Provisions implementing these requirements shall be incorporated into each permit.

(a) Duty to Comply.

1. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the AWPCA and the FWPCA and is grounds for enforcement action, for permit termination, revocation and re-issuance, suspension, modification; or denial of a permit renewal application.

2. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the FWPCA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

3. Any person who violates a permit condition is subject to a civil penalty as authorized by Code of Alabama (1975) §22-22A-5(18) (1987 Cum. Supp.) and/or a criminal penalty as authorized by the AWPCA.

(b) Duty to Reapply. If the permittee wishes to continue a discharge regulated by the permit after the expiration date of that permit, the permittee must apply for re-issuance of the permit at least l80 days prior to its expiration and, except as provided in rule 335-6-6-.06 and subparagraph 335-6-6-.08(1)(k)9., must obtain a new permit prior to the expiration of the existing permit. If the permittee does not desire to continue the discharge of wastewater allowed by an expiring permit, the permittee shall notify the Department at least 180 days prior to expiration of the permit of the permittee's intention not to request reissuance of the permit.

(c) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce production or other activities in order to maintain compliance with the conditions of the permit.

(d) Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any violation of the permit or to minimize or prevent any adverse impact of any permit violation.

(e) Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the

permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities only when necessary to achieve compliance with the conditions of the permit.

(f) Permit Actions. The permit may be modified, revoked and reissued, suspended, or terminated for cause. The filing of a request by a permittee for a permit modification, revocation and re-issuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(g) Property Rights. The permit does not convey any property rights of any sort or any exclusive privilege.

(h) Duty to Provide Information. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and re-issuing, suspending, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by the permit.

(i) Inspection and Entry. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the AWPCA, any substances or parameters at any location.

(j) Monitoring and Records.

1. All permits shall specify:

(i) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(ii) Required monitoring, including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; and

(iii) Applicable reporting requirements based upon the impact of the regulated activity.

2. To assure compliance with permit limitations, all permits shall specify requirements to monitor:

(i) The mass and/or other measurement for each pollutant limited in the permit;

(ii) The volume of effluent discharged from each outfall; and

(iii) Other measurements as appropriate; including pollutants in internal waste streams, pollutants in intake water for net limitations, pollutants subject to notification requirements, frequency, and rate of discharge.

3. Samples and measurements taken for the purpose of monitoring shall be in accordance with the terms of the NPDES permit.

4. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the above reports or the application for this permit, for a period of at least three years from the date of the sample measurement, report or application. This period may be extended by request of the Director at any time. If litigation or other enforcement action, under the AWPCA and/or the FWPCA, is ongoing which involves any of the above records, the records shall be kept until the litigation is resolved.

5. Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

6. All records required to be kept for a period of three years shall be kept at the permitted facility or an alternate location approved by the Department in writing and shall be available for inspection.

7. Monitoring shall be conducted according to EPA-approved test procedures in 40 CFR Part 136, unless other test procedures have been approved by the Director or specified in the permit. Upon the establishment of a program for certifying commercial laboratories which perform wastewater analyses, only a laboratory certified by the state may be used for contracting wastewater analyses used for NPDES reporting.

8. Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained or performed under the permit shall, upon conviction, be subject to penalties as provided by the AWPCA.

(k) Signatory Requirements. All applications, reports, or information submitted to the Director shall be signed and certified according to the requirements of rule 335-6-6-.09.

(l) Reporting Requirements.

1. Planned Changes. The permittee shall apply for a permit modification at least 180 days in advance of any planned physical alterations or additions to a facility. Application is required only when:

(i) The alteration or addition could result in the discharge of additional pollutants or increase the quantity of pollutants discharged. This notification applies to pollutants that are or are not subject to discharge limitations in the permit, as well as to pollutants subject to notification requirements under rule 335-6-6-.13; or

(ii) The alteration or addition would result in additional discharge points that would require coverage under an NPDES permit.

2. Anticipated Noncompliance. The permittee shall give advance notice to the Director of any planned changes in or other circumstances regarding a facility which may result in noncompliance with permit requirements.

3. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished as provided by applicable state and federal law.

4. Transfers. The permit is not transferable to any person except by modification or revocation and re-issuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the AWPCA or FWPCA. The Director may require the submittal of a complete permit application by the new operator and may issue a new permit or the Director may,

in the case of a change in operator where no significant change in operations has occurred that would affect compliance with the NPDES permit, where no additional discharges would be added that would require coverage by an NPDES permit and where no additional requirements under the AWPCA or FWPCA are necessary, accomplish transfer of the NPDES permit by the following procedure:

(i) The current permittee and the prospective permittee shall apply for a transfer of the permit at least thirty days in advance of the change in operator.

(ii) This application shall include a written agreement between the existing and new permittees containing the specific date for transfer of permit responsibilities, coverage and liability. This application shall be witnessed and accompanied by the appropriate fee required under chapter 335-1-6.

5. Monitoring Reports.

(i) Monitoring results shall be summarized for each monitoring period on a Discharge Monitoring Report form (DMR) approved by the Department and shall be submitted so that the DMR is received by the Department no later than the 28th day of the month following the reporting period specified in the permit.

(ii) Except as allowed under (v) below, monitoring reports shall be submitted with a frequency dependent on the nature and effect of the discharge, but in no case less than once per year, and as required by the NPDES permit.

(iii) If the permittee monitors any pollutant more frequently than required by the permit using EPA-approved test procedures in 40 CFR Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

(iv) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean (zero discharge days shall not be used in these calculations) unless otherwise specified by the Director in the permit.

(v) Except for those storm water discharges associated with industrial activity that are subject to an effluent limitation guideline under applicable Federal Regulations, requirements to report results of storm water discharge monitoring shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

(I) The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant

loadings identified in a best management practices plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

(II) The discharger to maintain a record for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

(III) Such report and certification to be signed by a person meeting the requirements of paragraph 335-6-6-.09(1);

(IV) Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer licensed to practice in the State of Alabama that the facility is in compliance with the permit, or alternative requirements; and

(V) Permits which do not require submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance, not required to be reported by this chapter, at least annually.

6. Noncompliance Reporting.

(i) Twenty-four Hour Reporting. The permittee shall report to the Director, within 24 hours of becoming aware of the noncompliance, any noncompliance which may endanger health or the environment. This shall include, but not be limited to, the following circumstances:

(I) Violation of a discharge limitation for any pollutants identified in the permit to be reported within 24 hours;

(II) A discharge which threatens human health or welfare, fish or aquatic life, or water quality standards;

(III) A discharge which does not comply with an applicable toxic pollutant effluent standard or prohibition established under Section 307(a) of the FWPCA;

(IV) A discharge which contains a quantity of a hazardous substance which has been determined may be harmful to the public health or welfare under Section 311(b)(4) of the FWPCA; and

(V) A direct or indirect unpermitted discharge of a pollutant to a water of the state, regardless of the cause of the discharge. This requirement shall not apply to spills or releases that are properly reported to the Department under any other state or federal requirement, if the report is made in accordance with the other requirement.

(ii) In addition to the oral report, a written submission shall also be submitted to the Director no later than five days after becoming aware of the circumstances identified in subparagraph 335-6-6-.12(l)6.(i) above.

(iii) The permittee shall report all instances of noncompliance not reported under subparagraphs 335-6-6.12(l)6.(i) and (ii) at the time monitoring reports are submitted.

(iv) Written reports required by subparagraph 335-6-6-.12(l)6.(ii) or (iii) shall include the following information:

(I) Description of the noncompliance and its cause;

(II) Period of noncompliance; including exact dates and times, or, if not corrected, the anticipated time it is expected to continue;

(III) Description of the steps taken and/or being taken to reduce or eliminate the noncompliance and to prevent its recurrence;

(v) Immediate notification. The permittee shall report to the Director, the public, the county health department, and any other affected entity such as public water systems, as soon as possible upon becoming aware of any notifiable sanitary sewer overflow.

(m) Bypass.

1. Bypass Not Exceeding Limitations. The permittee may allow any bypass to occur which does not cause discharge limitations to be exceeded and which enters the same receiving water as the permitted outfall but only if it also is for essential maintenance to assure efficient operation of the waste treatment facility. The permittee shall monitor the bypassed wastewater at a frequency, at least daily, sufficient to prove compliance with permit discharge limitations. These bypasses are not subject to the provisions of subparagraph 335-6-6-.12(m)3.

2. Notice.

(i) Anticipated Bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the Department, if possible at least ten days before the date of the bypass.

(ii) Unanticipated Bypass. The permittee shall submit notice of an unanticipated bypass as required in subparagraph 335-6-6-.12(l)6.

3. Prohibition of Bypass.

(i) Bypass is prohibited and the Director may take enforcement action against a permittee for bypass, unless:

(I) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(II) There were no feasible alternatives to the bypass, such as the use of auxiliary waste treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition

is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(III) The permittee submitted notices as required under subparagraph 335-6-6-.12(m)2. and the bypass was approved by the Director.

(ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the conditions listed above in subparagraph 335-6-6-.12(m)3.

(n) Upset.

1. Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit limitations if the requirements of subparagraph 335-6-6-.12(n)2. are met.

2. Conditions Necessary for Demonstration of an Upset. A permittee who wishes to establish the affirmative defense of an upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the specific cause(s) of the upset;

(ii) The wastewater treatment facility was at the time being properly operated;

(iii) The permittee submitted notice of the upset as required in subparagraph 335-6-6-.12(l)6.; and

(iv) The permittee complied with any remedial measures required under paragraph 335-6-6-.12(d).

3. Burden of Proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(o) New, reissued, modified or revoked and reissued permits shall incorporate all applicable requirements of rule 335-6-6-.12 and rule 335-6-6-.13.

(p) An NPDES permit issued for a "new discharger" or "new source" shall expire eighteen months after issuance if "construction" has not begun during the eighteen-month period.

(q) That portion of an NPDES permit authorizing the discharge of increased quantities of pollutants to accommodate the modification of an existing facility shall expire if "construction" of the modification has not begun within eighteen months after issuance of the NPDES permit or modification of the NPDES permit to allow the discharge of increased quantities of pollutants.

(r) The permittee shall provide spill prevention, control and/or management for any stored pollutant(s) that may, if spilled, be reasonably expected to enter a water of the state or the collection system for a publicly or privately owned treatment works. Any containment system used for spill control and management shall be constructed of materials compatible with the substance(s) stored and of materials which shall prevent the pollution of groundwater and shall be capable of retaining 110 percent of the volume of the largest container of pollutants for which the containment system is provided.

Author: John Poole, Ed Hughes.
Statutory Authority: Code of Alabama 1975, § 22-22-9, § 22-22-14, § 22-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991; July 12, 1995, August 1, 2002; September 29, 2015.

335-6-6-.13 Conditions Applicable to Specific Categories of NPDES Permits. The following conditions apply to all NPDES permits within the categories specified below and shall be incorporated into NPDES permits as applicable.

(a) Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under paragraph 335-6-6-.12(l), all existing manufacturing, commercial, mining, and silvicultural permittees must notify the Director as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

(i) One hundred micrograms per liter;

(ii) Two hundred micrograms per liter for acrolein and acrylonitrile; five hundred micrograms per liter for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter for antimony;

(iii) Five times the maximum concentration value reported for that pollutant in the permit application; or

(iv) A level established by the Director under subparagraph 335-6-6-.14(3)(g);

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

(i) Five hundred micrograms per liter;

(ii) One milligram per liter for antimony;

(iii) Ten times the maximum concentration value reported for that pollutant in the permit application; or

(iv) A level established by the Director under subparagraph 335-6-6-.14(3)(g).

(b) Publicly and Privately Owned Treatment Works.

1. Publicly owned treatment works and privately owned treatment works shall not allow the introduction of wastewater other than domestic wastewater from a new indirect discharger prior to the approval and permitting, if applicable, of the discharge by the Department (permits for indirect discharges to privately owned treatment works shall be issued in accordance with the procedures for issuance of permits to indirect dischargers to POTWs as found in chapter 335-6-5).

2. Publicly owned treatment works and privately owned treatment works shall not allow an existing indirect discharger to increase the quantity or change the character of its non-domestic wastewater discharge prior to the approval and permitting, if applicable, of the discharge by the Department (permits for indirect discharges to privately owned treatment works shall be issued in accordance with the procedures for issuance of permits to indirect dischargers to POTWs found in chapter 335-6-5).

3. Publicly owned treatment works and privately owned treatment works shall report to the Department any adverse impact caused or believed to be caused by an indirect discharger, on the treatment process, quality of discharged wastewater, or quality of sludge. Such report shall be submitted within seven days of the date that the permittee becomes aware of the adverse impacts.

4. Publicly owned treatment works shall designate discharge points for trucked or hauled pollutants and shall not allow discharge of such pollutants at any other location. Additionally, publicly owned treatment works shall not allow the discharge of industrial wastes or pollutants at a designated discharge point unless such discharge has been permitted by the Department or determined by the Department not to be a significant industrial user.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, § 22-22-9, § 22-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991, August 1, 2002; September 29, 2015.

335-6-6-.14 Establishing Limitations, Standards, and Other Permit Conditions.

(1) In addition to permit conditions required under rule 335-6-6-.12 and rule 335-6-6-.13, the Director shall establish permit conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements. An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit.

An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit.

(2) All applicable requirements shall be incorporated into each NPDES permit either expressly or by reference. If incorporated by reference, a specific citation to the applicable requirements must be given in the permit.

(3) Each NPDES permit shall include conditions meeting the following requirements, where applicable:

(a) Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under Section 301 of the FWPCA or new source performance standards promulgated under Section 306 of the FWPCA, or case-by-case effluent limitations determined under Section 402(a)(1) of the FWPCA when technology based standards or new source performance standards have not been promulgated, or on a combination of the two. Application of technology-based effluent limitations shall be in accordance with 40 CFR Part 125 (2007) Subpart A.

(b) Other applicable effluent limitations and standards under Sections 301, 302, 303, 304, 307, 318, and 405 of the FWPCA and applicable effluent guidelines and standards under 40 CFR (2007) Subchapter N. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the FWPCA for a toxic pollutant and that standard is more stringent than any limitation on the pollutant in the permit, the Director shall institute proceedings to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(c) Where applicable, requirements for secondary treatment shall be in accordance with the Department's Water Quality Criteria, Section V, and 40 CFR Part 133 (2007).

(d) A reopener clause that requires permit modification or permit revocation and reissuance to include the requirements of any applicable standard or limitation that is promulgated under Sections 301(b)(2)(C), (D), (E), and (F), 304(b)(2), and 307(a)(2) of the FWPCA after the permit is issued and when that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit and that requires permit modification or permit revocation and reissuance to correct any water quality standard violation caused by the permitted discharge shall be included in all permits.

(e) Other requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under Sections 301, 304, 306, 307, 318, and 405 of the FWPCA shall be included where necessary to:

1. Achieve water quality standards established under Section 303 of the FWPCA and (AWPCA) Code of Alabama 1975, §22-22-9(g);

(i) Limitations must be applied to control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, have reasonable potential to cause, or contribute to an exceedance of a narrative or numerical water quality standard;

(ii) Procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the discharge, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity) and where appropriate the dilution of the effluent in the receiving water shall be considered when determining whether a discharge will cause, have reasonable potential to cause, or contribute to an exceedance of a narrative or numerical water quality standard;

(iii) When the Director determines that a discharge will cause, have reasonable potential to cause, or contribute to an exceedance of a narrative or numerical water quality standard for an individual pollutant, the permit shall contain a discharge limit for that pollutant;

(iv) Except when it can be determined using the methods described in subparagraph 335-6-6-.14(3)(e)1.(ii), toxicity testing data, or other information that chemical specific limits are sufficient to attain and maintain the narrative toxicity water quality standard, the permit shall contain effluent limits for whole effluent toxicity sufficient to attain and maintain the narrative standard.

2. Attain or maintain a specified water quality through water quality related effluent limits;

3. Conform to applicable water quality requirements under Section 401(a)(2) of the FWPCA when the discharge affects another state;

4. Incorporate any more stringent limitations, standards, or schedule of compliance requirements established under federal or state law or regulations in accordance with Section 301(b)(1)(C) of the FWPCA;

5. Ensure consistency with the requirements of a Water Quality Management Plan approved by EPA under Section 208(b) of the FWPCA;

6. Incorporate Section 403(c) (FWPCA) criteria under 40 CFR Part 125 (2007), Subpart M, for ocean discharges;

7. Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors", under 40 CFR Part 125 (2007), Subpart D.; and

8. Incorporate effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, consistent with the

requirements of any applicable total maximum daily load allocation established pursuant to section 303(d) of the FWPCA and 40 CFR Part 130.7(2007).

(f) Toxic Pollutants. Limitations established under subparagraph 335-6-6-.14(3)(a), (b), or (e) to control pollutants meeting the criteria listed in subparagraph 335-6-6-.14(3)(f)1. shall be included. Limitations will be established in accordance with subparagraph 335-6-6-.14(3)(f)2. An explanation of the development of these limitations shall be included in the permit rationale and (if prepared) fact sheet. Permit conditions for toxic pollutants shall be in accordance with the requirements of 40 CFR Part 129 (2007).

1. Limitations must control all toxic pollutants which the Director determines (based on information reported in a permit application or in a notification under paragraph 335-6-6-.13(a) or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology based treatment requirements appropriate to the permittee under 40 CFR Part 125.3 (2007) or in concentrations which would cause violations of state water quality standards in the receiving stream.

2. The requirement that the limitations control the pollutants meeting the criteria of subparagraph 335-6-6-.14(3)(f)1. will be satisfied by:

(i) Limitations on those pollutants;

(ii) Limitations on other pollutants which, in the judgment of the Director, will represent treatment of the pollutants under subparagraph 335-6-6-.14(3)(f)1. to the levels required by technology based treatment requirements under 40 CFR Part 125.3(c) (2007); and/or

(iii) Whole effluent toxicity limits.

3. When no individual water quality standard exists for a substance that the Director determines to be present in concentrations that represent a potential to cause a violation of a narrative water quality standard(s), limitations on the discharge of the substance shall be based on the review of any applicable data available to the Department. Information that may be considered includes, but is not limited to, the following:

(i) EPA water quality criteria or other EPA documents that suggest or predict an acceptable instream pollutant concentration,

(ii) Information that may be available from the Food and Drug Administration,

(iii) Scientific information available to the permit writer,

(iv) Review of practices employed by agencies of other states and their success in achieving compliance with the standard,

(v) Toxicity or other testing performed by the Department or by the permit applicant and others, testing must be in accordance with good scientific practice and must be quality controlled, and

(vi) When information sufficient to develop a permit limit is not available to the Department, whole effluent toxicity testing may be substituted for a numerical permit limitation.

(g) Notification Level. A notification level which exceeds the notification level of paragraph 335-6-6-.13(a) or (b) may be included and upon petition from the permittee or on the Director's initiative. This new notification level may not exceed the level which can be achieved by technology based treatment requirements appropriate to the permittee under 40 CFR Part 125.3(c) (2007).

(h) Twenty-four Hour Reporting. Pollutants for which the permittee must report violations of discharge limitations under subparagraph 335-6-6-.12(l)6.(i) shall be listed in the permit. This list shall include any toxic pollutant, hazardous substance, any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance, or any other pollutant specified by the Director.

(i) Monitoring Requirements. To ensure compliance with permit limitations, the permit shall include requirements to monitor:

1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;

2. The volume of effluent discharged from each outfall, except when the volume is not required to evaluate the discharge's impact on water quality or compliance with effluent or treatment standards;

3. The determination of the toxicity of the effluent by whole effluent biological testing, as necessary;

4. Other measurement as appropriate; including pollutants in internal waste streams; pollutants in intake; water for net limitations; frequency, rate of discharge, etc., for noncontinuous discharges; and pollutants subject to notification requirements; and

5. According to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 for the analysis of pollutants or pollutant parameters or required under 40 CFR chapter I, subchapter N.

(i) For the purposes of subparagraph 335-6-6-.14(3)(i)5., a method is “sufficiently sensitive” when:

(I) The method minimum level (ML) is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or

(II) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N for the measured pollutant or pollutant parameter.

(ii) In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136 or methods are not otherwise required under 40 CFR chapter I, subchapter N, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters.

(iii) With respect to subparagraph 335-6-6-.14(3)(i)5.(i), applicants or permittees have the option of providing matrix or sample specific minimum levels rather than the levels published in 40 CFR Part 136. Further, where an applicant or permittee can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of "sufficiently sensitive", the analytical results are not consistent with the QA/QC specifications for that method, then the Director may determine that the method is not performing adequately, and the Director shall select a different method from the remaining EPA-approved methods that is sufficiently sensitive consistent with subparagraph 335-6-6-.14(3)(i)5.(i). Where no other EPA-approved methods exist, the Director should select a method consistent with subparagraph 335-6-6-.14(3)(i)5.(ii).

(j) Pretreatment Program for POTW's. Requirement for POTW's to:

1. Comply with the provisions of paragraph 335-6-6-.13(b);

2. Identify, in terms of character and volume of pollutants, any indirect discharges into the POTW subject to pretreatment standards under Section 307(b) of the FWPCA, general and specific prohibitions under 40 CFR Part 403 (2007), and subject to permitting requirements under chapter 335-6-5;

3. Submit a local program, when required by and in accordance with 40 CFR Part 403 (2007) and chapter 335-6-5 of these regulations, to ensure compliance with pretreatment standards as applicable under Section 307(b) of the FWPCA. The local program shall be incorporated into the permit as described in 40 CFR Part 403 (2007). The Department may choose to assume responsibility for any or all of these requirements. When the Department assumes partial responsibility, the local program shall address those requirements not assumed by the Department.

(k) Best Management Practices: to control or abate the discharge of pollutants when:

1. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the FWPCA and the AWPCA or;

2. Numeric discharge limitations are infeasible;

(l) Reissued Permits.

1. Except as provided in subparagraph 335-6-6-.14(3)(e)2., when a permit is renewed, modified, or reissued, limitations, standards or conditions shall be included which are at least as stringent as the final limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under rule 335-6-6-.17.

2. When effluent limitations were imposed under Section 402 (a)(1) of the FWPCA in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, subparagraph 335-6-6-.14(3)(e)1. shall apply unless:

(i) The permittee has installed the waste treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved but shall not be less stringent than required by the subsequently promulgated effluent limitation guidelines;

(ii) The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under rule 335-6-6-.17;

(iii) There is increased production at the facility which results in significant reduction in treatment efficiency, in which case the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads, but in no event shall permit limitations be less stringent than those required by subsequently promulgated standards and limitations;

(iv) The Director determines that technical mistakes or mistaken interpretations of the law were made in issuing the permit; or

(v) The permittee has received permit modification under Clean Water Act Sections 301(c), (301(g), 301(h), 301(i), 301(k), 301(n), or 316(a).

3. In any case, discharge limitations shall not be less stringent than required to meet water quality standards.

(m) Grants. Any conditions imposed in grants made by the Administrator to POTW's under Sections 201 and 204 of the FWPCA which are reasonably necessary for the achievement of effluent limitations under Section 301 of the FWPCA.

(n) Sewage Sludge. Requirements under Section 405 of the FWPCA governing the disposal of sewage sludge from publicly owned treatment works and privately owned treatment works, in accordance with any applicable regulations and requirements of 40 CFR Parts 122, 123, 124, 501, and 503 (2007).

(o) Other Sludge. Requirements under appropriate state and federal laws governing solid waste disposal or other requirements to ensure that sludges are disposed of in an environmentally acceptable manner.

Author: John Poole, Glenda Dean.
Statutory Authority: Code of Alabama 1975, § 22-22-9, § 22-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991; July 12, 1995, August 1, 2002; May 27, 2008; September 29, 2015.

335-6-6-.15 Calculating NPDES Permit Limitations.

(1) Outfalls and Discharge Points. Permit discharge limitations, standards and prohibitions shall be established for each discharge point from the facility, except where limitations on internal waste streams are more appropriately used.

(2) Production Based Limitations.

(a) In the case of POTW's, permit limitations, standards, or prohibitions shall be calculated based on design flow, the Department's Water Quality Criteria, Section IV, chapter 335-6-10, 40 CFR Part 133 (1994) secondary treatment requirements, and criteria necessary to achieve or maintain water quality standards for the particular receiving stream.

(b) Except, in the case of POTW's or as provided in subparagraph 335-6-6-.15(2)(c) or (d), calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall not be based upon the designed production capacity but shall be based upon a reasonable measure of actual production of the facility; for example, the production during the high month of the previous year or the monthly average for the highest of the previous five years. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitation; for example, monthly production shall be used to calculate average monthly discharge limitations.

(c) The Director may include a condition establishing alternate permit limitations, standards, or prohibitions based upon an anticipated increase, not to exceed maximum production capability, or decrease in production levels. Such anticipated increases or decreases in production must be reasonably projected to occur during the duration of the permit.

(d) If the Director establishes permit conditions under subparagraph 335-6-6-.15(2)(c):

1. The permit shall require the permittee to notify the Director at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the facility does not in fact meet the higher level designated in the notice;

2. The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Director under subparagraph 335-6-6-.15(2)(d)1., in which case the permittee shall comply with the level specified in the notice; and

3. The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as specified in 40 CFR Part 136 unless:

(a) An applicable effluent standard or limitation has been promulgated under the FWPCA and specifies the limitation for the metal in the dissolved or valent or total form;

(b) In establishing discharge limitations on a case by case basis, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the FWPCA; or

(c) All approved analytical methods for the metal inherently measure only its dissolved form.

(4) Continuous Discharges. For continuous discharges all permit discharge limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works or privately owned treatment facilities which treat domestic wastewater and

(b) Average weekly and average monthly discharge limitations for POTWs and privately owned treatment works which treat domestic wastewater.

(5) Non-continuous Discharges. Discharges which are not continuous, as defined in rule 335-6-6-.02, shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency (for example, a batch discharge shall not occur more than once every three weeks);

(b) Total mass (for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

(c) Maximum rate of discharge of pollutants during the discharge (for example, not to exceed two kilograms of zinc per minute or not to exceed a specified discharge rate); and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 milligrams per liter zinc or more than 250 grams of zinc in any discharge).

(6) Mass Limitations.

(a) All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

1. For pH, temperature, or other pollutants which cannot appropriately be expressed by mass;

2. When applicable standards and limitations are expressed in terms of other units of measurement;

3. When concentration limits are required to comply with water quality standards; or

4. If in establishing permit limitations on a case by case basis, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

(7) Pollutants in Intake Water.

(a) Upon request of the discharger, technology based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

1. The applicable effluent limitations and standards contained in 40 CFR Subchapter N (1994) specifically provide that they shall be applied on a net basis; or

2. The discharger demonstrates that the control system it proposes or uses to meet applicable technology based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters;

(b) Credit for generic pollutants such as biochemical oxygen demand or total suspended solids should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the point of discharge or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Director may waive this requirement if he finds that no significant environmental degradation will result.

(e) This paragraph does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(f) In no case shall the application of credits for pollutants in intake waters be allowed to result in the violation of water quality standards.

(g) When wastewater is treated by a system which removes a pollutant for which credit is granted, the credit granted shall be no greater than the limit of treatability of the pollutant by the treatment system.

(8) Internal Waste Streams.

(a) Limitations on internal waste streams may be imposed:

1. When permit limitations or standards imposed at the point of discharge are impractical or infeasible;

2. Prior to mixing with other waste streams or cooling water streams;

3. When the wastes at the final point of discharge are so diluted that monitoring would be impracticable;

4. When interferences among pollutants at the point of discharge would make detection or analysis infeasible.

(b) When monitoring of internal waste streams is required, the monitoring requirements of subparagraph 335-6-6-.14(3)(i) shall be applicable.

(c) When monitoring of internal waste streams is required, the permit rationale and fact sheet, where required, shall set forth the circumstances which make such limitations necessary.

(9) Disposal of Pollutants into Wells, into Publicly Owned Treatment Works or by Land Application.

(a) When part of a discharger's process wastewater is not being discharged into surface waters of the state because it is disposed into a well, into a POTW, private treatment facility, or by land application thereby reducing the flow or level of pollutants being discharged into surface waters of the state, applicable technology based effluent standards and limitations for the discharge in an NPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal.

(b) If none of the waste from a particular process is discharged into waters of the state, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocation for wastes from that process, shall be eliminated from calculation of permit effluent limitations or standards.

(c) In all cases other than those described in subparagraph (9)(b) of this rule, effluent limitations shall at least be no less stringent than the limitation derived by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the state, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 40 CFR Part 125 (1994), Subpart D to make them more or less stringent if discharges to wells, publicly owned treatment works, private treatment facilities, or by land application change the character or treatability of the pollutants being discharged to surface waters. This method may be algebraically expressed as:

$$P = \frac{[E][N]}{T}$$

Where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total wastestream, N is the wastewater flow to be treated and discharged to waters of the state, and T is the total wastewater flow.

(d) Subparagraph 335-6-6-.15(9)(a) does not apply to the extent that promulgated effluent limitations guidelines:

1. Control concentrations of pollutants discharged but not mass; or

2. Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into publicly or privately owned treatment works.

(e) Subparagraph 335-6-6-.15(9)(a) does not alter a discharger's obligation to meet any more stringent permit requirements established under the AWPCA.

(10) Mixing Zones. Limits calculated to comply with water quality standards may allow an opportunity for mixing with the receiving waters in accordance with rule 355-6-10-.05. Determination of mixing zones shall be in accordance with the following requirements.

(a) Whole effluent acute toxicity limitations shall be applied at the perimeter of the zone of initial dilution (ZID), when the discharge is mixed with the receiving stream by a high rate diffuser, in the absence of a high rate diffuser, acute limitations shall be applied based on best professional judgement and may be applied at the end of the pipe.

(b) Whole effluent chronic toxicity limitations shall be applied at the perimeter of a mixing zone developed using best professional judgement and, in instances where the discharge is to a lake or other water body having zero or near zero flow, limitations developed to meet chronic toxicity water quality standards and human health criteria for substances classified as non-carcinogens shall be applied at the perimeter of a mixing zone developed using best professional judgement. A mixing zone may be developed using isopleth studies, diffuser models, or other methods that are appropriate to the particular situation being evaluated. For discharges to waters of the coastal area, the mixing zone for whole effluent toxicity limitations and for limitations developed to meet chronic toxicity water quality standards and human health criteria for substances classified as non-carcinogens shall be the discharge information zone as defined by subparagraph 335-8– 2-.12(1)(a).

(c) When developing permit limits for discharge to flowing streams to comply with human health water quality criteria for pollutants classified as carcinogens the wastewater discharge shall be assumed to be completely mixed in the receiving water at the moment of discharge. When the discharge is to an impoundment or estuary, the allowable mixing zone shall be based on best professional judgement.

(d) Mixing zone prohibitions.

1. Mixing zones in streams shall not preclude passage of aquatic life up or down stream, shall not exceed a width of 50 percent of the stream width, shall not exceed a length of five times the width of the mixing zone, and shall not exceed an area of 25 percent of the stream cross-sectional area, and a mixing zone shall not encompass drinking water intakes.

2. The total area of all mixing zones in a lake shall not encompass more than ten percent of the surface area of the lake, the radius of any one zone shall not be greater than 750 feet, and a mixing zone shall not encompass water intakes.

(11) Receiving Water Flow. The calculation of permit limitations to meet water quality standards shall be based on following statistical flows:

(a) Permit limitations to comply with chronic aquatic life criteria for toxic substances listed in rule 335-6-10-.07 shall be calculated using the minimum 7-day low flow that occurs once in 10 years ($7Q_{10}$) or a base flow higher than the $7Q_{10}$, in which case discharge when the stream flow is less than the base flow shall be prohibited.

(b) Permit limitations to comply with acute aquatic life criteria for toxic substances listed in rule 335-6-10-.07 shall be calculated using the minimum 1-day low flow that occurs once in 10 years ($1Q_{10}$) or a base flow higher than the $1Q_{10}$, in which case discharge when the stream flow is less than the base flow shall be prohibited.

(c) Permit limitations to comply with human health criteria for substances classified as non-carcinogens and listed in rule 335-6-10-.07 shall be calculated using the minimum 7-day low flow that occurs once in 10 years ($7Q_{10}$) or a base flow higher than the $7Q_{10}$, in which case discharge when the stream flow is less than the base flow shall be prohibited.

(d) Permit limitations to comply with human health criteria for substances classified as carcinogens and listed in rule 335-6-10-.07 shall be calculated using the mean annual flow.

(e) Calculation of permit limitations to comply with water quality requirements, other than those listed in subparagraphs 335-6-6-.15(11)(a), (b), (c), and (d) and substances which in the concentrations found in the discharged wastewater can be reasonably expected to violate the narrative toxicity standards of chapter 335-6-10, shall be based on the assimilative capacity of the receiving water and shall not result in degradation of water quality. Permit limits recognizing the variability of receiving stream flows shall be allowable and may be based on statistical seasonal low flows or actual stream flow measurements taken at the time of discharge. Permit limits which require the instream measurement of the substance or parameter being regulated and require that the instream concentration not exceed the applicable water quality requirement may be imposed in conjunction with a discharge limit.

(12) Quantitation.

(a) For the purpose of reporting and compliance, permittees shall use the Minimum Level (ML) as established by EPA. All analytical values at or above the ML shall be reported as the measured value. Values below the ML shall be reported as "0" (zero).

(b) For pollutant parameters without an established ML, an interim ML shall be utilized. The interim ML shall be calculated as 3.18 times the Method Detection Level (MDL) calculated in accordance with the procedure in Appendix B of 40 CFR Part 136.

(c) Permittees may develop an effluent matrix-specific ML, where an effluent matrix prevents attainment of the established ML. However, a matrix specific ML shall be based upon proper laboratory method and technique. Matrix-specific MLs must be approved by the Department, and may be developed by the permittee during permit issuance, reissuance, modification, or during a compliance schedule.

Author: John Poole, Ed Hughes.
Statutory Authority: Code of Alabama 1975, §22-22-9, §22-22A-5.
History: January 24, 1989. **Amended**: April 29, 1991; July 12, 1995, August 1, 2002; January 23, 2003; September 29, 2015.

335-6-6-.16 Schedules of Compliance. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the FWPCA and the AWPCA.

(a) Time for Compliance. Any schedules of compliance shall require compliance as soon as possible and in accordance with the following:

1. Not later than the applicable statutory deadline under the FWPCA;

2. Within three years of adoption of a new water quality standard or within the timeframe determined by the Director for implementation of an applicable TMDL established pursuant to section 303(d) of the FWPCA and 40 CFR Part 130.7 (2007).

(b) Interim Dates. If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement in accordance with the following:

1. The time between interim dates shall not exceed one year;

2. Dates for compliance shall be established, where applicable, as follows:

(i) Submission of pollution abatement program and preliminary plans;

(ii) Submission of final plans, specification, and drawings;

(iii) Initiation of construction;

(iv) Attainment of operational status; and

(v) Attainment of compliance with permit limitations;

3. Reporting.

(i) The permit shall be written to require that no later than fourteen days following each interim date, the final date of compliance, or other period which the Director determines, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports.

(ii) The first NPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For dischargers that have ceased discharge for an extended period and wish to recommence discharge, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(c) Compliance schedules for storm water discharges shall not exceed three years from the effective date of the storm water discharge permit.

Author: John Poole, Glenda Dean.
Statutory Authority: Code of Alabama 1975, § 22-22-9, § 22-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989; July 12, 1995; May 27, 2008.

335-6-6-.17 Transfer, Modification, Revocation and Reissuance, and Termination of Permits. Subject to notice, hearing, and appeal rights of the permittee, the Department may transfer, modify, or revoke and reissue any NPDES permit during its term for cause, including but not limited to, the causes listed in this rule. All applicable fees required by chapter 335-1-6 shall be paid prior to permit transfer, modification, or revocation and reissuance.

(a) Permit Transfers. A permit may be transferred from the permittee to a new operator only if the permit has been modified, revoked and reissued, or a minor modification made to identify the new permittee:

1. If there is to be no change in the operation of the facility which would affect the permittee's ability to comply with the permit and if there are to be no new, different, altered or increased discharges from the facility, the permit may be transferred by modification, revocation and reissuance, or by a minor modification of the permit, provided that the reporting requirements of subparagraph 335-6-6-.12(a) are complied with.

2. If there are to be changes in the facility which would result in new, different, altered, or increased discharges from the facility, the transfer of ownership or operational obligations may be accomplished by complying with the reporting requirements of paragraph 335-6-6-.12(a), but no new,

different, altered, or increased discharges may commence until a new application and, if required by the Department, an engineering report describing such discharges have been submitted to the Department and the permit has been modified accordingly.

3. If the entity to which a permit is requested to be transferred, owns or operates facilities within the state which are in substantial noncompliance, as determined by the Director, the Director may refuse to transfer the permit until noncompliance is corrected or significant progress is made to achieve compliance.

(b) Modification or Revocation and Reissuance of Permits.

1. The following are causes for modification or revocation and reissuance of permits.

(i) When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a written request for modification or revocation and reissuance, by the permittee or other interested person, or conducts a review of the permit file), the Director may determine whether or not one or more of the causes for modification or revocation and reissuance exists. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to public notice requirements, and may request additional information, an engineering report, and/or an updated application. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, an updated application is required, additional information and/or an engineering report may be required, and the entire permit is reopened and subject to revision and the permit is reissued for a new term.

(ii) If cause exists for termination under paragraph 335-6-6-.17(c), the Director may determine that modification or revocation and reissuance is appropriate.

(iii) If the Director has received notification, as required in the permit, of a proposed transfer of the permit, he may determine that modification or revocation and reissuance is appropriate.

2. Modification of Permits. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

(i) Alterations. There are material and substantial alterations or additions to the facility or activity generating wastewater which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(ii) Information. Permits may be modified during their terms if the Director has received new information that was not available at the time of permit issuance and that would have justified the application of different permit conditions at the time of issuance.

(iii) New Regulations. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only when:

(I) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under 40 CFR Part 133 (1994), and

(II) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based.

(iv) Compliance Schedules. Permits may be modified to change compliance schedules:

(I) When the Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy; however, in no case may an NPDES compliance schedule be modified to extend beyond an applicable statutory deadline and

(II) To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under Section 202(a)(3) of the FWPCA for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under Section 202(a)(2) of the FWPCA; however, in no case shall the compliance schedule be modified to extend beyond an applicable FWPCA statutory deadline for compliance.

(v) When the permittee has filed a request for a variance under 301(c), 301(g), 301(h), 301(k), or 316(a) of the FWPCA or for fundamentally different factors within the time specified in the applicable federal regulations, and has been granted the variance, a permit may be modified to agree with the variance.

(vi) A permit may be modified to incorporate an applicable 307(a) FWPCA toxic effluent standard or prohibition.

(vii) Reopener. A permit shall be modified, when required by the reopener conditions in a permit, which are established in the permit under subparagraph 335-6-6-.14(3)(d).

(viii) Net Limits. A permit may be modified:

(I) Upon request of a permittee who qualifies for effluent limitations on a net basis under paragraph 335-6-6-.15(7) and

(II) When a discharger is no longer eligible for net limitations, as provided in paragraph 335-6-6-.15(7).

(ix) Pretreatment. A permit shall be modified as necessary under 40 CFR 403.8(e) (1994) (compliance schedule for development of pretreatment program).

(x) Failure to Notify. A permit may be modified upon failure of state to notify, as required by Section 402(b)(3) (1994) of the FWPCA, another state whose waters may be affected by a discharge.

(xi) Notification Levels. A permit may be modified to establish a notification level as provided in subparagraph 335-6-6-.14(3)(g).

(xii) Non-Limited Pollutants. A permit may be modified when the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology based treatment requirements appropriate to the permittee under 40 CFR 125.3(c) (1994).

(xiii) A permit may be modified if the permittee's effluent limitations were imposed under Section 402(a)(1) of the FWPCA and the permittee demonstrates operation and maintenance costs that are totally disproportionate from the operation and maintenance costs considered in the development of a subsequently promulgated effluent limitations guideline and EPA approves the demonstration, but in no case may the limitations be made less stringent than the subsequent guideline or less stringent than required to meet water quality standards.

(xiv) A permit may be modified to correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

(xv) A permit may be modified when the discharger has installed the treatment technology considered sufficient by the Director in setting effluent limitations imposed under Section 402(a)(1) of the FWPCA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline and shall not be less stringent than required to meet water quality standards).

3. Minor Modifications of Permits. Upon consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this subparagraph, without following the requirements of rule 335-6-6-.21. Any permit modification not processed as a minor modification under this subparagraph must be made for cause and all applicable requirements of rule 335-6-6-.21 must be satisfied. Minor modifications may only:

(i) Correct administrative and typographical errors;

(ii) Increase the frequency of monitoring or reporting by the permittee;

(iii) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(iv) Allow for a change in name or operational control of the facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director as required by subparagraph 335-6-6-.12(l)4.;

(v) Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge; or

(vi) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

(c) Termination of Permits.

1. The following are causes for terminating a permit during its term, or for denying a permit reissuance application:

(i) Noncompliance by the permittee with any condition of the permit;

(ii) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(iii) A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure or termination of a discharge by connection to a POTW); and

(iv) The permittee's failure to submit a complete application to include additional information requested by the Director and appropriate permit fees.

(v) The discharge endangers human health or the environment.

2. Substantial non-compliance, as determined by the Director, of another facility within the state owned or operated by the permittee requesting reissuance of a permit, will be grounds for denial of permit reissuance until such non-compliance is corrected.

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

Author: John Poole.
Statutory Authority: Code of Alabama 1975, § 22-22-9, § 22-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989, August 1, 2002; September 29, 2015.

335-6-6-.18 Enforcement Under NPDES.

(1) Any NPDES permit issued or reissued by the Department is a permit for the purpose of the AWPCA and the FWPCA as such any terms, conditions, or limitations of the permit are enforceable under state and federal law.

(2) Any person required to have an NPDES permit pursuant to this chapter and who discharges pollutants without said permit, who violates the conditions of said permit, who discharges pollutants in a manner not authorized by the permit, or who violates this chapter or applicable orders of the Department or any applicable rule or standard under this division, is subject to any one or combination of the following enforcement actions under the AWPCA.

(a) An administrative order requiring abatement compliance, mitigation, cessation of discharge, clean up, and/or penalties;

(b) An action for damages;

(c) An action for injunctive relief; or

(d) An action for penalties.

(3) Any order issued by the Department pursuant to the AWPCA requiring compliance with the AWPCA, its implementing rules, or an NPDES Permit shall specify a reasonable time within which noncompliance must cease. In appropriate cases a reasonable time may be immediately. Reasonableness shall be determined based upon the severity of the violation and the complexity and availability of the measures necessary to correct the violation.

(4) If the permittee is not in compliance with the conditions of an expiring or expired permit the Director may choose to do any or all of the following provided the permittee has made a timely application for reissuance of the permit:

(a) Initiate enforcement action based upon the permit which has been continued;

(b) Issue a notice of intent to deny the permit reissuance. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(c) Reissue the new permit with appropriate conditions; or

(d) Take other actions authorized by these rules and the AWPCA.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, § 22-22-9, § 22-22-14, § 22-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989; September 29, 2015.

335-6-6-.19 Tentative Determinations and Draft NPDES Permits.

(1) Tentative Determinations. When the Department is satisfied that an application is complete it shall make a tentative determination on the application, including a tentative determination to issue or to deny an NPDES permit for the discharge(s) described in the application. If the tentative determination is to issue an NPDES permit, the following additional tentative determinations shall be made:

(a) Tentative discharge limitations and monitoring requirements shall be identified for the constituents proposed to be limited;

(b) A preliminary schedule of compliance for meeting the tentative discharge limitations including interim dates and requirements, if applicable; and

(c) Any other tentative restrictions or other conditions determined necessary by the Director which will significantly affect the discharge described in the application.

(2) A determination may be made by the Director to deny a permit application if the applicant operates other permitted facilities within the state which are in substantial non-compliance, as determined by the Director, until such non-compliance is corrected or if the Director determines that a permit that results in compliance with applicable water quality standards could not be issued or, if issued, could not be complied with.

(3) Draft Permits.

(a) If the tentative determination is to issue, reissue, or modify an NPDES permit, the Department shall prepare a draft NPDES permit based upon the tentative determinations made pursuant to paragraph 335-6-6-.19(1) for the NPDES permit application.

(b) All effluent limitations, monitoring requirements, schedules of compliance, or other conditions determined necessary by the Director to be included in the draft permit shall be in accordance with the provisions of rules 335-6-6-.10 through 335-6-6-.16 where applicable.

(c) For every draft NPDES permit for which a fact sheet is not required in accordance with rule 335-6-6-.20, the Department shall prepare

a statement (rationale) of the basis of the conditions in the draft NPDES permit. The rationale shall be available to the public.

Author: John Poole.
Statutory Authority: Code of Alabama 1975, § 22-22-9, § 22-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991; September 29, 2015.

335-6-6-.20 Fact Sheets.

(1) A fact sheet shall be prepared for every draft NPDES permit for a major NPDES facility, for every NPDES draft permit that incorporates a variance, for any permit that a fact sheet is required by 40 CFR 124.8 (1994), and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

(2) The fact sheet shall include, when applicable;

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) The type and quantity of wastes, or pollutants which are proposed to be treated or discharged;

(c) A summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) Any calculations or other necessary explanation of the derivation of specific discharge limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard provisions and reasons why they are applicable or an explanation of how alternate effluent limitations were developed;

(f) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

1. Limitations to control toxic pollutants;

2. Limitations on internal waste streams;

3. Limitations on indicator pollutants;

4. Limitations for a new source or new discharger whose discharge has the potential to cause or contribute to the violation of a water quality standard;

5. Limitations set on a case by case basis in accordance with 40 CFR Part 125.3 (1989);

6. Waivers from monitoring requirements granted under 40 CFR Part 122.44(a) (2000).

(g) When appropriate, sketch or detailed description of the location of the discharge described in the application;

(h) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the public notice period and the address where comments will be received;

2. Procedures for requesting a hearing and the nature of that hearing; and

3. Any other procedures by which the public may participate in the final decision.

(i) Name and telephone number of a person to contact for additional information; and

(j) Permit rationales, permit applications and draft permits that contain information required to be included in a fact sheet may be referenced and attached to the fact sheet.

Author: John Poole, Ed Hughes.
Statutory Authority: Code of Alabama 1975, § 22-22-9, § 22-22A-5.
History: October 19, 1979. **Amended:** January 24, 1989, August 1, 2002.

335-6-6-.21 Public Notice Requirements.

(1) Actions Requiring Public Notice. The Director shall give public notice that the following actions have occurred:

(a) An NPDES Permit application has been received and a draft NPDES permit or draft modification to an NPDES permit has been prepared and a tentative determination made to issue or reissue the permit or modification;

(b) An NPDES Permit application has been received and a tentative determination to deny a permit application has been made;

(c) A tentative determination has been made to revoke and reissue an NPDES;

(d) A tentative determination has been made to terminate an NPDES permit (except that if the determination results from the permanent

termination of the flow or by connection to the POTW, the Director may terminate the permit by providing 30-day notice to the permittee); or

(e) A public hearing has been scheduled.

(2) Duration of Public Notice Periods.

(a) Public notice of the receipt of an application and the preparation of a draft permit or draft modification to a permit, including a notice of intent to deny a permit application or termination of a permit shall allow at least 30 days for public comment.

(b) Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the application and draft permit and the two notices may be combined.

(3) Methods of Public Notice. Public notice of activities described in paragraph 335-6-6-.21(1) above shall be given by the methods listed below:

(a) By mailing a copy of a notice to the persons listed below. Any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits:

1. The permit applicant.

2. Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit for the same facility or activity.

3. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities, including any affected states.

4. Any state agency responsible for plan development under the FWPCA Section 208(b)(2), 208(b)(4) or 303(e) and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

5. Any indirect discharger identified in the permit application of a publicly or privately owned treatment works.

6. Persons on a mailing list developed by:

(i) Including those who request in writing to be on the list;

(ii) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals (the Director may update the mailing list from time to time by requesting written indication of continued interest from those listed and may delete from the list the name of any person who fails to respond to such a request);

7. To any unit of local government having jurisdiction over the area where the facility is or is proposed to be located.

8. To each state agency having any authority under state law with respect to the construction or operation of such facility.

(b) By publication of a notice in a daily or weekly newspaper of general circulation within the area affected by the facility or activity.

(4) Content of Public Notices.

(a) All public notices issued under this rule shall contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit (when an address is not applicable to the regulated entity a general location shall be given);

3. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application;

4. A general description of the public comment procedures required by rule 335-6-6-.21 and the time and place of any hearing that will be held, (if applicable) including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

5. A general description of the location of each existing or proposed discharge point and the name of the receiving water; and

6. A general description of the activity or business conducted at the facility generating the wastewater.

(b) Public Notices for Hearings. In addition to the general public notice requirements, the public notice of a hearing shall contain the following information:

1. A reference to the date of previous public notices relating to the permit;

2. Date, time, and place of the hearing; and

3. A description of the nature and purpose of the hearing, including a citation of the applicable rules and procedures.

(5) Public Comments and Requests for Public Hearings. During the public comment period, any interested person may submit written

comments on the permit application and draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph 335-6-6-.21(7).

(6) Public Hearings.

(a) The Director shall hold a public hearing whenever it is found, on the basis of hearing requests, that there exists a significant degree of public interest in a permit application or a draft permit.

(b) The Director may also hold a public hearing at his or her discretion whenever such a hearing might clarify one or more issues involved in the permit decision;

(c) Any person may submit oral or written statements and data concerning the permit application or the draft permit. Reasonable limits may be set upon the time allowed for oral statement, and the submission of statements in writing may be required. The public comment period shall automatically be extended to the close of any public hearing under this rule. The hearing officer may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public.

(7) Response to Comments. At the time that any final permit decision is issued, the Department shall prepare a response to comments which shall be made available to the public. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed by the final permit decision, and the reasons for the change and

(b) Describe and respond to all significant comments (like comments may be grouped and one response written), concerning the draft permit, raised during the public comment period or during any hearing. A significant comment is a comment that offers information or suggestions of a technical, environmental, legal, or regulatory nature that are applicable to the proposed permit.

(8) Comments from Governmental Agencies.

(a) If during the comment period for an NPDES draft permit, the District Engineer of the U.S. Army Corps of Engineers advises the Director in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall include the specified conditions in the permit. Review or appeal of a permit denial or of conditions specified by the District Engineer shall be made through the applicable

procedures of the Corps of Engineers, those conditions shall be considered stayed in the NPDES permit for the duration of that appeal or review.

(b) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advised the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, a public water supply, or wildlife resources, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the FWPCA.

(c) In appropriate cases the Director may consult with one or more of the agencies referred to in this rule before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

Author: John Poole, Ed Hughes.
Statutory Authority: Code of Alabama 1975, § 22-22-9, § 22-22A-5
History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991, August 1, 2002; September 29, 2015.

335-6-6-.22 Variance Requests. Requests for variances shall be submitted to the Director for action. The Director may deny the request. If the Director determines that the variance should be granted, he shall forward the request with a recommendation that the request be approved to the Administrator. A discharger may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in the pertinent regulations as given below:

(a) Fundamentally different factors - 40 CFR Part 122.21 (1994); and 40 CFR Part 125 (1994);

(b) 301(c) or (g) variance from best available technology economically achievable (BAT) for non-conventional pollutants - 40 CFR Part 122.21 (1994);

(c) 301(k) Extension for innovative technology - 40 CFR Part 122.21 (1994); and 40 CFR Part 125 (1994); and

(d) 301(h) Variance for discharge into marine waters - 40 CFR Part 122.21 (1994); and 40 CFR Part 125 (1994).

Author: Craig Kneisel.
Statutory Authority: Code of Alabama 1975, § 22-22-9, § 22-22A-5
History: October 19, 1979. **Amended:** July 12, 1995.

335-6-6-.23 General Permits.

(1) Category. A general permit may be written to regulate:

(a) Storm water discharges or

(b) A category of discharges that all:

1. Involve the same or substantially similar types of discharges;

2. Discharge the same types of pollutants;

3. Require the same effluent limitations or operating conditions;

4. Require the same or similar monitoring; and

5. In the opinion of the Director are more appropriately controlled under a general permit than under individual permits.

(2) Prohibitions.

(a) A discharger, classified as a major discharger by EPA, shall not receive coverage under a general permit. The identity of major dischargers may be obtained from EPA or the Department.

(b) A discharger, not in compliance with Department rules applicable to its wastewater discharges or not in compliance with an individual NPDES permit applicable to the discharge in question, shall not receive coverage under a general permit.

(3) Area. A general permit shall be written to cover a category of discharges described in the permit, within a geographical area. The area shall correspond to existing geographic or political boundaries, such as:

(a) Designated planning areas under Sections 208 and 303 of the CWA;

(b) Sewer districts or sewer authorities;

(c) City, county, or state political boundaries;

(d) State highway systems;

(e) Standard metropolitan statistical areas as defined by the Office of Management and Budget;

(f) Urbanized areas as designated by the Bureau of the Census; or

(g) Any other appropriate division or combination of boundaries.

(4) Applications.

(a) Any interested party may make application to the Director requesting the issuance or modification of a general permit. The Director may deny the application: if he determines that application does not meet the criteria set forth in this rule for the issuance of a general permit; if the application does not contain sufficient information upon which to make a decision; or if he determines that the issuance of a general permit for the discharges addressed by the application is prohibited by this rule or other applicable state or federal laws or rules. If the Director accepts the application, a general permit addressing the discharges described by the petition shall be developed and proposed in accordance with this rule.

(b) The Director may, on his own initiative, develop and propose for issuance a general permit for a category of wastewater dischargers meeting the criteria of this rule.

(5) Provisions and Limitations.

(a) With the exception of those provisions identified in subparagraph 335-6-6-.23(4)(b), the requirements of rules 335-6-6-.02, 335-6-6-.07, 335-6-6-.10, 335-6-6-.11, 335-6-6-.12, 335-6-6-.13, 335-6-6-.14, 335-6-6-.15 and 335-6-6-.16 concerning permit provisions and determination of permit limitations shall apply to general permits. Provisions implementing all applicable requirements of these rules shall be incorporated into each general permit and permit limitations, determined in accordance with all applicable requirements of these rules, shall be incorporated into each general permit. In addition to the above listed requirements any requirement of 40 CFR Section 122.28(b) (1994) shall apply to general permits.

(b) The following requirements of rules 335-6-6-.12, 335-6-6-.13, and 335-6-6-.14 shall not apply to general permits:

1. Paragraph 335-6-6-.12(b);

2. Paragraph 335-6-6-.12(f);

3. Subparagraph 335-6-6-.12(l)1.;

4. Paragraph 335-6-6-.12(p);

5. Paragraph 335-6-6-.12(q);

6. Paragraph 335-6-6-.13(b); and

7. Subparagraph 335-6-6-.14(3)(j).

(c) Each general permit shall contain provisions implementing the requirements under paragraphs 335-6-6-.23(14) and (15).

(d) Each general permit may specify the appropriate public notice procedures required to be followed by each discharger prior to the coverage of any discharge under the general permit. Notice by individual dischargers shall not be required in instances where the Department can notice the dischargers with notice of the permit. For instance during renewal of a permit, those dischargers already covered may be noticed with the permit.

(e) The monitoring requirements of each general permit shall be in accordance with the requirements for individual permits referenced by this rule and shall be consistent with the requirements of 40 CFR Sections 122.42, 122.44, and 122.48 (1994).

(6) Compliance Schedules. A general permit may, when appropriate, specify a schedule of compliance leading to compliance with the FWPCA and the AWPCA. General permit compliance schedules shall comply with the requirements of rule 335-6-6-.16 and all dischargers covered under the general permit shall be subject to the same compliance schedule.

(7) Modification, Revocation and Reissuance, and Termination of Permits.

(a) Subject to the public notice procedures of rule 335-6-6-.21, the Director may modify or revoke and reissue any general permit during its term for cause including, but not limited to, the causes listed below:

1. When the Director receives any information that was not available at the time of permit issuance and that would have justified the application of different permit conditions at the time of issuance,

2. When the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued,

3. Upon failure of the state to notify, as required by Section 402(b)(3) of the FWPCA, another state whose waters may be affected by a discharge,

4. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology based treatment requirements appropriate to the discharge under 40 CFR 125.3(c) (1994),

5. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions,

6. When the permit limitations are found not to be protective of water quality standards, or

7. For any applicable cause set forth in 40 CFR Sections 122.61, 122.62, 122.63, and 122.64 (1994).

(b) Subject to the public notice procedures of rule 335-6-6-.21, the Director may terminate any general permit during its term for any of the causes for modification listed in subparagraph 335-6-6-.23(7)(a).

(c) The Director may terminate coverage of a discharge under a general permit for cause. Cause shall include, but not be limited to: noncompliance with the permit; noncompliance with Department rules; or a finding that the general permit does not control the wastewater discharge sufficiently to protect water quality or comply with treatment based limits applicable to the discharge.

(8) When an individual NPDES Permit is issued for a discharge otherwise subject to a general permit, the applicability of the general permit to that discharge is automatically terminated on the effective date of the individual permit.

(9) Issuance of an Individual NPDES Permit to a Person Eligible for Coverage or Covered by a General Permit:

(a) The Director may require any person with any discharges, otherwise eligible for coverage under a general permit, to apply for an individual NPDES Permit for any or all of the discharges at that facility by notifying that person that an application is required. Notification shall consist of a written description of the reason(s) for the decision, appropriate permit application forms and directions, a statement establishing the required date for submission of the application, and a statement informing the person that upon issuance of the individual permit coverage by the general permit for the applicable discharges shall automatically terminate. Reasons for requiring application for an individual permit may be:

1. Noncompliance with the general permit,

2. Noncompliance with Department rules,

3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the wastewater being discharged,

4. Effluent guidelines are promulgated for a point source(s) covered by the general permit,

5. A Water Quality Management Plan applicable to the wastewater being discharged under the general permit,

6. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit or either a temporary reduction or permanent reduction or elimination of the authorized discharge is necessary,

7. Standards for sewage sludge use or disposal have been promulgated for the sludge use or disposal practice covered by the general permit,

8. The discharge(s) is a significant contributor of pollutants. In making this decision the Director may consider:

(i) The location of the waters with respect to waters of the state,

(ii) The size of the discharge,

(iii) The quantity and nature of the pollutants discharged to waters of the state, and

9. A determination that the water of the state receiving the discharge is not meeting applicable water quality standards.

(b) Any person covered by a general permit may apply for termination of coverage by applying for an individual NPDES permit.

(c) Termination of coverage by a general permit shall be processed consistent with the rules found in this chapter applicable to individual NPDES Permits except a public notice period shall not be required for termination of coverage requested by the permittee, and a public notice shall not be required for termination if a public notice for coverage authorized by the Department is not required by the general permit.

(d) Any person may petition the Director for withdrawal of general permit coverage from a discharger. The Director shall consider the information submitted by the petitioner and any other information he may be aware of and may obtain additional information from the discharger and through inspections by Department staff and shall decide if coverage should be withdrawn. The petitioner shall be informed of the Director's decision and shall be provided a summary of the information considered.

(10) Enforcement. Any general permit issued or reissued by the Department is a permit for the purposes of the AWPCA and the FWPCA and any terms, conditions, or limitations of the permit are enforceable under state and federal law and as described under rule 335-6-6-.18.

(11) Permit Development. When the Department is satisfied that a general permit should be issued it shall develop a draft general permit in accordance with the procedures under rule 335-6-6-.19.

(12) Fact Sheets. A fact sheet shall be prepared for each draft general permit and shall be available to the public upon request. The fact sheet shall include, when applicable:

(a) A brief description of the category(s) of dischargers to be permitted by the general permit;

(b) A description of the geographic area to covered by the general permit; and

(c) The information required under rule 335-6-6-.20 to be included in fact sheets.

(13) Public Notice Requirements. Public notice of the Department's tentative decision to issue a general permit shall be accomplished in accordance with the requirements under rule 335-6-6-.21.

(14) EPA Review. Concurrent with issuance of public notice, the Department shall submit the draft general permit and fact sheet to EPA for review. EPA shall be allowed a review period of 90 days and a general permit shall not be issued over the specific written objection of the EPA.

(15) Notice of Intent.

(a) General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit.

(b) General permits shall specify whether a discharger that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, in accordance with the permit either upon receipt of the notice of intent by the Director, after a waiting period specified in the general permit, on a date specified in the general permit, or upon acknowledgment of the notice of intent by the Director.

(c) Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Director, be authorized to discharge under a general permit without submitting a notice of intent where the Director finds that a notice of intent requirement would be inappropriate. In making such a finding, the Director shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Director shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

(d) A notice of intent shall include:

1. A description of the processes generating the wastewater for which coverage is desired, which description shall be in sufficient detail to allow the Department to determine that the wastewater discharge is included in the category permitted by the general permit;

2. The latitude and longitude of the discharge points for each wastewater discharge and the name of the waterbody receiving each wastewater discharge for which coverage under the general permit is desired;

3. A contact person, address and phone number for each location to be covered under the general permit; and

4. Any other information specified by the general permit.

(e) A notice of intent shall be signed by a person meeting the requirements for signatories to permit applications under rule 335-6-6-.09 and the person signing the notice of intent shall make the certification required for submission of documents under rule 335-6-6-.09.

(f) If required by a specific general permit, proof of public notice as required by the permit under which the applicant seeks to discharge must be submitted with the notice of intent.

(16) Signatories to Reports. Discharge monitoring reports and any other submissions required by a general permit shall be signed in accordance with the requirements of rule 335-6-6-.09.

(17) Duration of General Permits.

(a) General permits shall not be issued for a term longer than five years unless a longer term is allowed by 40 CFR Part 122 and is approved by the Director. The term of the permit does not mean that coverage for a discharger is for five years; coverage for a discharger, which begins after the effective date of the permit, shall be determined by the Director or his designee and can be for the remaining term of the general permit.

(b) Should a general permit expire prior to reissuance, the permit shall be extended administratively until the Department can complete reissuance of the permit.

(c) Should a general permit expire and the Director decide not to reissue the permit, the Director shall notify each discharger permitted by the general permit to submit an individual permit application and shall give the discharger at least 90 days to submit the application. The general permit shall be extended until the Department completes the permit decision process for individual NPDES permits for all persons covered under the general permit and who have submitted applications for an individual permit within the time period required by the Director.

(d) Should the Director revoke or terminate a general permit, the Director shall notify each discharger permitted by the general permit to submit an individual permit application and shall give the discharger at least 90 days to submit the application. The effective date of the action shall be the date on which the Department completes the permit decision process for individual NPDES permits for all persons covered under the general permit and who have submitted

applications for an individual permit within the time period required by the Director.

Author: John Poole, Ed Hughes, Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16.
History: April 29, 1991. **Amended:** July 12, 1995, August 1, 2002; August 3, 2010; September 29, 2015.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER DIVISION - WATER QUALITY PROGRAM

CHAPTER 335-6-7
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

Best Management Practices, Registration Requirements, Technical Standards And Guidelines, Construction And Operation Requirements, Waste/Wastewater And Waste Product Treatment, Storage, Handling, Transport, And Disposal/Land Application, Nutrient Management, And Animal Mortality Management Requirements For Owners And Operators Of Animal Feeding Operations (AFOs) And Concentrated Animal Feeding Operations (CAFOs)

TABLE OF CONTENTS

335-6-7-.01	Purpose
335-6-7-.02	Definitions
335-6-7-.03	Applicability
335-6-7-.04	General Provisions
335-6-7-.05	Reserved
335-6-7-.06	Compliance with NPDES Rules
335-6-7-.07	Requirement to Apply for and Obtain Coverage Under a General or Individual NPDES Permit, Termination and/or Denial of Registration
335-6-7-.08	Reserved
335-6-7-.09	Notice of Registration (NOR)
335-6-7-.10	Registration Requirements for Concentrated Animal Feeding Operations (CAFOs)
335-6-7-.11	Reserved
335-6-7-.12	Registration Fees for Concentrated Animal Feeding Operations (CAFOs)
335-6-7-.13	Schedule of Registration and Certification/Evaluation of Approved Waste Management System Plan (WMSP)
335-6-7-.14	Reporting and Record Keeping
335-6-7-.15	Reserved
335-6-7-.16	Access to and Availability of Records, Reports or Information
335-6-7-.17	Entry and Inspection of Facilities
335-6-7-.18	Continuing Educational and Training Requirements
335-6-7-.19	Reserved
335-6-7-.20	Plans, Specifications, and Technical Requirements
335-6-7-.21	General Best Management and Housekeeping Practices
335-6-7-.22	Alternative or Innovative Technology
335-6-7-.23	Reserved
335-6-7-.24	Facility Closure
335-6-7-.25	Discharge Prohibitions and Waste Disposal Requirements
335-6-7-.26	Land Application and Manure Management Requirements
335-6-7-.27	Reserved

335-6-7-.28 Pollution Prevention
335-6-7-.29 Preventive Maintenance
335-6-7-.30 Reserved
335-6-7-.31 Discharge Notification
335-6-7-.32 Other Requirements
335-6-7-.33 Reserved
335-6-7-.34 Severability

335-6-7-.01 Purpose.

(1) The purpose of this chapter is for the Department, with input from the agricultural community, the environmental community, interested governmental resource agencies, and other stakeholders, to establish the minimum qualifications, standards and procedures, technical standards, construction and operation requirements, best management practices (BMPs), and waste/wastewater storage, treatment, handling, transport, disposal/land application, and dead animal disposal requirements for owners/operators of AFOs to protect water quality within the State as mandated by applicable State and federal law, and pursuant to the requirements of the National Pollutant Discharge Elimination System (NPDES).

(2) The Department intends to partner with the Natural Resources Conservation Service (NRCS), Alabama Soil and Water Conservation Committee (ASWCC), Auburn University College of Agriculture, Alabama Cooperative Extension System (ACES), Alabama Department of Public Health (ADPH), Alabama Department of Agriculture and Industries (ADAI), and other interested resource agencies to the extent possible through establishment of a formal Memorandum of Agreement (MOA) that describes joint administrative procedures and technical standards necessary to implement the requirements of this chapter and draw on the strengths of each resource agency to avoid duplication, conflicting regulatory requirements, or conflicting technical standards. Any MOA, guidance documents, forms, or other information will be incorporated into and updated as appropriate in the Alabama Nonpoint Source Management Program document, as amended.

(3) The Department's goal is to minimize administrative requirements while promoting and encouraging voluntary good stewardship in a continuing effort to implement an effective management program tailored to the needs of Alabama. This chapter provides for management, operational and maintenance procedures required by all AFO owners/operators to prevent point source pollution and minimize nonpoint source pollution to groundwater and surface waters of the State and control to the degree practicable the generation of offensive odors and breeding of nuisance pests by AFOs, and further provides for preparation and implementation of an approved, comprehensive Waste Management System Plan (WMSP) and registration by all CAFO owners/operators.

(4) The buffer requirements set forth in this chapter are intended to protect water quality, protect public health, and minimize odor to the maximum extent practicable. It is recognized that the generation of odor is inherent to animal agriculture. In order to minimize odor and nuisance pests, owner/operators are encouraged to adopt a good neighbor policy, and are required to implement odor and nuisance pest minimization BMPs in the operation of animal waste management systems.

(5) Unless approved otherwise by the Director or specifically provided for otherwise in this chapter, it is intended that all BMP design, implementation, and maintenance, pollution prevention/control, land application, buffers, waste storage, treatment, handling, transport, and disposal, dead animal disposal, facility construction, facility operation, facility management, and facility closure for AFOs shall meet or exceed the criteria of NRCS technical standards and guidelines and shall evaluate and implement as appropriate NRCS planning considerations and recommendations, and in such a manner to ensure protection of water quality. The Director retains final authority regarding disputes of a technical nature, prohibiting implementation of accepted practices which may not be protective of water quality in some situations, or for implementation of management practices not included in NRCS technical standards and guidelines, and as otherwise provided by law.

(6) Buffers, operation, management, monitoring, record keeping, continuing education, implementation of NRCS technical standards and guidelines, and other management practices required by this chapter are intended and established as regulatory common sense minimum requirements within the Department's statutory authority to ensure protection of the environment. It is anticipated that additional efforts to be good neighbors, enhance the farming operation, or assist resource agencies will be implemented voluntarily by many AFO owners/operators.

Author: Richard Hulcher, Steven Jenkins.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14, §§ 22-28-1 to 22-28-23 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended: December 1, 2000.

335-6-7-.02 Definitions. The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise or unless a different meaning is stated in a definition applicable to only a portion of this chapter. Unless manifestly inconsistent with this chapter, other words and phrases used in this chapter shall have the same meaning as used in chapters 335-6-3, 335-6-6, 335-6-10, 335-6-11, and the AWPCA.

(a) "AAPCA" means the Alabama Air Pollution Control Act, as amended.

(b) "ADAI" means the Alabama Department of Agriculture and Industries, including the office of the State Veterinarian.

(c) "ADEM" (Department) means the Alabama Department of Environmental Management.

(d) "ADPH" means the Alabama Department of Public Health.

(e) "Agricultural Waste" means animal production by-products including animal waste, wastewater, manure, litter, bedding material, feces, urine, washdown water, dead animals, compost, dead animal compost, or other potential nutrient sources or pollutants generated by operation of an Animal Feeding Operation (AFO).

(f) "Agronomic Rates" means the land application of animal wastes at rates of application which provide the crop or forage growth with needed nutrients for optimum health and growth in accordance with NRCS technical standards and guidelines to ensure the protection of groundwater and surface water quality.

(g) "Ancillary Equipment" means any devices including, but not limited to, such devices as piping, pumps, concrete conveyances, etc. used to distribute, meter, or control the flow of wastes.

(h) "Animal Feeding Operation" (AFO) means a lot or facility (other than an aquatic animal production facility) where animals (does not have to be the same animals) have been, are, or will be stabled, confined, gathered, or concentrated and fed or maintained (watered, cleaned, groomed, medicated, etc.) for a total of 45 days (days do not have to be consecutive) or more in any 12-month period (period does not have to correspond to the calendar year), and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season as generally described in 40 CFR (Code of Federal Regulations) 122.23(b)(1). Two or more AFOs under common ownership are considered a single AFO and may require Registration as a CAFO if they adjoin, or are in close proximity to each other as determined by the Director or his designee. Unless determined otherwise by the Director or his designee, two or more AFOs under common ownership or under different ownership are considered a single AFO and may require Registration as a CAFO, separately or together, if they are operated as a single operation, if they use a common area or system for the disposal of waste/wastewater, if they significantly share resources, storage or treatments systems, equipment, etc., or otherwise significantly link operations. Each owner/operator of an AFO that adjoins or is in close proximity to another AFO, or shares resources or has links to other operations, can contact the Department for clarification in writing of the status of their facility(s).

(i) "Animal Unit" (AU) means a unit of measurement for any AFO calculated by adding the following numbers: the number of slaughter and feeder cattle and dairy heifers multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing greater than

or equal to 55 pounds multiplied by 0.4, plus the number of swine weighing greater than or equal to 15 pounds and less than 55 pounds multiplied by 0.25, plus the number of swine weighing less than 15 pounds multiplied by 0.1, plus the number of goats multiplied by 0.16, plus the number of emus multiplied by 0.16, plus the number of rabbits multiplied by 0.016, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0, and as designated in rule 335-6-7-.10. Where an AU is not specifically defined in this chapter for an animal (e.g. nutria, other ratites, reptiles, brood cows, etc.), an appropriate AU is determined comparing live weight equivalent waste quantity and constituent composition (limiting nutrients, moisture, additive compounds, etc.) from the most similar type animal with a defined AU.

(j) "Animal Waste Management System" means any system used for the collection, storage, treatment, handling, transport, distribution, land application, or disposal of agricultural wastes, animal waste/wastewater, waste product, and dead animals generated by an AFO that meets or exceeds NRCS technical standards and guidelines.

(k) "AWPCA" means the Alabama Water Pollution Control Act, as amended.

(l) "Best Management Practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other effective management practices that meet or exceed NRCS technical standards and guidelines, NRCS Comprehensive Nutrient Management Plan (CNMP) guidelines, and Departmental requirements that are implemented to the maximum extent practicable to prevent or reduce pollutant discharges to waters of the State. BMPs also include effective treatment requirements, operating procedures, and practices to control construction and operation, site runoff, spillage or leaks, sludge or waste/wastewater transport, storage, disposal or land application, dead animal disposal, or drainage from raw material handling and storage. BMPs also mean full implementation and continued maintenance of appropriate structural and non-structural practices and management strategies to prevent and minimize the introduction of pollutants to stormwater and to treat stormwater to remove pollutants to the maximum extent practicable prior to discharge.

(m) "Bypass" means the intentional diversion of waste streams from any portion of a waste treatment facility.

(n) "CWA" means the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. § 1251 et seq., as amended.

(o) "Certified Animal Waste Vendor" (CAWV) means any person certified by the Department, or certified by another agency in cooperation with the Department, to accept liability and responsibility for AFO waste, obtain required continuing education, keep required records, and effectively manage, handle, transport, store, and properly land apply AFO waste in a manner that meets or exceeds NRCS technical standards and guidelines, manage animal mortality in a manner that meets or exceeds ADAI requirements, prevents

discharges, and ensures protection of groundwater and surface water quality in accordance with the requirements of this chapter, and the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto. The CAWV is responsible, in cooperation with the AFO owner/operator generating the waste/wastewater or land owner(s) receiving the waste/wastewater, for ensuring the suitability of each site prior to applying waste/wastewater, including but not limited to, proper timing of waste/wastewater application, proper calibration of equipment, ensuring that required waste/wastewater characterization and soil testing have been properly performed, ensuring that required inspections are properly performed, ensuring that required sampling of any discharges are properly performed, and ensuring that the land owner(s) or others receiving the waste/wastewater are informed of the requirements of this chapter.

(p) "Chronic and Catastrophic Rainfall" means precipitation events which may result in an overflow of the required retention structure as described in 40 CFR Part 412. Catastrophic rainfall conditions would mean any single event which would equal or exceed the volume of the 25-year, 24-hour storm event. Catastrophic conditions could also include tornadoes, hurricanes or other catastrophic conditions which could cause overflow due to winds or mechanical damage. Chronic rainfall would be that series of wet weather conditions which would not provide opportunity for dewatering and which would equal or exceed the volume of the comparable 25-year, 24-hour storm event.

(q) "Commission" means the Alabama Environmental Management Commission (AEMC).

(r) "Concentrated Animal Feeding Operation" (CAFO) means an animal feeding operation (AFO) as generally described in 40 CFR 122.23 Appendix B, 40 CFR 122.23(c), and defined in rule 335-6-7-.10. For purposes of this chapter, an AFO, regardless of size or number of animals, that has experienced a point source discharge after April 1, 1999 is considered to be included in this definition.

(s) "Construction" means any land disturbance associated with or the result of building, excavation, digging, land clearing, grubbing, placement of fill, grading, blasting, reclamation, or other activity which in any way disturbs, changes, or modifies the ground surface, ground profile or topography, or materials stored or processed above ground, including right-of-ways (ROWs) and associated areas, but excluding mining. Construction also means that the owner or operator has begun, or caused to begin as part of a continuous or phased on-site construction program, (1) any placement, assembly, or installation of facilities or equipment; or (2) significant site preparation work including, but not limited to, clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or (3) entered into a binding contractual obligation for the purpose of placement, assembly, or installation of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can

be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(t) "Control Facility" means any system used for the retention of all wastes on the premises until their ultimate disposal. This includes the retention of manure, liquid waste, dead animals, and runoff from the feedlot or stable area.

(u) "Department" means the Alabama Department of Environmental Management (ADEM), established by the Alabama Environmental Management Act, Code of Alabama 1975, §§ 22-22A-1 to 22-22A-16.

(v) "Director" means the Director of the Alabama Department of Environmental Management or his authorized representative or designee.

(w) "Discharge" means "[t]he addition, introduction, leaking, spilling or emitting of any sewage, industrial waste, pollutant or other waste into waters of the State", Code of Alabama 1975, § 22-22-1(b)(9), as amended.

(x) "Freeboard" means the minimum elevation of the top of the settled embankment above the maximum design water surface in a lagoon or waste storage pond/sump to provide a margin of safety.

(y) "Groundwater" means water below the land surface in a zone of saturation.

(z) "Hydrologic Connection" means the interflow and exchange between surface impoundments or containment structures and groundwater or surface water through an underground corridor or pathway. In the context of this chapter, the purpose of prevention/reduction of hydrologic connection is to prevent/reduce groundwater flow contact resulting in the transfer of pollutants from an AFO into groundwater or surface waters.

(aa) "Intermittent Watercourse" means, for the purposes of this chapter, a watercourse that is represented by a dashed blue line on the most recent U.S.G.S. topographic map, and that flows only at certain times of the year, receiving water from springs or surface sources, and does not flow continuously when water losses from evaporation or seepage exceed available stream flow.

(bb) "Land Application" means the removal of wastewater and/or waste solids from a control facility and distribution to, or incorporation into, the soil mantle at agronomic rates as a fertilizer on actively growing crops for disposal purposes which meets or exceeds NRCS technical standards and guidelines.

(cc) "Liner" means any barrier in the form of a clay soil layer, concrete, synthetic membrane or blanket, that meets or exceeds NRCS technical standards and guidelines properly installed to effectively prevent a hydrologic

connection between liquids contained in lagoons, pits, ponds, sumps, and other retention structures to waters of the State.

(dd) "Liquid Animal Waste Management System" means any system that is used for the collection, storage, treatment, handling, transport, distribution or disposal of animal waste in liquid form generated by an AFO as determined by NRCS or the Department.

(ee) "Maximum Extent Practicable" (MEP) means full implementation and regular maintenance of available technology to meet or exceed NRCS technical standards and guidelines to prevent discharges and ensure protection of groundwater and surface water quality, and if necessary, additional full implementation and regular maintenance of best available technology (BAT) to meet or exceed CWA and AWPCA technical standards and guidelines to the level necessary to prevent discharges and to ensure protection of groundwater and surface water quality.

(ff) "NPDES" means the National Pollutant Discharge Elimination System permitting system for the control of and discharge of pollutants as set forth in 33 U.S.C. § 1342 and regulations promulgated pursuant thereto, as administered by the Department in the State of Alabama.

(gg) "NRCS" means the Natural Resources Conservation Service, an agency within the U.S. Department of Agriculture.

(hh) "Ordinary High Water Mark" - as determined by U.S. Army Corps of Engineers guidelines [40 CFR, No. 144, Part 209.120(d)(2)(ii)(a)] - means with respect to inland surface waters the line on the shore established by analysis of all daily high waters. It is established as that point on the shore that is inundated 25% of the time, and is derived by a flow-duration curve for the particular water body that is based on available water stage data. It may also be estimated by erosion or easily recognized characteristics such as the line on the shore established by the fluctuation of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation or its inability to grow, the presence of vegetative litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(ii) "Operator" means any person in control of, or having responsibility for, the daily operation of an AFO or any person who treats and discharges wastewater or in the absence of treatment, the person who generates and/or discharges wastewater, sludge, or storm water.

(jj) "OAW" means Outstanding Alabama Water as defined in chapter 335-6-10.

(kk) "ONRW" means Outstanding National Resource Water as defined in chapter 335-6-10.

(ll) "Park" means an area of land owned or controlled by a governmental body through a permanent easement that is specifically set aside for public use (e.g. a public cemetery, land set aside for public access within a municipality maintained for recreational or ornamental purposes, a landscaped city square, a large tract of rural land kept in its natural state and reserved for the enjoyment and recreation of public visitors, a State or federal wilderness or dedicated monument area, a game preserve, a stadium or an enclosed playing field, a monument plaza, etc.)

(mm) "Perennial Non-Headwater Watercourse" means, for the purposes of this chapter, that portion of a water of the State in a well-defined channel that is represented by a solid blue line on the most recent U.S.G.S. topographic map and with a drainage watershed equal to or greater than 5.0 square miles (3,200 acres).

(nn) "Person" means any and all persons, natural or artificial, including, but not limited to, any individual, partner, partnership, association, society, joint stock company, firm, company, corporation, institution, trust, other legal entity, business organization or any governmental entity and any successor, representative, responsible corporate officer, agent or agency of the foregoing.

(oo) "Professional Engineer" (PE) means a person who by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and/or practical experience, is qualified to practice engineering according to the provisions of Code of Alabama (1975), §§ 34-11-1 through 34-11-37, as amended, and is presently registered by the Board of Registration for Professional Engineers and Land Surveyors.

(pp) "Professional Geologist" (PG) means a person who by reason of his special knowledge of the geological sciences and the principles and methods of geologic analysis and investigation, acquired by professional education and/or practical experience, is qualified to practice geology according to the provisions of Code of Alabama (1975), §§ 34-41-1 through 34-41-24, as amended, and is presently licensed by the Board of Licensure for Professional Geologists. The professional practice of geology shall mean the performance of geological service or work, including, but not limited to, consultation, geological investigation, surveys, evaluations, planning, mapping, or review of geological work related to the public practice of geology, or both, in which the performance is related to the public welfare or safeguarding of life, health, property, and the environment except as otherwise specifically provided or allowed by Alabama law.

(qq) "PWS" means Public Water Supply as defined in chapter 335-6-10.

(rr) "Qualified Credentialed Professional" (QCP) means any staff member of the Department designated by the Director, a PE registered in the State of Alabama, an NRCS representative, an NRCS approved professional, or other qualified professional or professional designation acceptable to the Department, who can document proven training and experience in design,

implementation, and inspection of comprehensive animal waste, waste product, and dead animal disposal management practices and system plans, including land application practices that meet or exceed NRCS technical standards and guidelines and the requirements of this chapter as may be demonstrated by state registration, credential, professional certification, relevant experience and continuing education, or completion of accredited university programs, acceptable to the Department, that enable the individual to make sound professional judgments regarding animal waste management practices. The registrant or professional should contact the Department with any questions or comments regarding designation as a QCP. The QCP must be in good standing with the authority granting the registration or designation. The QCP must be familiar with current industry standards and be able to certify that effective management strategies have been properly implemented and regularly maintained according to good engineering practices and the requirements of this chapter. Pursuant to chapter 335-6-3 a PE registered in the State of Alabama must certify the design and construction of structural practices such as a Spill Prevention Control and Countermeasures (SPCC) plan containment structures, embankments, dams, dikes, berms, ditches, lagoon construction, etc. Pursuant to Code of Alabama 1975, §§ 34-41-1 to 34-41-24, a PG must perform and certify certain geological services or work.

(ss) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of pollutants from an AFO which has the potential to discharge into groundwater or surface water.

(tt) "Retention Facility" or "Retention Structure" means all collection ditches, conduits and swales for the collection of runoff and wastewater, and all basins, ponds, sumps, and lagoons used to store and/or treat wastes, wastewaters and manure.

(uu) "Severe Property Damage" means substantial physical damage to property, damage to the waste treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources, as defined by the Department, which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(vv) "Storm-Water or Wastewater Collection/Drainage System" means piping, pumps, ditches, swales, concrete conveyances, conduits, and any other structure or equipment used to collect and transport the flow of surface water run-off or wastewater resulting from precipitation or other sources, or wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

(ww) "Surface Impoundment" is a natural topographic depression, man-made excavation, or diked area generally formed primarily of compacted earthen materials (although it may be lined with man-made materials) designed and constructed to prevent discharges to surface water and groundwater.

(xx) "Tank" is a stationary device designed to contain an accumulation of animal wastes, fuels, or chemicals, and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

(yy) "Toxic Pollutants" means pollutants and combination of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organisms, either directly from the environment or indirectly through food chains, will, on the basis of information available to the Department or Director cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in such organisms or their offspring. This shall include but not be limited to pollutants listed as toxic pursuant to 33 U.S.C. § 1317(a)(1), as amended.

(zz) "Trade Secret" (pursuant to rule 335-6-6-.07) includes but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound or procedure, as well as production data or compilation of information, financial and marketing data, which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article of trade or a service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not have the information.

(aaa) "25-Year, 24-Hour Rainfall Event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service in Technical Paper Number 40, Rainfall Frequency Atlas, as amended.

(bbb) "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, failure to fully implement and regularly maintain effective management practices that meet or exceed NRCS technical standards and guidelines and Department requirements, or careless or improper operation.

(ccc) "Waste" means Agricultural Waste including, but not limited to chemicals, sediment, trash, debris, garbage, etc. generated at an AFO.

(ddd) "Waste Management System Plan" (WMSP) means a comprehensive plan which meets or exceeds USDA Natural Resources Conservation Service (NRCS) technical standards and guidelines, NRCS Comprehensive Nutrient Management Plan (CNMP) guidelines, the requirements of this chapter, and applicable requirements of the CWA and regulations promulgated pursuant thereto, that is prepared by a QCP approved by the Department. The plan shall detail management of the entire facility and associated areas which includes but is not limited to proper treatment, storage,

handling, transport, and disposal/utilization of wastes, wastewater, wasteproduct, dead or diseased animals, general housekeeping BMPs, nutrient management, and land application of wastes. The nutrient management portion of the plan shall include an assessment of the land application site; a description of the land use, cropping sequence, and management of crops; nutrient budget which accounts for nitrogen and phosphorus use; timing of applications, buffer requirements, erosion, and runoff control practices; and if the site is not owned by the registrant, a signed lease to use the land, a detailed bill of sale for the waste, a valid contract with a CAWV, or a signed written land use agreement. The site assessment shall include a soil map, hydrologic soil group(s), permeability of the upper ten inches of soil, and location of streams, sinkholes, and wells. The nutrient budget shall account for all available nutrients applied on the site and shall include soil test results, sources of nutrients, and application rates. A detailed map of the application site showing location of fields, buffer zones, streams, wells, sinkholes, and other pertinent information will be part of the plan.

(eee) "Wastewater" means liquid Agricultural Waste and any liquid waste or water generated directly or indirectly in the operation of an AFO (such as spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, lagoons, manure pits, direct contact, swimming, washing, or spray cooling of animals; and dust control) and any precipitation (rain or snow) which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g. milk, eggs).

(fff) "Wastewater Treatment Tank" means a tank that is designated to receive and treat an influent wastewater through physical, chemical, or biological methods.

(ggg) "Waters of the State" means "[a]ll waters of any river, stream, watercourse, pond, lake, coastal, groundwater or surface water, wholly or partially within the State, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership or corporation unless such waters are used in interstate commerce", Code of Alabama 1975, § 22-22-1(b)(2), as amended. "Waters" include all navigable waters as defined in 33 U.S.C. § 1362(7), as amended, which are within the State of Alabama.

(hhh) "Well" means a hole drilled, dug, driven, bored, jetted, or otherwise constructed for water production or water supply.

Author: Richard Hulcher, Steven Jenkins.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14, §§ 22-28-1 to 22-28-23 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended: December 1, 2000.

335-6-7-.03 Applicability.

(1) The provisions of this chapter are applicable to the construction, operation, maintenance, repair, and closure of cattle, swine, poultry, fowl, dairy, stockyard, auction or buyer yards, farms, facilities, or operations, and any other AFOs or facilities with wild or domesticated animals designated by the Director or his designee, and their associated waste management and land application systems located wholly or partially within the State of Alabama.

(2) Unless specifically excluded in writing by the Director from the administrative requirements of this chapter pursuant to rule 335-6-7-.07(5), and in accordance with applicable requirements of the CWA and NPDES program, the requirements of this chapter are applicable to all new and existing AFOs in the State.

(3) Any AFO may be required to register under this chapter or be required to obtain an NPDES Individual permit or appropriate General permit authorization in writing by the Director or his designee for reasons that include but are not limited to the location of the facility, size of the facility, discharge status of the facility, and compliance history of the owner/operator.

(4) Unless required in writing by the Director, AFOs that are not considered CAFOs pursuant to rule 335-6-7-.10 are not required to apply for and obtain Registration from the Department as required by this chapter.

(5) Chapter Modification and Public Participation.

(a) The Director or his designee shall cause to be published a Public Notice with a comment period of not less than 30 days to solicit public participation and comment and to schedule a Public Hearing according to procedures described in rule 335-6-6-.21 regarding the content of, implementation of, and compliance with provisions herein, prior to the completion of the first five year term beginning with the effective date of this chapter, and at least once every five years after the Public Notice referenced above and each subsequent Public Notice is held. After review of comments received during the public participation process, and no later than 120 days after the close of the public comment period, the Director or his designee shall prepare a written Response To Comments addressing comments received during the public participation process and shall make a determination in writing regarding the status of this chapter and of the need, if any, to initiate procedures pursuant to Code of Alabama (1975) §§ 41-22-1 through 41-22-27, as amended, to modify this chapter to ensure that the requirements of this chapter are in accordance with the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto. Where the Director or his designee has initiated procedures to modify this chapter as set forth in this rule, the Director or his designee shall provide the proposed modifications to the Regional Administrator, United States Environmental Protection Agency, for

comment, objection, or recommendation, for a period of time not less than 90 days.

(b) The Director or his designee shall cause to be published a Public Notice with a comment period of not less than 30 days according to procedures described in rule 335-6-6-.21 to inform the public regarding the Response To Comments and the Director's or his designee's determination regarding the need, if any, to initiate rulemaking procedures to modify this chapter as described in (a) above. The Public Notice shall include information to inform the public how to obtain in writing the procedures for the public to petition the Department to initiate procedures in accordance with chapter 335-2-2 to modify this chapter if the Director or his designee determines, after consideration of comments or other information received during the public participation process, that modification of this chapter by the Department is not necessary.

(c) Where the Director or his designee has initiated the procedures within the prescribed periods set forth in paragraph (a), the provisions of this chapter continue in force until modified or repealed pursuant to applicable provisions of Code of Alabama (1975) §§ 41-22-1 through 41-22-27, as amended. Pursuant to paragraph (b), provisions proposed to be modified or repealed shall continue in force until the effective date of any modification or repeal and any proposed new provision shall apply commencing with the effective date of the new provision.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended:

335-6-7-.04 General Provisions.

(1) All AFOs, regardless of size or registration status, must maintain adequate records to document compliance with this chapter and shall fully implement and regularly maintain comprehensive waste management system Best Management Practices (BMPs) to the maximum extent practicable which meet or exceed NRCS technical standards and guidelines to prevent and minimize discharges of pollution during construction and operation. Appropriate pollution abatement/prevention facilities and structural and nonstructural BMPs, or Department approved equivalents, must be fully implemented prior to and concurrent with commencement of regulated activities and regularly maintained during operation as needed at the facility to meet or exceed NRCS technical standards and guidelines and ADEM requirements until closure is approved by the Director or his designee. Failure to fully implement and regularly maintain BMPs for the protection of water quality and minimization of odors to the maximum extent practicable may subject the owner/operator of the AFO to appropriate enforcement action.

(2) All AFO owners/operators shall regularly inspect and evaluate their facility(s) to ensure compliance with provisions of this chapter. Each owner/operator of an AFO that is also a defined CAFO or that may meet the criteria for designation as a CAFO under this chapter shall notify the Director or his designee of their status and register. Each CAFO owner/operator shall implement and maintain an approved WMSP and submit formal certification/evaluation as required by this chapter. Each owner/operator of an AFO that has a question or is unsure regarding their status under this chapter shall contact the Director or his designee for clarification of their status.

(3) Except as provided otherwise by this chapter and approved by the Director or his designee in writing, after September 30, 1999, continued operation of CAFO facilities existing after April 1, 1999 who have not submitted a complete and correct application or Notice of Registration (NOR) for coverage under a valid NPDES Registration, General permit (if issued), or Individual permit, are prohibited. Except as provided otherwise by this chapter and approved by the Director or his designee in writing, after April 1, 1999, construction of, or commencement of regulated activity, at proposed CAFO facilities who have not submitted a complete and correct application or NOR and have not been granted coverage under a valid NPDES Registration, General permit, or Individual permit, and by the Director or his designee, is prohibited.

(4) Construction and operation of, and discharges from, CAFO facilities who have had coverage terminated or have been denied coverage under a valid NPDES Registration, General permit, or Individual permit, are prohibited.

(5) As used in this chapter:

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

(b) Words in the singular include the plural and words in the plural include the singular; and

(c) Words that are capitalized include non-capitalized and non-capitalized words include capitalized.

(6) In any case where rule(s) may appear to be in conflict, allow different actions, or allow a choice of actions, the requirements of the rule(s) are presumed to complement and supplement each other. For buffers, the more stringent applicable buffer requirement shall apply.

Author: Richard Hulcher, Steven Jenkins.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14, §§ 22-28-1 to 22-28-23 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended: December 1, 2000.

335-6-7-.05 Reserved.

335-6-7-.06 Compliance with NPDES Rules.

(1) Approval of Registration under this chapter constitutes NPDES permit coverage as provided in chapter 335-6-6. Unless specifically provided otherwise by this chapter, Registrants shall comply with all provisions of this chapter and the NPDES permit program as described in chapter 335-6-6.

(2) Any noncompliance with this chapter constitutes a violation of this chapter and NPDES rules and may constitute a violation of the CWA and the AWPCA and is grounds for enforcement action and/or for requiring the owner/operator or registrant to apply for and obtain an Individual NPDES permit.

(3) It shall not be a defense for an owner/operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this chapter. Upon reduction, loss, or failure of the treatment facility, the owner/operator shall, to the extent necessary to maintain compliance with this chapter, control production or discharge or both until the facility is restored or an effective alternative method of treatment is provided.

(4) The owner/operator shall take all reasonable steps to prevent and minimize to the maximum extent practicable any discharge in violation of this chapter which has a reasonable likelihood of adversely affecting human health or the environment and/or the groundwater or surface water receiving the discharge(s).

(5) In accordance with the provisions of 40 CFR 123.1(i), states may adopt and enforce rules which are more stringent than those required for NPDES delegation, or operate a program with a greater scope of coverage than required by federal law and an owner/operator shall comply with such State rules. This includes any requirements to prohibit discharge from all AFOs regardless of the number of animals being confined, stabled, or concentrated and fed. This chapter may be both greater in scope and more stringent than required by federal law. Enforcement authority for conditions in this chapter which constitute greater scope of coverage than required by Federal law are not part of the federally approved NPDES program and therefore are not subject to EPA oversight.

(6) To ensure compliance with the requirements of this chapter, an AFO/CAFO owner/operator has the option to apply for and obtain coverage under an Individual NPDES permit, considering the requirements of rule 335-6-7-.07(3), including payment of required application fees, as provided in 40 CFR 122.28(b)(2)(i), and as pursuant to the requirements of chapter 335-6-6. All requirements of this chapter shall apply to the AFO/CAFO owner/operator until issuance of the Individual NPDES permit. The AFO/CAFO owner/operator shall be considered in violation of this chapter, the

AWPCA, and NPDES requirements each day that the operation is not in compliance with the requirements of this chapter until the required complete and correct Individual permit application is submitted and Individual permit coverage is issued by the Department.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended:

335-6-7-.07 Requirement to Apply for and Obtain Coverage Under a General or Individual NPDES Permit, Termination and/or Denial of Registration.

(1) The Director may require any CAFO required to be registered under this chapter to apply for and obtain an Individual NPDES permit as provided in 40 CFR 122.28(b)(2)(i) and pursuant to chapter 335-6-6. The Director or his designee will notify the owner/operator in writing that an Individual permit application to include the appropriate application fee is required. If an owner/operator fails to submit a complete and correct Individual NPDES application with applicable application fee as required by chapter 335-1-6 or by the deadline specified by the Director or his designee, then any Registration granted to the owner/operator is automatically terminated at the end of the day specified for application submittal and the owner/operator may be subject to enforcement action. All requirements of this chapter still apply to the AFO/CAFO owner/operator. The owner/operator shall be considered in violation of this chapter, the AWPCA, and NPDES requirements each day until the required complete and correct Individual permit application is submitted and Individual permit coverage is issued by the Department.

(2) When an Individual NPDES permit or General permit (if issued) coverage is issued to an owner/operator subject to this chapter, the applicability of this chapter to the registrant is automatically terminated on the effective date of the Individual/General permit coverage. When an Individual NPDES permit or General permit coverage is terminated or an application is denied to an owner/operator otherwise subject to this chapter, the owner/operator continues to be subject to the requirements of this chapter on and after the date of such termination or denial, unless otherwise specified in writing by the Director or his designee.

(3) Individual NPDES permits or General permit coverage issued to AFO/CAFO facilities shall contain at least the same design and operational considerations as described in this chapter and/or an affirmative demonstration of new and/or innovative technology or management measures acceptable to the Director or his designee to ensure an equivalent level of environmental quality as required by this chapter. When the facility obtains coverage under an Individual permit or General permit (if issued) reflecting

current regulatory requirements, any previously approved Registration will be considered administratively voided and superseded.

(4) Initial construction (that exceeds 1 acre) of an AFO that is not registered under this chapter, or additional construction (that exceeds 1 acre) at an existing AFO that is not registered under this chapter shall obtain coverage under an NPDES construction Notification, Registration, General permit, or Individual permit prior to commencement of new or increased construction, land disturbance, or associated regulated activity, unless exempted on a programmatic or categorical basis from this requirement in writing by the Director or his designee.

(5) Termination or Denial of Registrations.

(a) The following may be causes for terminating a Registration during its term, for denying a Registration issuance application, or denying a Registration reissuance application:

1. Substantial noncompliance by the registrant or applicant with any condition of the Registration or the requirements of this chapter;

2. The registrant's or applicant's failure in the Registration application or during the Registration issuance or reissuance process to disclose fully all relevant facts, or the registrant's or applicant's failure to disclose all relevant facts or the registrant's or applicant's misrepresentation of any relevant facts, at any time;

3. A change in any condition that results in either a temporary or a permanent reduction or elimination of any discharge controlled by the Registration [for example, facility closure or termination of a discharge by connection to a publicly/privately owned treatment works (POTW)];

4. The registrant's or applicant's failure to submit a complete Registration, including any additional information requested by the Director or his designee and appropriate registration fees;

5. The registrant's or applicant's history of substantial noncompliance if determined applicable by the Director; or

6. Any other relevant factors the Director determines to be appropriate.

(b) If cause exists for denial or termination of Registration under this rule, the Director may determine that termination or denial of Registration is appropriate.

(c) If the Director determines that a Registration that results in compliance with applicable water quality standards could not be issued or, if issued, could not be complied with, such Registration shall be terminated or denied.

(d) Any applicant or registrant whose Registration is denied or terminated pursuant to the provisions of this rule shall comply with the AWPCA and applicable requirements of division 335-6 and may apply for coverage under an Individual NPDES permit pursuant to the provisions of chapter 335-6-6.

Author: Steven Jenkins, Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended: December 1, 2000.

335-6-7-.08 Reserved.

335-6-7-.09 Notice of Registration (NOR).

(1) Unless exempted by the Director or his designee in writing, the Notice of Registration (NOR) shall include the following information:

(a) Facility owner's name, address, and telephone number;

(b) Operator's name, address, and telephone number, if different from owner;

(c) Facility name, contact person, address, telephone number, directions to the facility, and Township, Range, and Section(s) of the facility and each land application site, Latitude and Longitude of the front access gate of the facility, and Latitude and Longitude of each lagoon or liquid waste storage/treatment structure;

(d) Methods proposed to be or currently being used for processing wastes/wastewater (for example, dry storage facility, flushing to holding ponds/sumps, followed by land application, etc.);

(e) Name of receiving water(s) according to USGS 7.5-minute topographic map to which wastewaters have discharged, are discharging, or could potentially be discharged;

(f) The type(s) and highest number of each animal type that have been in open confinement and/or housed under roof for the previous 12 months, and the anticipated type(s) and highest number of each animal type that are planned/expected to be in open confinement and/or housed under roof for the next 12 months;

(g) If different from the owner/operator, the name, address, telephone number, and contact person for the entity who owns or has an ownership interest in the animals present at the facility, and animal feed or chemicals stored at the facility;

(h) If flowing surface waters or waters of the State (e.g. streams, rivers, canals) have the potential to come into direct contact with animals confined or concentrated in the facility, describe measures to be utilized to avoid direct animal contact;

(i) If a corporation, or partnership, a statement that the entity is registered with or has notified the Office of the Secretary of State of Alabama in writing of the intent to conduct business in Alabama;

(j) Listing of any partners or other owners;

(k) Listing of any past or current permit violations, Registration violations, NPDES rules violations, and violations of the AWPCA and CWA;

(l) Proposed schedule for preparation and implementation of approved WMSP and for submittal of appropriate certification/evaluation of implementation of the WMSP that is certified by a QCP;

(m) Other relevant information that may be requested by the Director or his designee;

(n) Date of last annual inspection and name of the QCP who performed the inspection, date of last five-year inspection and the name of the PE who performed the inspection or directed/supervised the QCP who performed the inspection, and the name of the QCP who performed the inspection under the direct supervision of the PE, and a summary of any deficiencies observed and corrective action taken as a result of the inspection(s);

(o) All NORs for coverage under this chapter must be signed in accordance with the provisions of 40 CFR 122.22 and rule 335-6-7-.09(9), (11), and (12).

(p) Any additional plans, applicable information, or certifications required by this chapter or the Director or his designee.

(2) The NOR must be delivered or mailed by certified mail to the Department or other agency as may be designated by the Director.

(3) Coverage provided by registration under this chapter will expire 365 days from issuance unless the owner/operator submits a complete and correct NOR requesting continued coverage and continued coverage is approved by the Director. However, all requirements of this chapter continue in effect regardless of the owner/operator's registration status.

(4) In accordance with chapter 335-1-6 (Fee System) and rule 335-6-7-.12, a registration fee must accompany the NOR. An NOR shall not be considered complete and correct until submittal of the required fee is verified by the Department. Failure to remit the required fee is grounds for the Director or his designee to initiate enforcement action and to deny Registration under this chapter and require the owner/operator to apply for an Individual NPDES

permit pursuant to the provisions of rule 335-6-7-.07(5). Subsequent annual registration fees are due with the submittal of any NOR requesting continued coverage or if billed by the Department in accordance with chapter 335-1-6.

(5) An owner/operator who registers under this chapter must provide a complete and correct NOR to the Department or other agency approved by the Department on such form or forms, to include complete and correct information, as the Department may require. An NOR shall be considered complete and correct as determined by the Director or his designee.

(6) Unless notified in writing by the Director or his designee within 45 days after written verification from the Department of receipt of a complete and correct NOR, including the appropriate registration fee, WMSP if required, and applicable QCP certifications, that the NOR is incomplete, that additional time is needed by the Department to properly process the NOR, or that the NOR has been denied, owners/operators are authorized to construct and operate the facility on an interim basis provided the facility remains in full compliance with all provisions of this chapter. Subsequent to the filing of a complete Registration, the Department shall determine whether to formally approve or deny the request for Registration. In the event the Registration is formally approved, any interested party, as provided in Code of Alabama 1975, § 22-22A-7(c), as amended, may appeal the Registration approval to the Environmental Management Commission. In the event Registration is denied, the Department shall provide to the applicant a written statement setting 335-6-7-.09 out the basis for the denial. The applicant may appeal the denial in accordance with Code of Alabama 1975, § 22-22A-7(c), as amended.

(7) Registration Modification.

(a) Registrants shall notify the Department in writing whenever there is a change in operational procedures of the registered facility. When the operational situation changes, an owner/operator covered under this chapter shall submit a revised NOR, including any applicable fee for a Major modification, describing the operational changes at the facility, including any supporting documentation required by the Department.

(b) Major Modification. The registrant must request modification of the Registration from the Department in writing and submit the appropriate registration fee at least 15 days prior to any change in ownership or operational procedures of the registered facility, including, but not limited to, the following:

1. A change of ownership or name of registrant;

2. A change in operational control of the facility;

3. Increase in the number of confined or concentrated animals at any time which is sufficient to place the facility in a higher animal unit fee category as provided in chapter 335-1-6 – Fee Schedule D, Water Permits/Registration, CAFO.

4. Significant change in waste treatment, handling or disposal as determined by the Director or his designee.

(c) Minor Modification. If required by the Director or his designee, the registrant shall notify the Department in writing of any minor modification of the Registration. The registrant shall document no later than 30 days after any minor change that the WMSP has been properly updated regarding any minor change in operational procedures of the registered facility, including, but not limited to, the following:

1. A change in approved land application sites.

2. Non-significant change in waste treatment, handling or disposal as determined by the Director or his designee.

3. Entering into or canceling a written contract with a CAWV.

(d) The Department may in its discretion require the owner/operator to provide construction plans and specifications, amended plans of operation or any other information required by this chapter.

(8) In the event of any change in control or ownership of facilities covered by this chapter, the registrant shall, by certified mail, signed receipt, or other method approved by the Department, notify at least 15 days prior to the change in ownership, with copy to the Department, the succeeding owner/operator or controller of the existence of this chapter and the need to update the facility's Registration.

(9) All NORs shall be signed as follows:

(a) For a corporation: By a responsible corporate officer. For the purposes of this chapter, a responsible corporate officer means a principal executive officer at the level of vice president or above of the corporation in charge of a principal business function or who performs similar policy or decision making functions for the corporation.

(b) For a partnership or sole proprietorship: By a general partner or the proprietor, respectively.

(c) For a Limited Liability Corporation (LLC): By any controlling member.

(d) For a municipality, State, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this paragraph, a principal executive officer of a federal agency includes the chief executive officer of the agency or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(10) All reports required by this chapter and other information required by the Director or his designee shall be signed by a person described above or

by a duly authorized representative of that person, and where required by this chapter, a QCP. A person is a duly authorized representative only if:

(a) The authorization is made in writing and signed by a responsible corporate official; and

(b) The authorization specifies either an individual or a person having responsibility for the overall operation of the regulated facility or activity, such as the position of facility manager, superintendent, or position of equivalent responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(c) The written authorization is submitted to and approved by the Director or his designee.

(11) If a signatory authorization under this chapter is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new signatory authorization satisfying the above requirements must be submitted to the Director, prior to or with any reports, information, or applications to be signed by an authorized individual.

(12) Any person signing a document required by this chapter shall make the following certification:

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

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended: December 1, 2000.

335-6-7-.10 Registration Requirements for Concentrated Animal Feeding Operations (CAFOs).

(1) After April 1, 1999, no new CAFO shall be constructed or commence operation unless the owner/operator has first submitted a complete and correct Notice of Registration (NOR) to the Department or other governmental agency acceptable to the Department, and the Registration has been approved by the Department.

(2) After September 30, 1999, no CAFO existing after April 1, 1999 shall continue operation unless the owner/operator has first submitted a complete and correct NOR to the Department or other governmental agency acceptable to the Department.

(3) After April 1, 1999, no existing AFO shall expand or modify operations such that the AFO would become a defined CAFO or would be designated as a CAFO, and no existing CAFO shall expand or modify operations, unless the owner/operator has first submitted a complete and correct NOR to the Department or other governmental agency acceptable to the Department, and the Registration has been approved by the Department.

(4) For purposes of this chapter, a CAFO is an AFO which is subject to the NPDES permitting requirements of 40 CFR 122.23 and as generally described by EPA's Guide Manual On NPDES Regulations For Concentrated Animal Feeding Operations (CAFOs) (December 1995), as amended, meeting any of the following criteria:

(a) An AFO with more than the following number(s) and type(s) of animals:

1. 1,000 slaughter or feeder cattle,

2. 700 mature dairy cattle (whether milked or dry cows),

3. 2,500 swine each weighing equal to or greater than 25 kilograms (approximately 55 pounds),

4. 4,000 swine each weighing equal to or greater than 7 kilograms and less than 25 kilograms (approximately between 15 pounds and 55 pounds),

5. 10,000 swine each weighing less than 7 kilograms (approximately 15 pounds or less),

6. 6,250 goats,

7. 500 horses,

8. 10,000 sheep or lambs,

9. 55,000 turkeys,

10. 125,000 laying hens, broilers, or other poultry,

11. 6,250 emus,

12. 60,000 rabbits,

13. 5,000 ducks, or

14. 1,000 animal units of any other type/size animal as generally described in 40 CFR 122, Appendix B, or as determined by the Director; or

(b) An AFO with more than the following number(s) and type(s) of animals and where there is a point source or nonpoint source discharge or a point source or nonpoint source discharge has occurred after April 1, 1999, of pollutants into groundwater or surface waters of the State through a man-made ditch, flushing system, other similar man-made devices, or improper handling, storage, transport, distribution, or land application of wastes:

1. 300 slaughter or feeder cattle,

2. 200 mature dairy cattle (whether milked or dry cows),

3. 750 swine each weighing equal to or greater than 25 kilograms (approximately 55 pounds),

4. 1,200 swine each weighing equal to or greater than 7 kilograms and less than 25 kilograms (approximately between 15 pounds and 55 pounds),

5. 3,000 swine each weighing less than 7 kilograms (approximately 15 pounds or less),

6. 1,875 goats,

7. 150 horses,

8. 3,000 sheep or lambs,

9. 16,000 turkeys,

10. 37,500 laying hens, broilers, or other poultry,

11. 1,875 emus,

12. 18,000 rabbits,

13. 1,500 ducks, or

14. 300 animal units of any other type/size animal as generally described in 40 CFR 122, Appendix B, or as determined by the Director.

(c) As determined necessary by the Director, a new or existing AFO, 100 animal units or larger, which is located in a localized watershed or defined stream segment that has been formally designated by the Director and publicly noticed by the Department as a priority, threatened, or water quality limited/impaired watershed due to documented, monitored pollutant concentrations which may be caused by or contributed to by actual or potential point or nonpoint source discharges from an AFO. The AFO shall remain registered until termination of the Registration is approved by the Director or his designee.

(d) An AFO of any size which has been designated by the Director following an on-site inspection by Department representatives as a significant contributor or potential significant contributor of pollution, or has caused or contributed to a violation of an applicable Water Quality Standard. An AFO that fails to fully implement and regularly maintain effective BMPs after notification from the Department shall be considered a significant contributor, shall be considered to have discharged pursuant to rule 335-6-7-.10(4)(e), and shall be subject to enforcement action by the Department.

(e) An active AFO or inactive AFO that has not been properly closed according to the requirements of this chapter of any size which has experienced or experiences a discharge to groundwater or surface water of the State by lack of proper management, abandonment, negligence, by design, or for any other reason not authorized by this chapter at any time after April 1, 1999.

(f) An AFO of any size which has experienced a discharge to groundwater or surface water of the State due to bypass or upset conditions as defined in rule 335-6-7-.32(3) or (4), which has not fully implemented and regularly maintained a WMSP and associated land application plan which meets or exceeds NRCS technical standards and guidelines at any time after April 1, 1999 or did not notify the Department of an unpermitted discharge or the bypass or upset discharge as required by this chapter or the AWPCA at any time after April 1, 1999.

(g) At any time after April 1, 1999, an AFO of any size with a liquid waste management system which has not fully implemented and regularly maintained a WMSP and associated land application plan which meets or exceeds NRCS technical standards and guidelines, as certified by NRCS personnel or a PE at the time of installation or as a result of a post-construction comprehensive inspection/evaluation. Unless determined otherwise by the Director or his designee, a facility is considered to have a liquid waste management system if liquid storage or treatment is used (flushing systems, lagoons, waste storage ponds, sumps, tanks, etc.), or if the waste is defined as liquid, slurry, or semi-solid according to American Society of Agricultural Engineers (ASAE) Standard S292.4, Section 2, Part 2.74, as amended.

(5) Animal units (AUs) for animals not specifically listed in this chapter (e.g. nutria, other ratites, reptiles, brood cows, etc.), shall be determined on an individual basis by the Director or his designee considering the quantity and chemical characteristics of the waste using as a comparison listed animals that are similar.

(6) Unless approved by the Director or his designee in writing, a CAFO that discharges all of its stormwater runoff and wastewater to a sanitary sewer system which discharges to a water of the State in accordance with a valid NPDES or State Indirect Discharge (SID) permit is not eligible to obtain registration coverage under this chapter.

(7) An owner/operator of an AFO that is not defined by rule as a CAFO or is not designated as a CAFO by the Director, that has registered may

request termination of Registration at any time from the Department. Voluntary Registration by an AFO that is not defined by rule as a CAFO or is not designated as a CAFO by the Director is not considered to be a CAFO after approval of the voluntary registration termination provided the AFO owner/operator continues to comply with all applicable requirements of this chapter. The request shall be in a form acceptable to the Department.

Author: Richard Hulcher, Steven Jenkins.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended: December 1, 2000.

335-6-7-.11 Reserved.

335-6-7-.12 Registration Fees for Concentrated Animal Feeding Operations (CAFOs).

(1) The registrant of a CAFO shall pay an initial and annual Registration fee according to chapter 335-1-6 - Fee Schedule D, Water Permits/Registration, CAFO. The total registration fee amount shall be determined annually by the registrant according to the Fee Schedule and approved by the Director or his designee. Payment of the appropriate fee shall be due with submittal of the initial and each subsequent annual NOR.

(2) The registrant of a CAFO shall pay a modification fee according to chapter 335-1-6 - Fee Schedule D, Water Permits/Registration, CAFO. The registration modification fee amount shall be determined by the registrant from the Fee Schedule D and be approved by the Director or his designee. Payment of the appropriate modification fee shall be due with submittal of the request to modify the existing NOR filed with the Department. A modification fee is required if there is:

(a) A change of ownership or name of registrant;

(b) A change in operational control of the facility; or

(c) Any increase in the number of animal units at any time which is sufficient to place the facility in a higher fee category.

(d) Significant change in waste treatment, handling or disposal.

(3) A "Greenfield" fee required by chapter 335-1-6 shall not be required provided the registrant submits the continuing education certification(s) required in rule 335-6-7-.18(1) and (2) with the initial Registration and/or each annual Registration.

(4) The registrant shall comply with all applicable fee requirements for the operation of this facility, as specified in chapter 335-1-6. Failure to

promptly remit all required fees, certifications, or other information required by the Director shall be grounds for the Director to initiate enforcement action and/or terminate Registration under this chapter.

(5) Any AFO that is not defined by rule as a CAFO or is not designated as a CAFO by the Director that wishes to be registered shall pay the applicable fee according to chapter 335-1-6.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended:

335-6-7-.13 Schedule of Registration and Certification/Evaluation of Approved Waste Management System Plan (WMSP).

(1) Owners/operators of CAFOs who intend to or are required to obtain coverage under this chapter shall submit a Notice of Registration (NOR) to the Director or his designee in accordance with the following:

(a) Facilities existing after April 1, 1999 shall submit the complete and correct NOR no later than September 30, 1999, or as otherwise authorized by the Director or his designee in writing on a case-by-case basis.

(b) New or proposed facilities shall submit the NOR at least 30 days prior to the proposed beginning of construction of the facility and at least 45 days prior to the proposed commencement of feeding operations at the facility and shall comply with the provisions of rule 335-6-7-.09.

(c) AFOs not previously subject to registration requirements of this chapter, but which intend to expand operations to more than the number and type of animals to be considered a CAFO, must submit a new NOR or, if currently registered a modified NOR, to the Director or his designee at least 30 days prior to the proposed beginning of construction of the expanded facilities and at least 45 days prior to the proposed commencement of feeding operations at the expanded facilities and shall comply with the provisions of rule 335-6-7-.09.

(d) CAFOs subject to this chapter may submit a NOR at any time after the dates specified above. However, the Director or his designee may take appropriate enforcement action for failure to submit a NOR as required by the Department in accordance with this chapter.

(2) Owners/operators of AFOs defined or designated as CAFOs by the requirements of this chapter who intend to, are required to, or have obtained NPDES permit coverage under this chapter shall submit to the Department certification/evaluation by a QCP that the facility has been designed, constructed, or has been updated, and can reasonably be operated in

accordance with an approved WMSP that meets or exceeds NRCS technical standards and guidelines and as required by this chapter and the Director or his designee. The type, format, and content of the certification/evaluation required shall be determined by the Director or his designee considering facility construction, site conditions, operational history and any potential impacts to groundwater and surface waters of the state. Unless required otherwise in writing by the Director or his designee, the certification/evaluation shall be submitted by the earliest date specified according to the following schedule:

(a) After April 1, 1999, new or proposed CAFO facilities shall submit the required certification at least 15 days prior to the commencement of feeding operations at the new CAFO facility.

(b) Facilities existing after April 1, 1999 with a WMSP previously prepared by a QCP or an NRCS representative that met or exceeded NRCS technical standards and guidelines at the time it was implemented shall submit the required certification/evaluation no later than November 1, 1999.

(c) AFOs not previously subject to registration under this chapter, but which intend to expand or modify operations to more than the number and type of animals to be considered a CAFO after April 1, 1999, must submit the required certification/evaluation at least 15 days prior to commencement of feeding operations at the expanded facilities.

(d) Existing facilities identified as a priority facility by the Director due to size, location, potential impacts to water quality, or other factors shall submit the required certification/evaluation no later than 30 days after receiving written notification from the Director or his designee, unless an extension is granted in writing by the Director or his designee.

(e) Facilities existing after April 1, 1999 with point or nonpoint source discharges which may have caused since April 1, 1999, are causing, or have the potential to cause, as determined by the Director or his designee, a violation of a State Water Quality Standard pursuant to chapter 335-6-10, shall submit the required certification/evaluation no later than November 1, 1999.

(f) Facilities existing as of April 1, 1999 where any point source discharge(s) have occurred after April 1, 1999 shall submit the required certification/evaluation no later than November 1, 1999.

(g) Facilities existing as of April 1, 1999 where any nonpoint source discharge(s) have occurred after April 1, 1999 shall submit the required certification/evaluation no later than November 1, 2000.

(h) Facilities existing after April 1, 1999 located in watersheds of water bodies listed on the Department's CWA Section 303(d) list of priority water quality limited streams as a result of agricultural impacts or pollutants directly related to animal agriculture shall submit the required certification/evaluation no later than November 1, 2001.

(i) Facilities existing after April 1, 1999 located in the watersheds of water bodies listed on the Department's CWA Section 305(b) list as being water quality impacted as a result of agricultural impacts or pollutants directly related to animal agriculture shall submit the required certification/evaluation no later than November 1, 2002.

(j) All remaining facilities existing after April 1, 1999 that are not required to submit certification/evaluation pursuant to (a) through (i) of this rule and that have not previously submitted the required certification/evaluation shall submit the required certification/evaluation no later than November 1, 2003.

(k) Existing facilities located in a watershed designated by the Director pursuant to rule 335-6-7-.10(4)(c) as a priority watershed shall submit the required certification/evaluation within ninety (90) days after public notice by the Department, unless an alternate schedule is approved in writing by the Director or his designee.

(l) Facilities existing after April 1, 1999, with an earthen storage or treatment facility for liquid waste which was constructed without documented technical assistance from a QCP according to NRCS technical standards and guidelines shall submit the required certification/evaluation to continue operation or implement an approved closure plan no later than November 1, 2000.

(3) The Director may modify (shorten or extend) any deadline required in this rule in accordance with the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto, for cause, to include but not be limited to, availability of adequate technical resources and funding. Failure to seek or obtain, or delay in seeking or obtaining, technical assistance or the services of a QCP in a timely manner for preparation, implementation, and certification/evaluation of a WMSP, may be considered by the Director or his designee when determining if deadline modification is warranted.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended:

335-6-7-.14 Reporting and Record Keeping.

(1) AFO owners/operators shall cooperate fully with inspections, monitoring and testing conducted by the Department as well as requests for document submission, submission of engineering or technical data, and testing and monitoring performed by the owner/operator at the request of the Department.

(2) AFO owners/operators must keep all records required either:

(a) At the facility and be immediately available for inspection by the Department; or

(b) At a readily available alternative site and be provided for inspection to the Director or his designee upon request.

(3) The registrant shall designate in writing as part of any Registration individual(s) responsible for inspections and record keeping.

(4) Incidents such as spills, or other discharges, along with information describing the pollution potential and quantity of the discharge, shall be documented and reported to the Director or his designee as required by this chapter by all AFO owners/operators.

(5) CAFO facility inspections and maintenance activities shall be documented and reported as required by this chapter and records must be kept on site or at a Department approved location for a minimum of three years and until after the next inspection and certification/evaluation of the facility and applicable records by a PE as required by rule 335-6-7-.28.

(6) All reports required by this chapter shall be submitted in a timely manner as required by this chapter or as required by the Director or his designee. Failure to submit required reports may subject the AFO owner/operator to enforcement actions in accordance with the provisions of the AWPCA, as amended, and rules promulgated thereunder.

(7) All discharge information and other data required to be maintained by the AFO owner/operator shall be made available to the Director or his designee upon request. Signed copies of monitoring reports shall be submitted to the Director or his designee if requested.

(8) AFO owners/operators shall retain copies of all records required by this chapter for a period of at least three years from the date reported. This period may be extended by the Director at any time.

(9) Except for data determined to be confidential under 40 CFR Part 2, under Code of Alabama 1975, § 22-22-9(c), as amended, and under rule 335-6-7-.16 all reports prepared and submitted in accordance with the terms of this chapter shall be available for public inspection at the Department's Montgomery offices, or through appropriate alternative procedures implemented by the Department and the name and address of any applicant or registrant, name and location of the facility, NPDES applications or NORs, permits, registration, and effluent data shall not be considered confidential.

(10) The registrant shall document any planned physical alterations or additions to the registered facility. The AFO owner/operator must ensure that any change or facility expansion is in accordance with the provisions of this chapter, and that an applicable Registration issuance or Registration modification is obtained and approved by the Director or his designee and a revised WMSP that meets or exceeds NRCS technical standards and guidelines

is obtained and accepted by the Director or his designee, prior to any change or modification. Notwithstanding Departmental acceptance of the WMSP, additional/revised effective management practices shall be implemented as necessary by the AFO owner/operator that are sufficient to protect water quality and minimize the generation of odors to the maximum extent practicable.

(11) The registrant shall furnish to the Director or his designee any information which the Director may request to determine whether cause exists for modifying, revoking and requiring coverage under an Individual NPDES permit, or terminating the facility's Registration under this chapter, or to determine compliance with this chapter. The registrant shall also furnish to the Director or his designee, upon request, copies of records required to be kept by this chapter.

(12) When the registrant becomes aware that it failed to submit any relevant facts or submitted incorrect information in the NOR or in any other report required by this chapter, it shall promptly submit such facts or information to the Director.

(13) Except as required by rule 335-6-7-.03, while an AFO that is not a defined or designated CAFO is not required to maintain or submit specific records unless required in writing by the Director, it is the responsibility of owners/operators of an AFO that may not be considered a CAFO requiring registration under this chapter to maintain sufficient records that can document their status as a facility that has implemented best management practices that meet or exceed NRCS technical standards and guidelines, that has not discharged, or that is not otherwise required to register. Any records shall be made available to the Director or his designee upon request. Failure to record and keep adequate records documenting the operation of the AFO shall not be a defense to the Department determining that the operation is a CAFO requiring registration under rule 335-6-7-.10.

Author: Richard Hulcher, Steven Jenkins.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14, §§ 22-28-1 to 22-28-23 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended: December 1, 2000.

335-6-7-.15 Reserved.

335-6-7-.16 Access to and Availability of Records, Reports or Information.

(1) Any owner/operator of an AFO shall, upon request of a duly authorized representative of the Department, permit the representative, at all reasonable times, access to all records concerning the acquisition, storage, handling, and transport of regulated chemicals, compounds, and pollutants and permit the representative to copy said records.

(2) Except as provided by rule 335-6-6-.07, any records, reports, or information obtained under this chapter may be made available to the public by the Department. The owner/operator shall prove to the satisfaction of the Director or his designee that records, reports or information, or a particular part thereof to which the Department has access under this chapter, if made public, would divulge production or sales figures or methods, processes or production unique to such owner/operator or would otherwise tend to adversely affect the competitive position of such owner/operator by revealing trade secrets. The Department may consider such record, report, or information or particular portion thereof, confidential. Nothing in this paragraph shall be construed to prevent disclosures of such report, record, or information to federal or State representatives as necessary for purposes of administration of any federal or State laws or when relevant to proceedings under this chapter. Information concerning the presence or concentration of substances in waste, wastewater, soil, or State waters shall not be considered confidential by the Department.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended:

335-6-7-.17 Entry and Inspection of Facilities.

(1) Any owner/operator of an AFO shall upon request of the Director or his designee upon the presentation of credentials and other documents as may be required by law, permit Department representatives to enter, at all reasonable times, property and buildings at the facility and allow the representative to inspect facilities and equipment, review records, to conduct monitoring and sampling, and to:

(a) Excluding the personal domicile of the owner/operator, enter upon the premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this chapter. The owner/operator shall provide the records upon request at an alternate location acceptable to the Department;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this chapter;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this chapter; and

(d) Sample, inspect, or monitor, at reasonable times, for the purposes of assuring compliance with this chapter or as otherwise authorized by the CWA and/or AWPCA, any substances or parameters at any location.

(2) Where bio-security may be a concern for any specific structure or breeding area, the registrant, with consent by the Department, shall provide alternate access acceptable to the Department that does not require bio-security to meet with facility personnel, and to inspect/evaluate waste management systems, land application sites, record storage areas, and enter other areas deemed necessary by the Director or his designee.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended:

335-6-7-.18 Continuing Educational and Training Requirements.

(1) Except as provided in rule 335-6-7-.18(3), commencing effective April 1, 1999, all managing owners/operators and onsite supervisors of proposed or existing registered facilities and proposed or existing CAFO operations must obtain certification of satisfactory completion of formal education or training in the areas of general BMPs, comprehensive waste/wastewater management, land application, nutrient budgeting, dead animal disposal, and other appropriate areas. Proof of satisfactory completion of up to sixteen (16) hours of approved group or individualized initial training and education must be submitted with the NOR or no later than one (1) year after the effective date of the initial Registration unless extended by the Director or his designee for cause. The registrant will be informed of, and the Department shall approve initial training requirements including, but not limited to, appropriate curricula, course content, course length, any participant testing, evaluation of the effectiveness/applicability of the training, and total hours of training required.

(2) Except as provided in rule 335-6-7-.18(3), commencing effective April 1, 1999, all managing owners/operators and onsite supervisors of all registered facilities and unregistered existing CAFO operations, which have been in operation for no less than eighteen (18) months, must obtain certification of satisfactory completion of annual refresher training in the areas of general BMPs, comprehensive waste/wastewater management, land application, nutrient budgeting, dead animal disposal, and other appropriate areas as described in and in addition to the educational requirements required in rule 335-6-7-.18(1). Proof of satisfactory completion of up to eight (8) hours of annual approved group or individualized refresher training and education must be submitted with each annual re-registration NOR unless extended by the Director or his designee for cause. The registrant will be informed of, and the Department shall approve refresher-training requirements including, but not limited to, appropriate curricula, course content, course length, any participant testing, evaluation of the effectiveness/applicability of the training, and total hours of training required.

(3) An owner/operator has the option to submit the additive "Greenfield" fee with the initial registration and each annual registration as provided in chapter 335-1-6 – Fee Schedule D, Water Permits/Registration, CAFO so that the Department can perform a comprehensive facility evaluation prior to approval of the registration request, in lieu of submitting the continuing education certification(s) required in rule 335-6-7-.18(1) and (2).

(4) Failure to obtain and submit certification of the prerequisite and annual training and education, or pay the additive Greenfield fee as provided in rule 335-6-7-.18(3) shall be deemed a violation of this chapter.

(5) Where employees are responsible for activities which relate to rule compliance, those employees must be regularly trained or informed of any information pertinent to the proper operation and maintenance of the facility and waste/wastewater disposal. Training shall address such topics as proper land application of wastes, nutrient budgeting, proper operation and maintenance of the facility, good housekeeping and chemical/fuel management practices, proper dead or diseased animal disposal, proper waste product disposal, necessary record keeping requirements, emergency response in case of power failure, system failure, or unpermitted discharge, spill response and clean-up, and other topics required by the Director or his designee. The registrant is responsible for determining the appropriate training frequency for different levels of personnel expertise and the pollution prevention plan shall identify periodic dates for such training.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended: December 1, 2000.

335-6-7-.19 Reserved.

335-6-7-.20 Plans, Specifications, and Technical Requirements.

(1) No AFO animal waste management system shall be constructed, modified, repaired, or placed into operation after April 1, 1999 unless it is designed, constructed, operated, and maintained in accordance with final design plans and specifications which meet or exceed NRCS technical standards and guidelines as accepted by the Department, and the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto.

(2) No CAFO animal waste management system shall be constructed, modified, or placed into operation after April 1, 1999 unless certified by a QCP that it is designed, constructed, and can be operated and maintained in accordance with a WMSP which meets or exceeds NRCS technical standards and guidelines and as accepted by the Department, and the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto.

(3) Unless approved otherwise in writing by the Director pursuant to rule 335-6-7-.22, new well siting and construction, and new or existing well operation and maintenance, all waste management activities including but not limited to structural designs, system plans, waste storage, handling, and transport, nutrient management, land application, dead animal disposal including incinerator and freezer siting and operation, waste product disposal, construction erosion and sediment control BMPs, spill prevention control and countermeasures (SPCC) BMPs, other necessary BMPs required for good housekeeping, and implementation of waste management practices for AFOs and CAFOs shall be in accordance with this chapter, the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, and shall meet or exceed the technical standards and guidelines contained in the NRCS Field Office Technical Guide and other approved technical publications or documents as amended, for the year that the practice was implemented, to include:

(a) Conservation Practice Standards - Field Office Technical Guide, Section IV, Standards and Specifications, February, 1990, as amended.

(b) Agricultural Waste Management Field Handbook - National Engineering Handbook Series (NEHS), Part 651, April 1992, as amended.

(c) Alternative or innovative technology implemented in accordance with rule 335-6-7-.22.

(d) General best management and housekeeping practices implemented in accordance with rule 335-6-7-.21.

(4) If full implementation and regular maintenance of management practices that meet or exceed NRCS technical standards or guidelines are not or will not be protective of water quality and/or reduce the generation of odors to the maximum extent practicable, the owner/operator of an AFO shall implement, within timeframes required by the Director or his designee, additional effective structural and nonstructural management practices necessary to adequately protect water quality and/or reduce the generation of odors to the maximum extent practicable.

(5) Except as provided in rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), AFO confinement buildings with a liquid waste/wastewater handling system, liquid waste storage settling basins, lagoons, holding ponds, sumps, or pits, and other animal liquid waste containment structures for new operations that are initially constructed or commence initial operation after April 1, 1999 shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 1,320 feet of the nearest existing occupied dwelling, church, school, hospital, or park.

(a) Except as provided in rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), AFO dry waste confinement buildings and dry

waste storage/containment and treatment structures for new operations that are initially constructed or commence initial operation after April 1, 1999 shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 330 feet of the nearest existing occupied dwelling, church, school, hospital, or park.

(b) Except as provided in rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), any new or additional confinement buildings with a liquid waste/wastewater handling system, liquid waste storage settling basins, lagoons, holding ponds, sumps, or pits, and other animal liquid waste containment structures constructed after April 1, 1999 at existing AFO facilities shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 660 feet of the nearest existing occupied dwelling, church, school, hospital, or park.

(c) Except as provided in rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), any new or additional confinement buildings with a dry waste handling system or dry waste storage/containment and treatment structures constructed after April 1, 1999 at existing AFO facilities shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 165 feet of the nearest existing occupied dwelling, church, school, hospital, or park.

(6) Except as provided in rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), AFO confinement buildings with a liquid waste/wastewater handling system, liquid waste storage settling basins, lagoons, holding ponds, sumps, or pits, and other animal liquid waste containment structures for new operations that are initially constructed or commence initial operation after April 1, 1999 shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 500 feet of any property line.

(a) Except as provided in rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), AFO dry waste confinement buildings and dry waste storage/containment and treatment structures for new operations that are initially constructed or commence initial operation after April 1, 1999 shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 165 feet of any property line.

(b) Except as provided in rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), any new or additional confinement buildings with a liquid waste/wastewater handling system, liquid waste storage settling basins, lagoons, holding ponds, sumps, or pits, and other animal liquid waste containment structures constructed after April 1, 1999 at existing AFO facilities shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 500 feet of any property line.

(c) Except as provided in rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), any new or additional confinement buildings with a dry waste handling system or dry waste storage/containment and treatment structures constructed after April 1, 1999 at existing AFO facilities shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 165 feet of any property line.

(7) Except as provided in rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), any new or additional confinement buildings, waste/wastewater handling system, waste/wastewater transport structures, waste/wastewater treatment structures, settling basins, lagoons, holding ponds, sumps, or pits, and other agricultural waste containment/treatment structures constructed after April 1, 1999 shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this chapter, and the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 100 feet of any streams including, but not limited to, intermittent streams, ponds, lakes, springs, sinkholes, or PWS, ONRW, or OAW classified/designated waters, wells, and water supplies. Buffer distances for streams, ponds and lakes shall be measured from the ordinary high water mark. Buffer distances in excess of 100 feet may be required according to site specific conditions or according to NRCS guidelines. The Department may require additional buffer distances deemed necessary to protect waters of the State on an individual facility basis.

(8) Except as provided in rule 335-6-7-.20(9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), or other applicable rules, and notwithstanding the provisions of paragraphs (5), (5)(b), (6), (6)(b) of this rule, any new or additional confinement buildings with a liquid waste/wastewater handling system, or any liquid waste storage settling basins, lagoons, holding ponds, sumps, or pits, and other animal liquid waste containment structures where construction commenced on or after December 1, 2000 at new or existing AFO/CAFO facilities shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed closer than 500 feet to an existing offsite potable water well, 200 feet to a perennial non-headwater watercourse, or PWS, ONRW, or OAW classified/designated waters, and in no case shall be constructed closer than the distances from property lines as specified below.

Animal Units (AU)	Minimum Buffer Distance From Property Line
Less than 1,000	500 feet
1,000 – 2,499	1,320 feet
2,500 – 3,999	2,640 feet
4,000 and greater	5,280 feet

(9) Except as provided in rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), or other applicable rules, any new or additional wells installed after December 1, 2000 as defined in 335-6-7-.02 shall be located, operated, and maintained to meet or exceed applicable requirements of ADEM Administrative Code chapter 335-9, NRCS technical standards and guidelines, the requirements of this chapter, and the requirements of the AWPCA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 100 feet of any confinement buildings, waste/wastewater handling system, waste/wastewater transport structures, waste/wastewater treatment structures, settling basins, lagoons, holding ponds, sumps, or pits, and other agricultural waste containment/treatment structures. Buffer distances in excess of 100 feet may be required according to site specific conditions or according to NRCS guidelines. The Department may require additional buffer distances deemed necessary to protect groundwater resources on an individual facility basis.

(10) AFO confinement buildings, dry waste storage/containment and treatment structures, liquid waste storage settling basins, lagoons, holding ponds, sumps, or pits, and other animal liquid waste containment structures shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this chapter, and the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto.

(11) AFO operations existing as of April 1, 1999 and proposing to construct/expand an animal waste containment structure in order to prevent waste/wastewater discharge or run-off to waters of the State may be considered exempt from location buffer distances specified in this chapter by the Director if the Director or his designee determines in writing that the additional/expanded structures are necessary to assure the protection of water quality and that there is not a feasible location alternative.

(12) Location buffer distances do not apply to confinement buildings, settling basins, holding ponds, sumps or other animal waste containment structures existing prior to April 1, 1999 nor do they apply to structures existing as of April 1, 1999 when a registration modification is required due to a change in ownership.

(13) Location buffer distances from an existing occupied dwelling, church, school, hospital, park, or property line shall not apply if the existing occupied dwelling, church, school, hospital, or park is owned by owners/operators of the animal waste management system, if the adjoining property owner consents in writing through a dated, notarized document, if the adjoining property contains a deed restriction notifying the owner of the possibility of nearby AFOs, or if the area is specifically zoned for the construction and operation of CAFOs by the controlling elected governmental authority.

(14) Location buffer distances do not apply to AFO waste/wastewater storage/treatment structures in existence, or where full site preparation is complete and utility infrastructure is installed and is documented in writing, as of April 1, 1999, or to AFO waste/wastewater storage/treatment structures constructed in accordance with the requirements of this chapter after April 1, 1999 that are completed, replaced, repaired, modernized, reconstructed, and/or refurbished on the pre-existing site/location according to NRCS technical standards and guidelines to pre-existing size and operational status provided the resultant waste/wastewater storage/treatment structure is no closer to the nearest existing occupied dwelling, church, school, hospital, park, intermittent streams, ponds, lakes, springs, or sinkholes, or PWS, ONRW, or OAW classified/designated waters, wells, and water supplies, or property line than it was prior to the work on the waste/wastewater storage/treatment structure commencing.

(15) Location buffer distances do not apply to AFO confinement buildings in existence, or where full site preparation is complete and utility infrastructure is installed and is documented in writing, as of April 1, 1999, or to AFO confinement buildings constructed in accordance with the requirements of this chapter after April 1, 1999 that are completed, replaced, repaired, modernized, reconstructed, and/or refurbished on the pre-existing site/location to current industry design standards according to NRCS technical standards and guidelines provided the resulting confinement building is no closer to the nearest existing occupied dwelling, church, school, hospital, park, intermittent streams, ponds, lakes, springs, or sinkholes, or PWS, ONRW, or OAW classified/designated waters, wells, and water supplies, or property line than it was prior to the work on the confinement building commencing.

(16) Location buffer distances do not apply to confinement buildings, settling basins, holding ponds, sumps or other animal waste containment structures under significant, active construction in accordance with the requirements of this chapter as of April 1, 1999 provided all earthwork and construction/building is complete as of August 1, 1999 or an alternate completion date approved by the Director or his designee in writing, and the facility is ready to be operated according to NRCS technical standards and guidelines and the requirements of this chapter.

(17) Unless required by the Director or his designee in writing as conditions warrant on an individual facility, programmatic, or categorical basis to ensure the protection of water quality and minimization of odors to the

maximum extent practicable, the requirement for AFOs to maintain buffer distances contained in this chapter shall not apply to right-of-ways (ROWs) or easements for energy transmission or transportation (e.g. power lines, gas or water pipelines, roads, etc.). The Director or his designee may exempt in writing as conditions warrant on an individual facility, programmatic, or categorical basis the requirement to maintain buffer distances contained in this chapter for personal pets, veterinary offices, animal hospitals, municipal zoos, etc. small concentrations or collections of animals, or confined animals, and animals subject to specific zoning or siting restrictions by a municipality or other governmental body.

(18) A subsurface investigation for earthen holding pond, pit, sump, treatment lagoon, or other earthen storage/containment structure suitability and liner requirements shall be a component of the system design and shall be performed by the owner/operator under the supervision of and certified by a QCP, and may consist of auger holes, dozer pits, or backhoe pits at a depth to the extent necessary to determine adequacy of the specific site for waste storage. The subsurface investigation must extend at least two feet below the planned bottom grade. Subsurface investigation in soils underlain by the Demopolis or Mooreville Chalk formations of the Selma Chalk group in the Blackland Prairie major land resource area may terminate at a depth of 1 foot below the surface of the chalk [Reference: (1) Geologic Map of Alabama, 1988, Geologic Survey of Alabama, Michael W. Szabo and Charles W. Copeland, Jr., and (2) Land Resource Regions and Major Land Resource Areas of the United States, USDA-NRCS, SCS, Agricultural Handbook 296, MLRA 135, Alabama, Mississippi, and Arkansas Blackland Prairie]. A detailed, comprehensive geologic investigation for suitability of the site that meets or exceeds NRCS technical standards and guidelines must be performed for proposed sites in karst topography. In those situations where testing performed during the initial on-site subsurface investigation is not conclusive, the owner/operator shall conduct additional subsurface investigation as necessary and provide documentation certified by a QCP to ensure conformance with NRCS technical standards and guidelines or other additional standards required by the Director or his designee to ensure the protection of water quality. Unless relevant information is available to the contrary, compliance with this provision during design and construction of the facility will normally demonstrate that no hydrologic connection exists at the particular site.

(19) All WMSPs shall be developed to meet or exceed NRCS technical standards and guidelines and address operation of the lagoon, waste storage ponds/sumps, and other waste storage facilities, and the location, amount, and timing of land application of wastes with respect to the nutrient uptake cycle of the vegetation on the land application site(s), minimization of odors to the maximum extent practicable, and minimization of potential disease vectors and nuisance pests.

(20) Unless the AFO owner /operator contracts in writing with a valid CAWV for all waste generated, or the owner/operator properly sells or gives away in good faith the waste to another person, the comprehensive waste management system BMPs for the entire farm, facility, or operation must

include written agreements for use of all land application sites with documentation that adequate land application area is readily available. If the waste is sold or given away in good faith, the owner/operator or CAWV shall retain detailed, complete records of the transaction and provide the receiver of the waste information explaining the requirements of this chapter. AFO waste management system BMPs must meet or exceed NRCS technical standards and guidelines. A CAFO WMSP must be prepared by a QCP and must meet or exceed NRCS technical standards and guidelines. The Department may require proof of land ownership, contractual agreements, or written permission for use of land as a land application site.

(21) All AFOs shall implement effective management procedures to the maximum extent practicable to keep dry wastes under roof or effective cover and to minimize manure from the facility coming into contact with stormwater or other water or wastewater source (other than de minimus inputs as determined by the Department) at any time during production, handling/spillage, storage, treatment, transport, or other activity prior to proper land application which meets or exceeds NRCS technical standards and guidelines.

(22) Unless an alternate date is approved in writing by the Director or his designee, after April 1, 1999, all AFO lagoons and other waste storage/treatment facilities, separately or collectively/cumulatively, shall be designed, constructed, operated, and maintained to ensure sufficient storage volume to contain all dry/wet waste and wastewater, to contain contaminated stormwater resulting from runoff generated by a 25-year, 24-hour storm event, to contain uncontaminated stormwater (that cannot be separated/segregated from contaminated runoff) resulting from runoff generated by a 25-year, 24-hour storm event, and to maintain an additional minimum safety margin of at least 12 inches freeboard to prevent discharges to groundwater or surface water. Operating storage volume shall be sufficient to contain/retain all dry/wet waste and wastewater and contaminated stormwater during extended periods when waste/wastewater cannot be properly land applied during the growing season at agronomic rates due to adverse climatological or seasonal conditions (generally late fall, winter, and early spring months).

(23) All AFOs shall implement effective management procedures at all times to properly collect, manage, store, treat, transport, and dispose domestic sewage and domestic wastewater onsite or offsite in a manner that meets or exceeds NRCS technical standards and guidelines and the requirements of the Department and the ADPH.

(24) Unless extended in writing by the Director or his designee, no later than January 1, 2003, all AFOs and CAFOs in the North Alabama Area as designated in NRCS technical standards and guidelines shall implement provisions to provide for a minimum of 180 days waste/wastewater storage/retention/holding capacity and/or Department accepted management procedures that meet or exceed NRCS technical standards and guidelines to ensure effective water quality protection during periods when land application or other approved disposal alternatives are not available. After December 1,

2000, new or expanding AFOs and CAFOs in the North Alabama Area shall implement this 180 day permanent/temporary storage requirement prior to commencing initial operation and/or expanded operations.

(a) Unless extended in writing by the Director or his designee, no later than January 1, 2003, all AFOs and CAFOs in the South Alabama Area as designated in NRCS technical standards and guidelines, shall implement provisions to provide for a minimum of 120 days waste/wastewater storage/retention/holding capacity and/or Department accepted management procedures that meet or exceed NRCS technical standards and guidelines to ensure effective water quality protection during periods when land application or other approved disposal alternatives are not available. After December 1, 2000, new or expanding AFOs and CAFOs in the South Alabama Area shall implement this 120 day permanent/temporary storage requirement prior to commencing initial operation and/or expanded operations.

(25) After December 1, 2000, construction of new or expanded manure storage pits and/or new waste/wastewater storage ponds at new, expanding, or existing AFOs or CAFOs are prohibited unless the owner/operator submits in writing an affirmative demonstration acceptable to the Director or his designee that the use of new or expanded manure storage pits and/or new waste storage ponds will be protective of water quality and will provide for the minimization of odors to the maximum extent practicable. Approval of the use of new or expanded manure storage pits and/or new or expanded concentrated waste storage ponds, if granted, shall be made in writing by the Director or his designee.

(26) Eligibility for alternate or modified buffer requirements for new or expanding AFO facilities as provided in rule 335-6-7-.20(11), (12), (13), (14), (15), (16), (17), and (27), or other applicable rules, where construction commenced, is continuing, or resumes after December 1, 2000, must be approved in writing by the Director or his designee. Adequate, dated records documenting eligibility for alternate or modified buffer requirements claimed or applied by an AFO owner/operator for new or expanded facilities where construction was ongoing as of April 1, 1999 or construction commenced after April 1, 1999, and construction was completed prior to December 1, 2000, as provided in rule 335-6-7-.20(11), (12), (13), (14), (15), (16), (17), and (27), or other applicable rules, must be witnessed or notarized and submitted to the Department prior to June 1, 2001.

(27) Unless otherwise approved by the Director or his designee for cause in writing, notwithstanding any other provision of this chapter, existing or previously constructed/operated AFOs or AFOs constructed after April 1, 1999, that are inactive, idle, or closed, that have not registered and do not confine greater than 50 animal units during any 36 month period will not be considered existing facilities, but are/will be considered as expanding facilities for the application of buffer requirements and other requirements of this chapter at the time animal confinement greater than 50 animal units resumes.

Author: Richard Hulcher, Steven Jenkins.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14, §§ 22-28-1 to 22-28-23 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended: December 1, 2000.

335-6-7-.21 General Best Management and Housekeeping Practices.

(1) Owners/operators of AFOs shall fully implement and regularly maintain comprehensive waste management system Best Management Practices (BMPs) and owners/operators of CAFOs shall fully implement and regularly maintain comprehensive BMPs as part of an approved WMSP, that meet or exceed NRCS technical standards and guidelines, the requirements of this chapter, and the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto, and accepted by the Department, that includes but is not limited to:

(a) Structural and non-structural practices which will be implemented and maintained to prevent/minimize the discharge of all sources of pollution (e.g. sediment, trash, garbage, debris, oil and grease, chemicals, materials etc.) to State waters in stormwater runoff during the construction of the facility and during water acquisition or dewatering operations;

(b) Proper disposal of solid, toxic, or hazardous wastes as required by ADEM rules and applicable State and federal requirements and regular cleanup and proper disposal of floating or submerged trash and garbage resulting from activities authorized by this chapter;

(c) Appropriate, effective measures that will be taken to prevent airborne pollutants such as spray paint, herbicides, excessive road dust, etc. from entering any waterbody;

(d) Appropriate, effective measures that will be taken to ensure that materials used as earth fill for construction purposes must be non-toxic, non-acid forming and free of solid waste or other debris unless approved otherwise in writing by the Director or his designee.

(e) Spill Prevention, Control and Countermeasures (SPCC) that will be implemented for all onsite fuel, chemical, or pollutant storage tanks according to rule 335-6-6-.12(r) and other applicable State and federal requirements.

(2) Full implementation and regular maintenance of these BMPs as required by this chapter shall become a part of any registration and all requirements of the BMPs shall become requirements of the registration.

(3) The AFO facility owner/operator is responsible for remediation of offsite deposition or discharge of waste, wastewater, sediment, and other pollutants and shall, if required by the Director or his designee, implement

Department approved measures to remediate any impacts to the maximum extent practicable.

(4) The AFO facility owner/operator shall post or make readily available in a common location easily accessible to all employees the proper procedures, and ensure that all employees are fully aware of the proper procedures, to effectively respond to any emergency situation, spill, or discharge. The posted procedures shall contain detailed response instructions to include, but not be limited to, names of facility officials to be notified, State or federal agencies to be notified, local or downstream public water supply entities to be notified, appropriate phone numbers, addresses, safety precautions, immediate actions to abate the occurrence, public health and bio-security procedures, etc.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended:

335-6-7-.22 Alternative or Innovative Technology.

(1) Waste management and land application system plans submitted in accordance with the requirements of this chapter may include alternative or innovative waste management or land application technology or procedures not contained in NRCS technical standards and guidance documents, provided that:

(a) Use of the alternative technology or procedure is specifically approved for use by the NRCS and other agencies specified by the Director, and is approved by the Director or his designee, and;

(b) Point or nonpoint source pollution to waters of the State will not result from the use of the alternative technology or procedure.

(2) Reserved.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended:

335-6-7-.23 Reserved.

335-6-7-.24 Facility Closure.

(1) Should a CAFO or registrant cease operation, the owner/operator shall submit to the Department a closure/rehabilitation plan for the waste system storage/treatment structure(s) at least thirty (30) days prior to the final day of operation. This plan shall be prepared by a QCP to meet or exceed NRCS technical standards and guidelines, the requirements of this chapter, and the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto, and additional conditions required by the Director or his designee to ensure the protection of water quality, and shall be submitted to the Department in a format acceptable to Director or his designee. The closure plan, at a minimum, shall address maintenance of the facility until proper closure is completed and certified by a QCP and shall include a proposed schedule for closure not to exceed 180 days unless an extension is granted in writing by the Director or his designee.

(2) The owner/operator shall comply with all applicable requirements of this chapter until such time as the facility closure plan is approved by the Department.

(3) The approved closure plan shall be completed according to the approved schedule, unless an alternate date is approved in writing by the Director or his designee.

(4) Once closure is completed, the owner/operator shall submit to the Department certification from a QCP that the facility has in fact been properly closed in accordance with the closure plan and the requirements of this chapter.

(5) Failure to fully implement the closure plan as required by this chapter may subject the owner/operator to enforcement action to include, but not be limited to, termination of existing registrations and denial of future requests for registration.

(6) Where the owner/operator or registrant of the facility is unable to ensure proper closure or environmental remediation of the facility as required by this rule due to owner/operator death, liquidation bankruptcy, natural disaster, animal disease outbreak, etc., each landowner of the property where the facility is located and each person or entity (if different from the owner/operator) who owns or has an ownership interest in the facility, shall submit and implement the Closure Plan required by this rule or shall submit and implement an effective environmental remediation plan prepared by a QCP to meet or exceed NRCS technical standards and guidelines, the requirements of this chapter, and the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto, and additional conditions required by the Director or his designee to ensure the protection of water quality, and shall be submitted to the Department in a format acceptable to Director or his designee.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended:

335-6-7-.25 Discharge Prohibitions and Waste Disposal Requirements.

(1) Discharge Prohibitions.

(a) This chapter has as its stated purpose the prevention of discharges of pollution to waters of the State from AFOs, and contains conditions which may be broader in scope than federal rules. Except as specifically provided otherwise by this chapter, discharge of any wastewater from an AFO to waters of the State at any time is prohibited, except as a direct result of periods of chronic or catastrophic precipitation or weather conditions as determined by the Director or his designee, including precipitation equivalent to or in excess of the 25-year, 24-hour storm event, provided:

1. The Department is properly notified and discharges are properly sampled as required by rule 335-6-7-.31; and

2. Appropriate, effective waste management and land application practices that meet or exceed NRCS technical standards and guidelines have been fully implemented and regularly maintained prior to the causative precipitation event; and

3. The discharge is unavoidable after the AFO owner/operator has taken action to the maximum extent possible to prevent discharge(s); and

4. The owner/operator takes action to the maximum extent possible to terminate discharge(s) as soon as possible; and

5. The owner/operator takes action to the maximum extent possible to mitigate any impacts caused by the discharge(s) as soon as possible.

(b) No flowing surface waters or waters of the State (e.g. rivers, streams, canals, etc.) shall come into direct contact with the animals confined or concentrated in the facility or waste generated by the facility except as provided by NRCS technical standards and guidelines, the requirements of this chapter, the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto.

(c) Uncontaminated drainage or runoff (which does not come into contact with waste products, animals, or other pollutants) should be segregated and excluded from wastewaters flowing to the animal waste control structures (settling basins and holding basins) to the maximum extent practicable unless specific provisions are made in a WMSP for the addition of water to aid land application or reduce odors. Failure to segregate uncontaminated runoff from

other wastewater shall not be a valid defense to a discharge violation under this chapter. Diversion ditches, dikes, berms, terraces or other such structures designed to carry uncontaminated runoff peak flows expected at times when the 10-year, 24-hour rainfall event occurs are commonly constructed for this purpose.

(2) The following technical requirements and management practices are applicable to the operation and maintenance of waste control facilities (settling basins, holding ponds, sumps, lagoons, tanks, etc.). Documentation supporting these requirements shall be included in the WMSP that meets or exceeds NRCS technical standards and guidelines, and as approved by the Department.

(a) Waste control facilities must be constructed, maintained and operated so as to retain all contaminated rainfall from open lots and associated areas, process generated wastewater, and all other wastes from the AFO which will enter or be stored in the retention structure. Calculations must also include allowances for surface retention, infiltration, and other site-specific factors. For purposes of this chapter, land application sites are not included in the definition of waste control facilities.

(b) New, modified, or expanded AFO facilities shall not be built in or over a surface water of the State or in or over specific sites with direct hydrologic connection to groundwater.

(c) Waste/wastewater operating levels in the waste control facilities shall be in accordance with the approved WMSP that meets or exceeds NRCS technical standards and guidelines.

(d) Net freeboard (margin of safety) on any settling basin, lagoon, waste storage pond, sumps, and holding pond(s) shall meet or exceed NRCS technical standards but in no case shall be less than 12 inches.

(e) Solid material (sludges, manure, or other pollutants) accumulated in the waste control facilities shall be removed as necessary according to the approved WMSP to maintain the facilities' design treatment and storage volume. Solids, sludges, manure, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed or land applied in accordance with the requirements of this chapter and in a manner so as to prevent pollutants from being discharged to waters of the State.

(f) All basin, lagoon, and waste storage pond/sump liners shall be designed, constructed, and maintained to prevent leaking and control seepage in a manner that meets or exceeds NRCS technical standards and guidelines. Any leaks or observed seeps shall be documented and reported to the Department as required by this chapter and appropriately corrected. Any discharge from the waste storage, treatment, or transport system, including but not limited to, discharges caused by overflow, observed or evident leaks or seeps, conveyance structure failure, broken pipe, broken pump or other

equipment, etc. shall be reported to the Department in accordance with rule 335-6-7-.31.

(g) Waste/wastewater handling/storage/treatment/retention facilities, confinement buildings, holding pens, etc. may not be located in the 100-year flood plain unless the facility is constructed, maintained, and effectively protected from inundation and damage that may occur during that flood event.

(h) Waste handling, treatment, and management shall not create an environmental or a public health hazard; shall not result in the contamination of drinking water; and shall not cause or contribute to a violation of any Water Quality Standard(s).

(i) The owner/operator shall take all reasonable precautions to prevent the discharge of waters which have been, or could be contaminated by pesticides. All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent any pollutant from such material from entering the waters of the State and according to applicable State and federal law.

(j) Confinement buildings, settling basins, lagoons, waste storage ponds, sumps, and other animal waste control structures shall comply with the set-back requirements of this chapter in order to ensure the protection of water quality.

(k) Collection, storage, handling, transport, and disposal of solid animal waste shall be managed in accordance with recognized practices of good agricultural management and as authorized by the requirements of this chapter.

(l) Appropriate measures necessary, as documented in the facility's SPCC plan, to prevent spills and to clean up spills of any toxic pollutant shall be fully implemented. Where potential spills can occur, materials handling procedures and storage shall be specified. Procedures for immediate cleanup/remediation of spills shall be described in the training plans and the necessary equipment to implement a clean up shall be made available to facility personnel.

(m) AFO facilities located in the drainage area of a municipal separate storm sewer system (MS4) shall comply with applicable requirements in the storm water management program developed under an NPDES permit issued to the MS4. Failure to comply with this requirement is a violation of this chapter and may subject the AFO owner/operator to enforcement action.

(n) AFO facilities discharging through a publicly/privately owned treatment works (POTW) shall comply with applicable requirements in any NPDES permit issued to the POTW receiving the AFO facility discharge. Failure

to comply with this requirement is a violation of this chapter and may subject the AFO owner/operator to enforcement action.

(o) Facilities shall not expand operations, either in size or numbers, change land application procedures or areas, or implement significant change in waste treatment, handling or disposal as determined by the Director or his designee, unless the approved WMSP has been revised to meet or exceed NRCS technical standards and guidelines for the expanded/modified operations, and implementation of the approved, revised WMSP has been certified by the QCP.

(p) Facilities shall not expand operations, either in size or numbers, prior to amending or enlarging the waste handling procedures and structures to accommodate any additional wastes that will be generated by the expanded operations. Facilities shall not expand operations, either in size or numbers, unless adequate land is available and has been secured to properly land apply waste/wastewater for the existing operation and any additional waste/wastewater that will be generated by the expanded operations, or unless waste/wastewater disposal and land application responsibilities are properly contracted in writing to a valid CAWV.

(q) Waste and wastewater storage/treatment facilities, retention facilities, holding pens, or waste/wastewater disposal sites shall be located in accordance with the approved plans and specifications designed and implemented that meet or exceed NRCS technical standards and guidelines, and as accepted by the Department.

(3) All influent to containment structures shall be composed entirely of process wastewaters and contaminated stormwater from the proper operation and maintenance of the AFO and any precipitation from the AFO areas. The disposal of any other materials or pollutants into the containment/treatment structures or waste management system that is not approved by the Director or his designee, is prohibited.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14, §§ 22-28-1 to 22-28-23 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended: December 1, 2000.

335-6-7-.26 Land Application and Manure Management Requirements.

(1) The WMSP, prepared by the QCP with the NOR prior to construction and operation of a new CAFO, prior to construction and operation of additional facilities at an existing CAFO, as required to continue operation of an existing CAFO, or as otherwise required by the Director or his designee, are incorporated into the requirements of this chapter by reference. All provisions of the WMSP accepted by the Department become enforceable conditions of this chapter. Only areas identified in the approved WMSP shall be used for the disposal of animal liquid wastes, manure, litter, and mortality compost, and shall be located to prevent any pollutant from such materials from entering waters of the State to the maximum extent practicable. Unless waste disposal and land application responsibilities are contracted in writing to a valid CAWV, all new sites not identified in the approved WMSP at the time of registration under this chapter must be accepted by the Department prior to its use as a land application site.

(2) Unless alternate practice(s) or buffer distances are approved in writing by the Director or his designee, in order to ensure the protection of water quality, all AFOs shall ensure that:

(a) Land application of waste/wastewater shall be conducted in accordance with NRCS technical standards and guidelines, the approved WMSP, the requirements of this chapter, the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto.

(b) Any application of waste/wastewater shall be conducted in such a manner so as to prevent to the maximum extent practicable discharges of pollutants to groundwater or surface waters of the State.

(c) Application of waste/wastewater shall be conducted in a manner that meets or exceeds NRCS technical standards and guidelines, the approved WMSP, the requirements of this chapter, the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto, and is protective of water quality, but in no case shall be made within 50 feet of surface waters of the State including, but not limited to, perennial or intermittent streams, ponds, lakes, springs, or sinkholes; or within 100 feet of non-potable water wells and water supplies, or within 200 feet of PWS, ONRW, or OAW classified/designated waters, or potable water wells and water supplies. Buffer distances for streams, ponds and lakes shall be measured from the ordinary high water mark. Buffer distances in excess of 50, 100, or 200 feet may be required according to site specific conditions or according to NRCS guidelines. The Department may require additional buffer distances deemed necessary to protect waters of the State on an individual facility basis.

(d) Unless responsibility for wastes are properly assumed by a CAWV, the owner/operator shall ensure that the land owner of any offsite land

application site not owned or controlled by the registrant, abides by the applicable requirements of this chapter.

(e) The owner/operator shall ensure that appropriate waste handling equipment is available and used for effective operation of the application system.

(f) Storage/treatment of manure or wastewater in the 100-year flood plain is prohibited unless storage/treatment structure is constructed, maintained, and effectively protected in a manner that meets or exceeds NRCS technical standards and guidelines to prevent inundation, damage for that flood event, or discharge to waters of the State. The land application of AFO wastes at agronomic rates shall not be considered surface disposal in this case and is not prohibited if applied in a manner that meets or exceeds NRCS technical standards and guidelines, the approved WMSP, the requirements of this chapter, the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto.

(g) Effective management practices to protect water quality and minimize odors to the maximum extent practicable that meet or exceed NRCS technical standards and guidelines must be implemented and maintained for all manure/waste storage areas. Any runoff from manure storage piles must be retained on site and not discharged to groundwater or surface waters of the State.

(h) Temporary or permanent stockpiling or storage of waste /manure near watercourses or waters of the State during land application operations shall be done in a manner that meets or exceeds NRCS technical standards and guidelines and that will prevent discharge to a water of the State and minimize odors to the maximum extent practicable.

(i) Dead and diseased animals shall be managed and disposed of in accordance with NRCS technical standards and guidelines and as approved by the State Veterinarian, ADAI. Dead and diseased animal management and disposal shall be addressed in any WMSP submitted with an NOR, and as approved by the Department.

(j) Waste/wastewater shall be evenly distributed over application sites according to the approved nutrient management plan and according to NRCS technical standards and guidelines.

(k) Land application of waste/wastewater shall not be undertaken or continue when soil is saturated as defined in NRCS technical standards and guidelines, frozen, covered with ice or snow, during precipitation, or when significant precipitation as defined in NRCS technical standards and guidelines is reasonably expected within the next 72 hours. Waste/wastewater shall be applied in accordance with NRCS technical standards and guidelines and the WMSP. Waste/wastewater shall only be applied on days of the year and during times consistent with NRCS technical standards and guidelines and the WMSP. Land application shall be conducted when vegetation on the site is actively

growing or waste/wastewater can be applied to land up to 30 days prior to planting a crop (row or forage). If applied to conventional tillage (farm tillage practices which result in complete surface disturbance and/or soil inversion or minimal surface residues) cropland or to pasture or hay land being renovated or established, the waste/wastewater shall be incorporated immediately after application. Waste/wastewater does not have to be incorporated when applied to conservation tillage (farm tillage practices which manage and maintain plant residues on the soil surface) crop, hay, or pastureland.

(l) Waste/wastewater shall not be applied on slopes with a steep grade as defined by NRCS technical standards and guidelines and in any manner that will allow waste/wastewater to enter drainage conveyance structures, enter waters of the State or to run onto adjacent property without the written consent of the affected adjacent property owner. Effective vegetative filters that meet or exceed NRCS technical standards and guidelines and the requirements of this chapter shall be maintained between application sites and waters of the State.

(m) Surface and subsurface (plowing, injection into topsoil, etc.) application of waste/wastewater shall be done in a manner that meets or exceeds NRCS technical standards and guidelines to ensure the protection of groundwater and surface water quality in nearby streams including, but not limited to, perennial streams, intermittent streams, ponds, lakes, springs, sinkholes, rock outcrops, wells and water supplies, wetlands, or PWS, ONRW, and OAW classified/designated waters.

(n) Application of waste/wastewater near property lines shall be done in a manner to minimize odors to the maximum extent practicable, effectively control waste/wastewater application to prevent overland flow and significant aerial drift, from crossing any property line. Application of waste/wastewater near public roads shall be done in a manner that protects vehicles and the general public, effectively prevents application of waste/wastewater on the road, effectively prevents waste/wastewater from entering roadside drainage conveyance structures, and meets or exceeds NRCS technical standards and guidelines.

(o) After April 1, 1999, application of waste near property lines or neighboring occupied buildings shall be done in a manner that meets or exceeds NRCS technical standards and guidelines, but in no case shall be closer than 100 feet from the nearest existing occupied dwelling, church, school, hospital, or park.

(p) Aerial or spray irrigation, or other type pumped or pressurized surface land application of wastewater shall be done in a manner that meets or exceeds NRCS technical standards and guidelines, but in no case shall be closer than 500 feet from the nearest existing occupied dwelling, church, school, hospital, or park. Non-pumped surface application, or soil subsurface injection/application of wastewater shall be done in a manner that meets or exceeds NRCS technical standards and guidelines, but in no case shall be

closer than 200 feet from the nearest existing occupied dwelling, church, school, hospital, or park.

(q) The restrictions regarding property lines or neighboring buildings shall not apply if the adjoining property is also approved as a land application site under this chapter and if the adjoining property owner consents in writing. Buffer distances in excess of 100, 150, or 500 feet may be required according to site specific conditions or according to NRCS guidelines. The Department may require additional buffer distances deemed necessary to protect waters of the State on an individual facility basis.

(r) Application of waste/wastewater shall not be made in areas where such land application is prohibited by the Department for the protection of public water supplies, groundwater and surface water quality, or Alabama Department of Public Health rules for the protection of human health and welfare.

(s) Land application practices shall be managed so as to minimize to the maximum extent practicable ponding or puddling of wastewater on the site and the occurrence of nuisance conditions such as odors and flies.

(t) Facilities, including, but not limited to, ponds/sumps, lagoons, pipes, ditches, pumps, diversion and irrigation equipment, and other equipment shall be maintained to ensure ability to fully comply with the terms and conditions of this chapter and the pollution prevention plan.

(3) Unless responsibility for wastes is properly assumed by a CAWV in writing, or the owner/operator properly sells or gives away in good faith the waste to another person, AFO owners/operators shall keep complete records of all surface and subsurface application of waste and wastewater. A detailed log shall be kept of all surface and subsurface applied waste/wastewater, which will include the date, weight and/or volume, and destination and acreage over which the load was spread. All records and logs shall be kept at the facility and provided to the Department upon request. These records shall be kept in sufficient detail to determine application rates. If the waste is sold or given away in good faith, the owner/operator shall retain detailed, complete records of the transaction and provide the receiver of the waste information explaining the requirements of this chapter. Unless responsibility for wastes is properly assumed by a CAWV in writing, to the extent allowed by law, the owner/operator shall remain responsible for the proper disposition of the waste.

(4) The rate of land application of waste/wastewater can be based on either a laboratory analysis of a representative waste/wastewater sample or on the average nutrient values according to NRCS technical standards and guidelines for the type waste and animal operation. If NRCS approved average nutrient/component values for the appropriate animal type are used, a representative sample of waste and/or wastewater to be land applied need only be collected as often as is determined necessary by the QCP to ensure consistency with NRCS approved average nutrient/component values. Unless NRCS approved average nutrient/component values are used, a representative

sample of waste and/or wastewater to be land applied shall be collected periodically, but at least annually, and analyzed using an analytical methodology accepted by the Department for the following parameters:

(a) pH.

(b) Total Nitrogen.

(c) Ammonium Nitrogen.

(d) Total Phosphorus.

(e) Total Potassium.

(f) Percent Solids.

(g) Selected metals (e.g. zinc, copper, arsenic, etc.) which could become concentrated in animal wastes and in some cases are added to the animal feed producing the waste being tested.

(h) Any parameter(s) as may be required by the Director or his designee.

(5) The surface soils (0-3 inches in sod crops and depth of plow layer in cultivated crops) of each field where waste/wastewater has been or will be land applied shall be sampled according to accepted standard soil sampling procedures. Soils shall be evaluated and analyzed using analytical methodology appropriate for the soils and nutrients to be tested as outlined in:

(a) Soil Test Methods for the Southern Region of the United States, 1983, Southern Cooperative Service Bulletin, 289, University of Georgia, Athens, Georgia, or

1. Reference Soil and Media Diagnostic Procedures for the Southern Region of the United States, 1992, S.J. Donahue (ed.), Southern Cooperative Service Bulletin 374, Virginia Polytechnic Institute and State University, Blacksburg, Virginia, or

2. Soil Test Fertilizer Recommendations For Alabama Crops, 1994, J.F. Adams, C.C. Mitchell, and H.H. Bryant, Agronomy And Soils Department Series No. 178 (as amended), Auburn University, Alabama, or

3. Other analytical methodology(s) as may be approved by the Director or his designee.

(b) Soil samples shall be collected and analyzed at a frequency that meets NRCS technical standards and guidelines, and as often as is necessary to ensure protection of groundwater and surface water quality. Analyses shall include:

1. Soil pH and lime requirement for the soil and crop to be grown.

2. Extractable phosphorus.

3. Extractable zinc, copper, arsenic, and other selected metals, if it is determined by the QCP that it is probable that one or more metals (which could become concentrated in animal wastes and in some cases are added to the animal feed producing the waste being tested) are present in sufficiently high concentrations in the land applied waste or wastewater, or naturally present in the soil, that further soil accumulation could become toxic to plants or animals or potentially impact groundwater or surface water quality.

4. Any parameter(s) as may be required by the Director or his designee.

(6) The Department may require more frequent testing deemed necessary to protect waters of the State.

(7) Methods and timing of sampling and analysis described in this chapter shall be in a manner that meets or exceeds NRCS technical standards and guidelines.

(8) Annual reports for the previous year shall be submitted on forms approved by the Department with submittal of the NOR for continued coverage and must include the following:

(a) Any waste/wastewater analyses conducted;

(b) Any soils analyses conducted;

(c) Locations, volumes, and nutrient application rates for the previous year;

(d) Methods of land application;

(e) Types and uses of crops or vegetation grown on each land application site and plans/procedures for protective storage and/or removal of harvested crops or vegetation from the field;

(f) Documentation of any point source or nonpoint source discharges resulting from improper land application, spills, bypasses, etc., including actions taken by the owner/operator to correct any deficiencies as required by this chapter.

Author: Richard Hulcher, Steven Jenkins.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14, §§ 22-28-1 to 22-28-23 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended: December 1, 2000.

335-6-7-.27 Reserved.

335-6-7-.28 Pollution Prevention.

(1) Pollution Prevention Plans (PPP) are required to be developed and implemented by CAFO facilities in accordance with the EPA Storm Water rules promulgated on November 19, 1990 (FR 48062) and subsequent EPA rule requirements. The requirements for a PPP shall be considered to be met by a facility that has been properly designed, constructed, and is operated and maintained under terms of this chapter. Copies of all documentation signed by a CAFO owner/operator submitted to the Department by the registrant, including but not limited to WMSPs, construction plans and specifications, Notice of Registration for coverage under this chapter, and any other required documents requested by the Department shall be kept at the facility and will constitute the equivalent of a PPP.

(2) If not included in the documents addressed above, the PPP and any additional information regarding requirements shall be prepared and certified by a QCP and signed by a CAFO owner/operator and retained on site for review by Department representatives and shall include implementation of and compliance with the following:

(a) Written provisions for weekly inspection/evaluation of all waste management system practices, structural controls, and daily inspection/evaluation of each land application site during land application, and when precipitation has occurred within 7 days since the last application. Records shall include the dates for each inspection/evaluation, a log of the findings and action taken as a result of such inspection/evaluation, and shall be signed by the person(s) performing the inspection/evaluation.

(b) Written provisions for annual inspection by a QCP of all waste management system facilities, structural controls, and each land application site where wastes/wastewater have been applied in the previous year. Records shall include dates for each inspection, a log of the findings and action taken as a result of such inspections, and shall be signed by the person(s) performing the inspection/evaluation.

(c) Initial written documentation of inspection by a PE registered in the State of Alabama or a QCP under the direct supervision of the PE, and certification by the PE that all new and existing embankments, dams, dikes, ditches, or berms associated with lagoons or waste storage ponds/sumps or other structural controls identified by the Director or his designee have been constructed in accordance with accepted engineering practices and in such a manner that meets or exceeds NRCS technical standards and guidelines. Records shall include dates for each inspection, a log of the findings and any action taken as a result of such inspections, and shall be signed by the person(s) performing the inspection/evaluation.

(d) Written provisions for inspection by a PE registered in the State of Alabama or a QCP under the direct supervision of the PE, and certification/evaluation by the PE at least once every five years that all embankments, dams, dikes, ditches, or berms associated with lagoons or waste

storage ponds/sumps or other structural controls identified by the Director or his designee have been maintained in accordance with accepted engineering practices and in such a manner that meets or exceeds NRCS technical standards and guidelines. Records shall include dates for each inspection, a log of the findings and action taken as a result of such inspections, and shall be signed by the person(s) performing the inspection/evaluation.

(e) A schedule and procedures for lagoon or waste storage pond/sump dewatering must be retained at the facility. A date log indicating weekly inspections of the wastewater level in any lagoon or waste storage pond/sump shall be maintained, and shall be signed by the person(s) performing the inspection/evaluation. Owners/operators using ponds/sumps or lagoons for storage and treatment of storm water, manure and process generated wastewater, including flush water waste systems, shall maintain in their retention facility sufficient storage volume to contain all dry/wet waste and wastewater, to contain contaminated stormwater runoff from a 25-year, 24-hour event, to contain uncontaminated stormwater (that cannot be separated/segregated from contaminated runoff) from a 25-year, 24-hour storm event, and to maintain an additional 12 inch freeboard safety margin. The owner/operator shall restore storage volume for retention of all waste/wastewater, contaminated runoff from the 25-year, 24-hour event, and non segregated, uncontaminated runoff from the 25-year, 24-hour event as soon as possible after any rainfall event or accumulation of wastes or process generated wastewater which reduces such storage volume, weather permitting. Equipment capable of dewatering the wastewater lagoon or storage pond/sump shall be available whenever needed to restore the required operating storage volume and freeboard.

(f) A permanent marker (measuring device), visible from the top of the embankment, shall be maintained in the retention structure to show the volume/water levels for normal operation of the retention structure according to the approved animal waste system management plan for containing all dry/wet waste and wastewater, for containing contaminated stormwater resulting from runoff generated by a 25-year, 24-hour storm event, for containing uncontaminated stormwater (that cannot be separated/segregated from contaminated runoff) resulting from runoff generated by a 25-year, 24-hour storm event, and show the additional 12 inches of safety margin freeboard within the containment ponds/sumps or lagoon.

(g) Where a liner is installed in a retention structure in accordance with the requirements of this chapter, the owner/operator shall maintain the liner to prevent hydrologic connection to groundwater or surface waters. Provisions must be implemented to prevent damage from grazing animals through the use of fences or other protective devices. No trees shall be allowed to grow on or near the structure within the potential distance of the root zone. Any mechanical or erosive structural damage to the liner should be immediately evaluated by an NRCS representative or PE, or appropriate QCP, but in no case later than 3 days after the damage, or an alternate schedule approved by the Department. All documentation on inspection and maintenance of the liner shall be kept at the facility.

(h) The owner/operator shall keep records and ensure that storage and land application of animal liquid wastes, manure, or mortality compost shall not cause a discharge of pollutants to waters of the State, unless responsibility for ensuring proper management and preventing discharge(s) of any waste is properly assumed in writing by a CAWV. Except as provided by rule 335-6-7-.32(3) and (4), discharge (runoff) of waste from the land application site is prohibited.

(i) When animal liquid wastes, manure, or mortality compost is sold or given away to persons other than a CAWV, the owner/operator must maintain a log of:

1. Date of removal from the facility.

2. Temporary storage areas.

3. Name, address, and phone number of hauler/transporter.

4. Amount, in wet tons, cubic yards, or gallons of waste removed from the facility. (Incidental or de minimus amounts, as determined by the Director or his designee, need not be logged).

(j) Where waste is to be land applied by the hauler/transporter, the owner/operator must provide to the hauler/transporter any available nutrient analyses or the NRCS approved average nutrient value of the waste from that year.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14, §§ 22-28-1 to 22-28-23, and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended: December 1, 2000.

335-6-7-.29 Preventive Maintenance. CAFO owners/operators and registrants shall develop, maintain and implement an appropriate schedule for routine effective preventive maintenance to their control facilities. A maintenance log shall be maintained separately or as part of the approved animal waste system management plan and signed by the owner/operator documenting that preventive maintenance has been accomplished. A preventive maintenance program shall involve inspection and maintenance of all runoff management devices (cleaning separators, catch basins, etc.) as well as inspecting and testing facility equipment and containment structures to uncover conditions that could cause breakdowns or failures which may result in the discharge of pollutants to waters of the State.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14, §§ 22-28-1 to 22-28-23, and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended: December 1, 2000.

335-6-7-.30 Reserved.

335-6-7-.31 Discharge Notification.

(1) The discharge of waste/wastewater from facilities covered by this chapter to a water of the State is not authorized and owners/operators of facilities with such discharges may be subject to enforcement action by the Department. If, for any reason, there is a discharge from an AFO, the owner/operator is required to visually monitor and notify the Director or his designee as soon as possible, but in no case later than 24 hours after becoming aware of any discharge to a water of the State caused by dike or structural failure, leakage, equipment breakdown, overflow caused by chronic or catastrophic rainfall events, human error, improper management, or any other reason. The owner/operator shall document the circumstances/reasons if elapsed time between becoming aware of the discharge and notification to the Department exceeds 4 hours.

(2) Additionally, the registrant shall document the following information and submit a report to the Department within five (5) days of becoming aware of such discharge:

(a) A description and cause of the discharge, including an estimate of the flow, discharge volume, and any analytical data;

(b) The period of discharge, including exact begin and end dates and times, and, if not corrected, the anticipated time the discharge is expected to continue, and steps taken (or to be taken) to reduce, eliminate, and prevent the recurrence of the discharge;

(c) If the discharge was caused by a precipitation event(s), information from the on-site rain gauge or weather station in close proximity to the facility concerning the size of the precipitation event(s);

(d) All AFO facilities shall sample and analyze all discharges to a water of the State from any treatment, storage, or other waste/wastewater retention facilities. Sample analyses shall be retained on site, and submitted to the Department within 5 days unless otherwise directed by the Director or his designee.

(3) Samples shall consist of grab samples taken from the overflow or discharges from the retention structures. A minimum of one sample should be obtained from the initial discharge immediately, but in no case later than 60

minutes after the registrant becoming aware of the discharge or the potential for discharge and sampling shall continue at least once every 6 hours if the discharge continues, unless an alternate schedule is required by the Director or his designee. The sample shall be obtained, stored, transported, and analyzed in accordance with EPA approved methods for water analysis listed in 40 CFR Part 136. Measurements taken for the purpose of monitoring shall be representative of the discharge.

(4) Should discharge occur for any reason, the sample analysis, at a minimum, must include the following:

(a) Fecal Coliform Bacteria (col./100 ml).

(b) 5-Day Biochemical Oxygen Demand (mg/l).

(c) Total Suspended Solids (mg/l).

(d) Ammonia Nitrogen (mg/l).

(e) Total Phosphorus (mg/l).

(f) Any pesticide, hydrocarbon, or other pollutant which the owner/operator has reason to believe might be present in the discharge.

(g) Selected metals (e.g. zinc, copper, arsenic, etc.) which could become concentrated in animal wastes and in some cases are added to the animal feed producing the waste being tested.

(h) Any parameter(s) as may be required by the Director or his designee.

(5) The owner/operator must keep readily available onsite proper equipment and sample containers to obtain, store, handle, and transport any samples resulting from sampling conducted pursuant to the requirements of this chapter or retain a QCP able to properly conduct sampling within timeframes as required by this chapter.

(6) If required sampling is not conducted for any reason, the registrant must document the reasons why discharge samples could not be collected or why the discharger was unable to conduct sampling due to climatic conditions which prohibit the collection of samples, including weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storm, etc.). Once dangerous conditions have passed, the registrant shall collect a sample of the discharge, if ongoing, or from the retention structure, storage pond/sump, or lagoon if the discharge has ceased. The sample shall be analyzed in accordance with the above procedures.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended:

335-6-7-.32 Other Requirements.

(1) AFO owners/operators shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the owner/operator to achieve compliance with the conditions of this chapter. Proper operation and maintenance includes the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of this chapter. Proper operation and maintenance also includes the requirements for maintaining adequate staff to properly operate the facility and for registrants to conduct prerequisite and annual training as described in rule 335-6-7-.18.

(2) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device, record, or method required to be maintained under this chapter shall, upon conviction, be punished by fines and/or imprisonment as provided by State and federal law.

(3) Bypass.

(a) Any bypass is prohibited except as provided in (b) and (c) below:

(b) A bypass is not prohibited if:

1. It does not cause any applicable discharge limitation specified in this chapter to be exceeded or cause or contribute to a violation of an applicable Water Quality Standard; and

2. It is necessary for essential maintenance of a treatment or control facility or system to assure efficient operation of such facility or system; and

3. The AFO owner/operator submits a written request for authorization to bypass to the Direct or his designee or at least 5 days prior to the proposed bypass, the owner/operator is granted such authorization by the Director or his designee, and the owner/operator complies with any conditions imposed by the Director or his designee; and

4. Approval of the request is consistent with the requirements of this chapter; and

5. The AFO owner/operator monitors the discharge resulting from such bypass at a frequency, at least daily, or according to an alternate schedule as required by the Director or his designee, sufficient to prove compliance with applicable discharge limitations and requirements of this chapter; and

6. The facility has been designed, constructed, operated, and regularly maintained in a manner that meets or exceeds NRCS technical standards and guidelines.

(c) A bypass is not prohibited and need not meet the requirements and limitations of this chapter if:

1. It is unavoidable to prevent loss of life, personal injury, or severe property damage; and

2. There are no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime (this condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance); and

3. The AFO owner/operator submits a written request for authorization to bypass to the Direct or his designee or at least ten (10) days prior to the anticipated bypass (if possible) or if not possible, immediately notifies the Department telephonically or by facsimile and notifies the Department in writing, but in no case later than 48 hours after the bypass stating the valid reasons why prior notification could not be submitted, the owner/operator is granted such authorization, and the owner/operator complies with any conditions imposed by the Director to minimize any adverse impact on human health or the environment resulting from the bypass; and

4. The AFO owner/operator monitors the discharge resulting from such bypass as required by this chapter at least daily or according to an alternate schedule as required by the Director or his designee; and

5. The facility has been designed, constructed, operated, and regularly maintained in a manner that meets or exceeds NRCS technical standards and guidelines.

(d) The owner/operator has the burden of establishing that each of the conditions of (b) or (c) above have been met to qualify for an exception to the general prohibition against bypassing contained in a. above and an exemption, where applicable, from any discharge limitation or requirements specified in this chapter.

(4) Upset.

(a) A discharge which results from an upset need not meet the requirements and limitations of this chapter if:

1. As soon as possible, but in no case later than 24 hours after becoming aware of the occurrence of the upset, the owner/operator orally reports the occurrence and circumstances of the upset to the Director or his designee; and

2. No later than five (5) days after becoming aware of the occurrence of the upset, the owner/operator furnishes the Director or his designee with evidence, including properly signed, contemporaneous operating/inspection logs, or other relevant evidence, demonstrating that (i) an upset occurred; (ii) the owner/operator can identify the specific cause(s) of the upset; (iii) the owner/operator's facility was being properly operated at the time of the upset; and (iv) the owner/operator promptly took all reasonable steps to minimize any adverse impact on human health or the environment resulting from the upset; and

3. The AFO owner/operator monitors the discharge resulting from such upset as required by this chapter at least daily or according to an alternate schedule as required by the Director or his designee; and

4. The facility has been designed, constructed, operated, and regularly maintained in a manner that meets or exceeds NRCS technical standards and guidelines.

(b) The owner/operator has the burden of establishing that each of the conditions of (a) above have been met to qualify for an exemption from any discharge limitation/requirement or operating standard specified in this chapter.

(5) Property and Other Rights. Registration under this chapter does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, or any infringement of federal, State, or local laws or regulations, nor does it authorize or approve the construction of any physical structures or facilities or the undertaking of any work in any waters of the State or of the United States.

(6) Groundwater. Unless specifically authorized by this chapter or the Department, the discharge of pollutants to groundwater is not authorized. Should a threat of groundwater contamination occur, the Director may require groundwater evaluation and/or monitoring to properly assess the degree of the problem and the Director may require that any AFO/CAFO operator/owner undertake measures to mitigate, remediate, and/or abate any such discharge and/or contamination. Groundwater investigation/evaluation, monitoring, mitigation, remediation, and other activities performed voluntarily by the operator/owner or required by the Department, shall be conducted in accordance with a plan prepared and certified by a Professional Engineer (PE) or Professional Geologist (PG) and accepted by the Department.

(7) Coastal Zone Management.

(a) Excepting those activities described in rule 335-6-7-.32(7)(b) below, registration under this chapter is conditionally certified consistent with the Alabama Coastal Area Management Plan (ACAMP) contingent upon continued compliance with the ACAMP.

(b) The conditional certification in rule 335-6-7-.32(7)(a) above does not obviate the need for an AFO/CAFO owner/operator to apply for and/or otherwise obtain, if applicable, Coastal Use Permits and certifications required by chapter 335-8. Of particular note is the need to obtain a Coastal Use Permit for Commercial and Residential Developments in the Coastal Zone that are or will be greater than 5 acres in size.

(8) Activities not Authorized by this Chapter.

(a) Discharges from surface mining, mineral and ore raw material or product recovery and processing as described in chapter 335-6-9 are not authorized by this chapter unless specifically authorized by the Department on an individual basis.

(b) Discharge(s) from landfill activities as described in chapter 335-13 are not authorized by this chapter.

(c) Relocation, diversion, or other alteration of a water of the State is not authorized by this chapter unless specifically approved in writing by the Director or his designee.

(9) Compliance with Water Quality Standards.

(a) An AFO owner/operator or registrant may be required by the Director to apply for an Individual permit, if the Director determines that discharge under a registration approved pursuant to this chapter causes or contributes to a violation of State Water Quality Standard(s) or stream use classification.

(b) Compliance with requirements of this chapter or valid Registration terms and conditions notwithstanding, if any discharge(s) from the facility or regulated activity cause or contribute to a condition in contravention of State Water Quality Standards, the Department may require that the AFO owner/operator to take abatement action in an emergency situation, may modify any registration pursuant to the Department's rules, may require the AFO owner/operator to take timely non-emergency abatement action, may require the owner/operator to apply for an Individual permit pursuant to the Department's rules, or may require any combination of the actions specified above.

(c) If the Department determines, on the basis of a notice provided pursuant to this chapter or any investigation, inspection or sampling, that a modification of registration is necessary to assure maintenance of State Water Quality Standards or compliance with other provisions of the AAPCA, AWPCA, or CWA, the Department may require such modification.

(10) Animal Mortality Emergency Response. In addition to proper planning and proper management of normal operating animal mortality as required by 335-6-7-.26(2)(i), AFO owners/operators shall notify the State Veterinarian, ADAI immediately and shall comply with ADAI requirements

regarding emergency response for dead and diseased animal handling, transport, and disposal during occurrences of significant animal mortality due to disease, natural disaster, extreme climatological conditions, etc. to ensure the protection of groundwater and surface water quality.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14, §§ 22-28-1 to 22-28-23, and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended: December 1, 2000.

335-6-7-.33 Reserved.

335-6-7-.34 Severability. If any paragraph, subparagraph, provision, clause or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: March 31, 1999.
Amended:

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER DIVISION - WATER QUALITY PROGRAM

CHAPTER 335-6-8
GROUND WATER - AND - UNDERGROUND INJECTION CONTROL

TABLE OF CONTENTS

335-6-8-.01	Purpose
335-6-8-.02	Definitions
335-6-8-.03	Underground Sources of Drinking Water (USDW)
335-6-8-.04	Exempted Operations
335-6-8-.05	Prohibited Actions
335-6-8-.06	Required Actions
335-6-8-.07	Permit Issuance Procedures
335-6-8-.08	Public Notice Requirements
335-6-8-.09	Class III Well Permit Application Requirements
335-6-8-.10	Class V Well Permit Application Requirements
335-6-8-.11	Class III Well Permit Requirements
335-6-8-.12	Class V Well Permit Requirements
335-6-8-.13	Class VI Well Applicability and General Requirements
335-6-8-.14	Class VI Well Permit Application and Application Review Requirements
335-6-8-.15	Class VI Well Minimum Criteria for Siting
335-6-8-.16	Class VI Well Area of Review and Area of Review Corrective Action
335-6-8-.17	Class VI Well Financial Responsibility Requirements
335-6-8-.18	Class VI Well Construction Requirements
335-6-8-.19	Class VI Well Logging, Sampling and Testing Requirements Prior to Injection Well Operation
335-6-8-.20	Class VI Well Operating Requirements
335-6-8-.21	Class VI Well Mechanical Integrity Requirements
335-6-8-.22	Class VI Well Testing and Monitoring Requirements
335-6-8-.23	Class VI Well Reporting Requirements
335-6-8-.24	Class VI Well Plugging Requirements
335-6-8-.25	Class VI Well Post-Injection Site Care and Site Closure Requirements
335-6-8-.26	Class VI Well Emergency and Remedial Response Requirements
335-6-8-.27	Class VI Well Permit Requirements
335-6-8-.28	Technical Submittals and Other Reports to the Department
335-6-8-.29	Coordination with EPA
335-6-8-.30	Confidentiality

335-6-8-.01 Purpose.

(1) The Safe Drinking Water Act, Public Law 93-523, provides that a state may administer its own UIC Program. Such a program, however, must conform to the requirements of applicable Federal regulations, in particular 40 CFR Parts 124, 144 and 146.

(2) Section 22-22-1 et seq., Code of Alabama 1975, includes as its purpose "... to conserve the waters of the State and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to provide for the prevention, abatement and control of new or existing water pollution; and to cooperate with other agencies of the State, agencies of other states and the federal government in carrying out these objectives."

(3) It is the purpose of this chapter to establish rules and procedures which will enable the State to administer a UIC Program in conformance with applicable Federal laws and regulations and to administer the provisions of Section 22-22-1 et seq., Code of Alabama 1975.

Author: Curt Johnson, Thad Pittman, Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 19, 1982; Repealed: April 11, 2002. **Readopted:** May 16, 2002.
Amended: September 26, 2011; September 29, 2015.

335-6-8-.02 Definitions. Whenever used in this chapter, unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of this chapter, the following definitions shall apply:

(a) "Abandoned Well" means an injection well into which the injection has been terminated or a well in such a state of disrepair as to be unusable. A temporary abandonment shall be when injection has ceased but is expected to resume within one year. A permanent abandonment shall be when injection has ceased and no future injection is planned or when no injection has taken place for a period of one year or more.

(b) "Administrator" means the Administrator of the United States Environmental Protection Agency (EPA) or an authorized representative.

(c) "Area of Review" means the area around an injection well or well field in which migration of injected fluids and/or pollutants or formation fluids into an Underground Source of Drinking Water (USDW) may occur.

(d) "Area of Review Corrective Action" means the use of Department-approved methods to ensure that wells within the area of review do not serve as

conduits for the movement of fluids into underground sources of drinking water (USDW).

(e) "Aquiclude" means a formation that stores water, but does not transmit significant quantities of water, and which is often referred to as a confining interval.

(f) "Aquifer" means a geological formation, group of formations or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(g) "Aquifer Storage and Recovery (ASR) Well" means an injection well used for the injection of treated municipal wastewater, groundwater or surface water, treated or untreated, for the purpose of storage in a designated aquifer and recovery at a later time for a beneficial use.

(h) "Best Management Practices" ("BMP's") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMP's also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(i) "Blow-out Preventer" means a mechanical device used to keep pressurized fluids in a well from leaving the well head, while allowing access to the well casing by drilling tools and well-logging tools.

(j) "Bypass" means the intentional diversion of waste streams from any portion of a waste treatment facility.

(k) "Carbon Dioxide Plume" means the extent underground, in three dimensions, of an injected carbon dioxide stream.

(l) "Carbon Dioxide Stream" means carbon dioxide that has been captured from an emission source (e.g., a power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process. This subpart does not apply to any carbon dioxide stream that meets the definition of a hazardous waste under 40 CFR part 261.

(m) "Casing" means a heavy pipe or tubing which is lowered into a borehole, during or after drilling in order to support the sides of a hole and prevent caving; to prevent loss of drilling mud into porous formations; or to prevent water, gas or other fluid from entering or leaving the hole.

(n) "Cementing" means the operation where a cement slurry is placed into a borehole and/or forced behind a casing or between casings.

(o) "Cesspool" means a drywell that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

(p) "Class I Well" means an injection well used to inject a fluid and/or pollutant beneath the lowermost formation which contains an underground source of drinking water within five miles of the borehole. This definition excludes Aquifer Storage and Recovery Wells as defined in paragraph 335-6-8-.02(g).

(q) "Class II Well" means an injection well which is used:

1. To inject brine or other fluids which are brought to the surface in connection with oil or natural gas production and which may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

2. For enhanced recovery of oil or natural gas; or

3. For storage of hydrocarbons which are liquid at standard temperature and pressure.

(r) "Class III Well" means an injection well which is used for extraction of minerals or energy, including mining of sulfur by the Frasch process, solution mining of minerals, in-situ combustion of fossil fuel and recovery of geothermal energy to produce electricity. Fossil fuels include coal, tar sands, oil shale and any other fossil fuel which can be mined by in-situ combustion. Geothermal recovery wells used for heating and aquaculture are not considered Class III wells and are classified as Class V wells.

(s) "Class IV Well" means an injection well which is used for injection of a hazardous or radioactive waste into or above a formation which contains an USDW. A Class IV well does not include injection of treated contaminated ground water into the same formation from which it was drawn as a result of a cleanup of a release under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), or the Alabama Hazardous Waste Minimization Act, Code of Alabama § 22-30-1 through 22-30-24.

(t) "Class V Well" means an injection well not included in Classes I, II, III, IV or VI. Class V wells include but are not limited to:

1. Injection wells used to inject treated ground water as part of a ground water corrective action system;

2. Injection wells used to return the water used for heating or cooling in a heat pump to the supply aquifer (air conditioning return flow wells);

3. Cesspools, drywells, or other similar systems designed for injection;

4. Injection wells used for the injection of water previously used for cooling (cooling water return flow wells);

5. Injection wells used to drain surface fluid, primarily storm runoff into a subsurface formation (drainage wells);

6. Injection wells used to replenish the water in an aquifer (recharge wells);

7. Injection wells used for the injection of water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water (salt water intrusion barrier wells);

8. Injection wells used for the injection of a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines or injection wells used for the injection of wastewater form a coal washing operation into subsurface mines;

9. Injection wells used for the injection of any treated sanitary waste from business establishment, multiple dwelling, community or regional septic tank or other treatment system;

10. Injection wells (not used for the purpose of oil or natural gas production) used for injection into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water (subsidence control wells);

11. Injection wells used in heating, aquaculture and production of electric power (geothermal wells);

12. Injection wells used for injection of treated commercial or industrial fluids or pollutants, such as motor vehicle waste disposal wells, which are not hazardous or toxic;

13. Injection wells used for solution mining of conventional mines such as stopes leaching;

14. Injection wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts;

15. Injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale;

16. Injection wells used in experimental technologies.

(u) "Class VI Well" means a well that is not experimental in nature that is used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a USDW.

(v) "Class VI Well Area of Review" means the region surrounding the geologic sequestration project where USDWs may be endangered by the injection activity. The area of review is delineated using computational modeling that accounts for the physical and chemical properties of all phases of the injected carbon dioxide stream and displaced fluids, and is based on available site characterization monitoring, and operational data as set forth in 335-6-8-.16.

(w) "Completion" means the subsurface preparation of an injection well as approved by the Department.

(x) "Confining Zone" means a geologic formation, group of formations, or part of a formation stratigraphically overlying the injection zone(s) that acts as a barrier to fluid movement.

(y) "Construction" means that the owner or operator has:

1. Entered into a binding contractual obligation for the purpose of placement, assembly, or installation of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under the paragraph; or

2. Begun, or caused to begin as part of a continuous on-site construction program:

(i) Any placement, assembly, or installation of facilities or equipment; or

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment.

(z) "Corrective Action" means remedial action taken to mitigate or correct the introduction of pollutants to ground water, surface water or soils, the discharge from which could result in the introduction of pollutants to ground water or surface water.

(aa) "Department" means the Alabama Department of Environmental Management, established by the Alabama Environmental Management Act, Code of Alabama 1975, §§ 22-22A-1 to 22-22A-16.

(bb) "Director" means the Director of the Department or an authorized representative.

(cc) "Discharge" means the addition, introduction, leaking, spilling or emitting of any sewage, industrial waste, pollutant or other wastes into the waters of the state.

(dd) "Draft Permit" means a document indicating the Department's tentative decision to issue, modify and issue, revoke and reissue, or reissue a permit. A denial of a request for issuance, modification and issuance, revocation and reissuance, or termination is not a draft permit.

(ee) "Drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids and/or pollutants.

(ff) "Existing Injection Well" means a permitted injection well that is in operation or under construction on the effective date of this chapter.

(gg) "Facility or Activity" means any injection well or other facility or activity that is subject to regulation under the UIC program.

(hh) "Fluid" means a material or substance which flows or moves whether in a semi-solid, liquid, sludge, gas or any other form or state.

(ii) "Formation" means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailingly but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

(jj) "Formation Fluid" means a fluid present naturally as opposed to a fluid introduced into a formation from drilling or well injection.

(kk) "General Permit" means a permit that may be issued to an owner or operator of Class V wells with same or similar facilities and activities that generate similar fluids and or pollutants for well injection when in the opinion of the Department, the injection is more appropriately controlled by this type of permit.

(ll) "Geologic Sequestration" means the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations. This term does not apply to carbon dioxide capture or transport.

(mm) "Geologic Sequestration Project" means an injection well or wells used to emplace a carbon dioxide stream beneath the lowermost formations containing a USDW.

(nn) "Ground Water" means water below the land surface in a zone of saturation.

(oo) "Hazardous Waste" means a hazardous waste as defined by Code of Alabama § 22-30-3(5).

(pp) "Improved Sinkhole" means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of injection.

(qq) "Industrial Wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade or business or from the development of natural resources.

(rr) "Injection" means the subsurface emplacement of fluids and/or pollutants through a well.

(ss) "Injection Well" means a well that is used for well injection.

(tt) "Injection Zone" means the formation, group of formations or part of a formation receiving fluids and/or pollutants through an injection well.

(uu) "Injection Zone Class VI" means a geologic formation, group of formations, or part of a formation that is of sufficient areal extent, thickness, porosity, and permeability to receive carbon dioxide through a well or wells associated with a geologic sequestration project.

(vv) "Modification of a Well" means any operation requiring reworking of an injection well causing a change in the physical construction of the well after its initial completion, and not requiring a permit modification. Such reworking operations include, but are not limited to, squeezing, reperforating, setting a liner, and side tracking of a well into the same injection zone. Routine maintenance where the physical construction and/or operations are not changed does not constitute modification of a well. Modifications resulting in new injection zones are not allowed except by permit modification.

(ww) "Motor Vehicle Waste Disposal Well" means an injection well that receives or has received fluids from motor vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work.

(xx) “Municipal Wastewater” means wastewater discharged to a POTW or a Semi-Public or Private treatment facility containing majority domestic wastewater.

(yy) "New Injection Well" means an injection well other than an existing injection well.

(zz) "Operator" means the person responsible for the operation of a treatment system and/or an injection well.

(aaa) "Other Wastes" means all other substances, whether liquid, gaseous, or solid, or energy in the form of heat from all other sources including but not limited to, any vessels or other conveyances traveling or using the waters of this state, except industrial wastes or sewage.

(bbb) "Owner" means a person that owns a facility or activity subject to regulation under the UIC Program.

(ccc) "Packer" means a mechanical or physical device used to seal off certain sections of an injection well.

(ddd) "Permit" means any issued permit under the UIC Program.

(eee) "Permittee" means a person to whom a permit has been issued under this chapter.

(fff) "Person" means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

(ggg) "Plugging" means the act or process of permanently stopping any flow of any pollutants, water, oil, gas, formation fluids or surface waters into or out of a borehole or well.

(hhh) "Point of Injection" means the last accessible sampling point prior to fluids and/or pollutants being injected into an injection well.

(iii) "Pollutant" includes but is not limited to any physical, chemical, biological, sanitary, industrial, radioactive substance, matter, or waste, or other waste.

(jjj) "Pollution" means the discharge of a pollutant or combination of pollutants.

(kkk) "Post-Injection Site Care" means appropriate monitoring and other actions (including corrective action) needed following cessation of injection to ensure that USDWs are not endangered, as required under 335-6-8-.25.

(lll) "Pressure Front" means the zone of elevated pressure that is created by the injection of carbon dioxide into the subsurface. For the purposes of this chapter, the pressure front of a carbon dioxide plume refers to a zone where there is a pressure differential sufficient to cause the movement of injected fluids or formation fluids into a USDW.

(mmm) "Radioactive Waste" means any waste which contains radioactive materials in concentrations which exceed those listed in 10 CFR Part 20, Appendix B, Table II, Column 2.

(nnn) "Sanitary Waste" means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the waste is not mixed with industrial waste.

(ooo)"Schedule of Compliance" means a schedule of remedial measures included in a permit including an enforceable sequence of interim requirements leading to compliance with the appropriate regulations.

(ppp) "Septic System" means a treatment tank and injection well that is used to treat and inject sanitary waste and is typically comprised of a septic tank and subsurface fluid distribution system.

(qqq) "Sewage" means water-carried human wastes from residences, buildings, industrial establishments or other places, together with such ground, surface, storm or other wastes as may be present.

(rrr) "Site" means the area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(sss) "Site Closure" means the point/time, as determined by the Department following the requirements under 335-6-8-.25, at which the owner or operator of a geologic sequestration site is released from post-injection site care responsibilities.

(ttt) "State/EPA UIC Memorandum of Agreement" means an official document signed by the Director and Administrator which describes the functions and responsibilities of the Department and EPA in the conduct or management of the UIC Program.

(uuu) "Subsurface Fluid Distribution System" means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute and inject fluids and/or pollutants below the surface of the ground.

(vvv) "Total Dissolved Solids (TDS)" means the total dissolved solids as determined by use of the method specified in 40 CFR Part 136.

(www) "Transmissive Fault or Fracture" means a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

(xxx) "Underground Injection Control (UIC)" means the regulatory management and control of well injection.

(yyy) "UIC Program" means the EPA approved state program for management and regulation of well injection.

(zzz) "Underground Source of Drinking Water (USDW)" means an aquifer or portion thereof:

1. Which currently supplies drinking water for human consumption; or

2. In which the ground water contains fewer than 10,000 mg/l of total dissolved solids.

(aaaa) "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the owner or operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(bbbb) "Vertical Well" means a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension.

(cccc) "Waters of the state" means all waters of any river, stream, watercourse, pond, lake, coastal, ground or surface water, wholly or partially within the state, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a person unless such waters are used in interstate commerce.

(dddd) "Well" means a borehole; or, drilled or driven shaft; or, a dug hole; or, an improved sinkhole; or, a subsurface fluid distribution system; or a cesspool; or a drywell; or, any other system which results in subsurface emplacement of fluids and/or pollutants.

(eeee) "Well Field" means a well or group of wells of similar construction which are used for the same purpose, penetrate essentially the same geological formations and are located in the same area.

(ffff) "Well Injection" means injection.

(gggg) "Well Log" means a recording obtained from a well, showing such information as resistivity, radioactivity, spontaneous potential, acoustic velocity, and other information as a function of depth and/or time.

Author: Curt Johnson, Thad Pittman, Sonja Massey, Joe Kelly, Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: Adopted June 19, 1982; **Repealed:** April 11, 2002. **Readopted:** May 16, 2002.
Amended: July 28, 2008; September 26, 2011; September 29, 2015.

335-6-8-.03 Underground Sources of Drinking Water (USDW). All aquifers or portions of aquifers partially or wholly within the State of Alabama which supply water for human consumption, and all aquifers or portions of aquifers partially or wholly within the State of Alabama in which the groundwater contains less than 10,000 mg/l of total dissolved solids, are designated underground sources of drinking water and shall be protected from pollution.

Author: Curt Johnson, Thad Pittman, Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: Adopted June 19, 1982; **Repealed:** April 11, 2002. **Readopted:** May 16, 2002.

335-6-8-.04 Exempted Operations. The following well injection operations are not subject to the provisions of this chapter:

(a) Single family sanitary waste disposal systems.

(b) All sanitary waste subsurface distribution wastewater systems serving establishments, a single development, or contiguous developments which collectively have a design flow of 15,000 gallons per day or less shall be permitted and regulated by the Alabama Department of Public Health pursuant to Act 2009-773.

(c) Facilities injecting natural gas for purposes of storage.

(d) Class II wells.

(e) Class V wells for disposal of laundromat, seafood processing, and meat processing (not slaughter house) wastewaters, if permitted by the Alabama Department of Public Health.

(f) Any dug hole which is not used for injection.

(g) Dug, drilled, or driven shafts used to extract oil, gas, or ground water.

Author: Curt Johnson, Thad Pittman, Sonja Massey; Joe Kelly.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: Adopted June 19, 1982; Repealed: April 11, 2002. **Readopted:** May 16, 2002.
Amended: July 28, 2009.

335-6-8-.05 Prohibited Actions.

(1) The following actions are prohibited by this chapter:

(a) The discharge of fluids and/or pollutants to ground water and/or to soils, which may result in a discharge of fluids and/or pollutants to ground water which is not authorized by and in compliance with a permit issued under the provisions of this chapter, the Alabama Hazardous Waste Management and Minimization Act or ADEM Administrative Code division 335-14 (Hazardous Waste Program) or other chapter of the ADEM Administrative Code.

(b) The injection into any injection well or the construction of any injection well or facility to be used for the injection into any injection well unless such injection and construction is authorized by permit in accordance with this chapter.

(c) Violation of any condition or requirement of any permit issued pursuant to this chapter.

(d) Constructing, operating, maintaining, converting, plugging, abandoning, or conducting any other injection activity in a manner that allows the movement of fluids and/or pollutants into a USDW, if the presence of fluids and/or pollutants may cause an exceedance of any primary or secondary drinking water regulation under 40 CFR Part 141, 142 and 143; or may result in a water of the state failing to meet applicable water quality criteria in accordance with ADEM Administrative Code rule 335-6-10; or may otherwise adversely affect the health of persons or other legitimate beneficial uses. The owner or operator shall have the burden of showing that the requirements of this paragraph are met.

(e) Well injection between the outermost casing and the borehole.

(f) Construction or operation of a Class I well.

(g) Operation of a Class III well lacking mechanical integrity.

(h) Operation of a Class VI well lacking mechanical integrity.

(i) Construction or operation of a Class IV well.

(j) Construction or operation of a cesspool.

(k) Construction or operation of a motor vehicle waste disposal well.

(l) Construction or operation of a Class V vertical well for the injection of sanitary waste, treated or untreated, unless the injection is through an Aquifer Storage and Recovery (ASR) well permitted under this chapter.

(2) If the Department becomes aware that an injection well may cause a violation of primary or secondary drinking water regulations under 40 CFR Parts 141, 142, and 143 in a USDW, has not been operated in accordance with the requirements of this chapter, or otherwise poses a threat to the environment or the health of persons, the Department may order the owner or operator to take such actions (including where required closure of the injection well) as may be necessary to prevent or abate the violation of a primary or secondary drinking water regulation under 40 CFR Part 141, 142, and 143 in a USDW. This may include the performance of ground water quality investigations and the implementation of corrective actions. Such investigations and/or corrective actions shall be conducted in a manner suitable to the Department.

(3) The Department may take emergency action upon receipt of information that a fluid and/or pollutant which is present in or likely to enter a USDW may present an imminent and substantial endangerment to the health of persons or the environment.

Author: Curt Johnson, Thad Pittman, Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 19, 1982; Repealed: April 11, 2002. **Readopted:** May 16, 2002.
Amended: July 28, 2009; September 26, 2011; September 29, 2015.

335-6-8-.06 Required Actions.

(1) In the event of a discharge of fluids and/or pollutants to ground water and/or to soils, which may result in a discharge of fluids and/or pollutants to ground water, which is not authorized by a permit, the following actions must be taken by the person responsible for the discharge:

(a) Make a report to the Department within 24 hours of becoming aware that an unauthorized discharge has occurred;

(b) Take immediate action to prevent any further unauthorized discharge of fluids and/or pollutants;

(c) Take immediate action to identify and mitigate threats which may be posed to people or the environment;

(d) When required by the Department, conduct an investigation to determine the lateral and vertical extent of soil and ground water contamination for the pollutants likely to be present considering the source and nature of the unauthorized discharge. This investigation shall be conducted within the time frame and according to the requirements identified by the Department.

(e) When required by the Department, prepare and implement a corrective action plan sufficient to mitigate the impact or potential impact of the unauthorized discharge to the surrounding population and the environment. The corrective action plan shall be prepared to address risks to human health and the environment and shall take into account current and future exposure pathways and receptors, toxicity of pollutants, current and reasonable future land uses, and current and future use of aquifers. The corrective action shall be conducted within the time frame and according to site-specific requirements identified by the Department.

Author: Curt Johnson, Thad Pittman, Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 19, 1982; Repealed: April 11, 2002. **Readopted:** May 16, 2002.

335-6-8-.07 Permit Issuance Procedures. Upon receipt of a complete permit application the Department shall:

(a) Determine the type of well.

(b) Determine if a general permit may be applicable.

(c) Determine whether the proposed injection poses an unacceptable risk of contamination of an USDW. Where the application does not provide sufficient information to demonstrate that the proposed injection well will not cause the exceedance of a primary or secondary drinking water regulation under 40 CFR Part 141, 142, and 143, or otherwise render the ground water unsafe or objectionable for human consumption, or result in a water of the state failing to meet applicable water quality criteria in accordance with ADEM Administrative Code rule 335-6-10, the Department shall not issue the permit.

(d) Determine any special construction and operation requirements which may be required to protect a USDW.

(e) For a Class III or Class VI well, or a Class V well permitted by an individual permit:

1. Prepare a fact sheet and include as a minimum the information required by 40 CFR 124.8 or future Federal regulations applicable to State UIC Programs;

2. Submit a copy of the draft permit to the owner or operator and EPA for review and comment.

(f) Allow public participation in the permitting process in accordance with procedures established in rule 335-6-8-.08.

(g) Review comments received from any interested persons, EPA and the owner or operator.

(h) Make a final decision to issue, modify and issue, or deny the permit.

(i) A Class VI well may not be permitted or authorized by procedures of permit by rule, general permit, or by an area permit.

Author: Curt Johnson, Thad Pittman, Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 19, 1982; **Repealed:** April 11, 2002. **Readopted:** May 6, 2002.
Amended: July 28, 2009; September 26, 2011; September 29, 2015.

335-6-8-.08 Public Notice Requirements.

(1) Public notice is required when the Department takes the following actions:

(a) A permit application has been received and a draft permit, or draft modification to a permit has been prepared and a tentative determination made to issue or reissue the permit or modification;

(b) A public hearing has been scheduled.

(c) A general permit is proposed for issuance for a stated category of Class V wells.

(d) Proposes termination of a permit for cause.

(2) Public notice is not required when the Department makes a minor modification to a permit. Minor permit modification may only:

(a) Correct administrative and typographical errors;

(b) Increase the frequency of monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(d) Allow for a change in name or operational control of the facility where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new owner or operator has been submitted to the Department;

(e) Delete an injection well when the injection to that well is terminated, the well has been properly abandoned, and the injection well does not result in injection to other injection wells except in accordance with permit limits. This provision does not apply to a permitted Class VI well.

(f) Amend a Class VI injection well testing and monitoring plan, plugging plan, post-injection site care and site closure plan, or emergency and remedial response plan where the modifications merely clarify or correct the plan, as determined by the Department and in accordance with this rule.

(3) The duration of a public notice shall be as follows:

(a) At least 30 days shall be allowed by the Department to receive public comment after a public notice is issued for a general permit, draft permit, or draft modification to a permit;

(b) At least 30 days shall be allowed by the Department to receive public comment prior to the scheduled date of a public hearing. The public notice of the hearing may be given at the same time as public notice of the general or draft permit. The two notices may be combined.

(4) Public notice shall be provided using the following methods:

(a) A copy of public notices shall be mailed to the persons listed below. Any person entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits:

1. The person applying for a permit.

2. Any other agency which the Department knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit for the same facility or activity.

3. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, public health, and other appropriate government authorities including any affected states.

4. Any state agency responsible for plan development under the FWPCA Section 208(b)(2), 208(b)(4) or 303(e) and the U.S Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

5. Persons on a mailing list developed by:

(i) Including those who request in writing to be on the list;

(ii) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals (the Department may update the mailing list from time to time by requesting written indication of continued interest from those listed and may delete from the list the name of any person who fails to respond to such a request);

6. To any unit of local government having jurisdiction over the area where the facility is or is proposed to be located.

7. To each state agency having any authority under state law with respect to the construction or operation of such facility.

(b) Public notice shall be published in a daily or weekly newspaper of general circulation within the area affected by the facility or activity.

(c) For a Class VI permit, at the time that the public notice is issued for the draft permit, a notice shall be mailed or e-mailed to the State Oil and

Gas Board and any state agency regulating mineral exploration and recovery, the Chief of the Public Water Supply regulatory program in Alabama, and all agencies that oversee injection wells in the State.

(5) All public notices shall, as a minimum, contain the following information:

(a) Name and address of the office processing the permit action for which notice is being given;

(b) Name and address of the person applying for a permit or holding a permit and, if different, of the facility or activity regulated by the permit (when an address is not applicable to the regulated entity, a general location shall be given);

(c) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the general or draft permit, statement of basis or fact sheet, and the application;

(d) A general description of the public comment procedures required by this rule and the time and place of any hearing that will be held, (if applicable) including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

(e) A general description of the location of each existing or proposed injection well or well field; and

(f) A general description of the activity or business conducted at the facility generating the fluids and/or pollutants to be injected.

(6) The public notice of a hearing shall contain, in addition to public notice information requirements in paragraph (4) of this rule, the following information:

(a) A reference to the date of previous public notices relating to the permit;

(b) Date, time, and place of the hearing; and

(c) A description of the nature and purpose of the hearing, including a citation of the applicable rules and procedures.

(7) The Department shall accept public comments and requests for public hearings as follows:

(a) During the public comment period, any interested person may submit written comments on the permit application, and general or draft permit, and may request a public hearing if no hearing has already been scheduled.

(b) A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing.

(8) The Department shall determine when a public hearing is appropriate as follows:

(a) Whenever it is found, on the basis of hearing requests, that there exists a significant degree of public interest in a permit application, or general or draft permit.

(b) At the Department's discretion, whenever such a hearing might clarify one or more issues involved in the permit decision.

(9) The Department shall hold a public hearing in the following manner:

(a) At a location that shall be convenient to the majority of those providing comments in response to the public notice.

(b) To allow any person to present oral or written statements and to present data concerning the permit application, and general or draft permit to the Department. Reasonable limits may be set upon the time allowed for oral statement. As a result, the submission of statements in writing may be necessary.

(c) Automatically extend the public comment period to the close of any public hearing. The hearing officer may also extend the comment period by so stating at the hearing.

(d) The Department shall make a record of the public hearing available to the public in the form of a tape recording or written transcript.

(10) The Department shall prepare and make available to the public upon request, a response to comments received during the public comment period or public hearing, as follows:

(a) After consideration of any comments, the Department may revise and issue a draft or general permit, or not issue a draft or general permit.

(b) The Department may provide a written reply to significant comments (like comments may be grouped and one response written) concerning the general or draft permit. A significant comment is a comment that offers information or suggestions of a technical, environmental, legal, or regulatory nature that are applicable to the general or draft permit.

(c) After consulting with, or receiving written comments from Federal or State agencies with jurisdiction over public health, the Department may add and/or modify permit conditions that these Federal or State agencies have advised the Department are necessary to avoid substantial impairment of a public water supply.

Author: Curt Johnson, Thad Pittman, Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 19, 1982; **Repealed:** April 11, 2002. **Readopted:** May 16, 2002. **Amended:** July 28, 2009; September 26, 2011.

335-6-8-.09 Class III Well Permit Application Requirements.

(1) For any new well field(s), the owner or operator shall submit the information required in subparagraphs (1)(a) through (1)(e) and (1)(h) of rule 335-6-8-.10, any additional information required by paragraph (3) of rule 335-6-8-.10, and the following information:

(a) Data on all wells (to include injection wells, oil and gas exploration and/or production wells, and water wells) located within the area of review which represents well type, well construction, date drilled, location, depth, record of plugging and/or completion and the present use of the well.

(b) An inventory of all surface waters located within the area of review to include type, location, and use.

(c) A map(s) which shows the location of wells, surface waters, and other pertinent surface features such as roads, mines, quarries, residences, and other structures within the area of review.

(d) Hydrogeological data including maps and cross sections showing local geological structure, regional geological structure, and the horizontal and vertical location of USDW's within the area of review. Where sufficient information is available, the direction of flow of water in each USDW shall also be shown.

(e) The source and analysis of the chemical, physical, radiological, and biological characteristics of the pollutants to be injected and, if available, of the formation fluid from the intended injection zone.

(f) A best management practice plan shall be developed in accordance with sound engineering practices to prevent or respond to pollution of any USDW or surface water which may be caused by operation or failure of the well or any other associated equipment at the facility as follows:

1. Examine each facility component or system with respect to its potential for causing a release of significant amounts of fluids and/or pollutants into a USDW or surface water due to equipment failure, improper operation, natural phenomena such as rain, freezing temperatures, etc.;

2. Include a prediction of the direction, rate of flow and total quantity of fluids and/or pollutants which could be discharged from the facility as a result of equipment failure, natural phenomena or other circumstances;

3. Establish best management practices addressing each system capable of causing a release of significant amounts of fluids and/or pollutants into a USDW or surface water;

4. Reflect all applicable requirements for Spill Prevention Control and Countermeasure (SPCC) plans under 40 CFR Part 151, and incorporate such plans into the plan by reference;

5. Assure the proper management of solid and hazardous waste;

6. Address materials storage areas, process and material handling areas, loading and unloading areas, plant site runoff, and sludge and waste disposal areas;

7. Consider including statement of policy, employee training, inspections, preventative maintenance, and housekeeping;

8. When necessary, provide impervious liners, dikes, or other structures sufficient to prevent the discharge of a fluids and/or pollutant to a USDW;

9. Document the plan in narrative form and include any necessary plot plans, drawings or maps.

(g) A plan for plugging and abandonment of the injection well. Plugging shall be accomplished so that USDW's are completely isolated and the movement of fluids and/or pollutants into any USDW or between USDW's is prevented and so that the injection zone is isolated. Plugging shall also be accomplished so that surface water cannot enter the well.

(h) An executed financial guarantee sufficient to demonstrate the financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner acceptable to the Department. Financial responsibility may be demonstrated by the submission of adequate assurance, such as financial statements or other materials acceptable to the Department.

(i) A description of the corrective actions planned to eliminate any deficiencies in the plugging or completion of wells located in the area of review which, if not eliminated, may result in pollution of a USDW. In determining the adequacy of the corrective action, the following criteria shall be considered:

1. Nature and volume of the injected fluid;

2. Nature of by-products of injection;

3. Potentially affected population;

4. Geology;

5. Hydrology;

6. History of the injection operation; and

7. Hydraulic connections with underground sources of drinking water.

(j) A proposed ground water monitoring program showing the location, depth, and method of construction of any monitoring wells to be installed and similar information concerning any existing wells or surface water bodies to be monitored. This submittal shall also provide a proposed sampling and testing scheme to be followed during groundwater monitoring. Monitoring wells shall be located and constructed in accordance with approved plans and shall conform to subparagraph (1)(e) items 1. through 4. of rule 335-6-8-.10 and the following requirements:

1. Where injection is into a formation containing less than 10,000 mg/l total dissolved solids, monitoring wells shall extend into the injection zone.

2. Where a USDW is penetrated by the injection well and the operation may cause or be affected by subsidence or catastrophic collapse, monitoring wells shall be located outside the physical influence of the possible subsidence or collapse.

3. Where the injection zone is an USDW; the number, location, construction, and frequency of monitoring of the monitoring wells shall be determined by considering:

(i) The population relying upon the USDW affected or potentially affected by the injection operation;

(ii) The proximity of the injection operation to points of withdrawal of drinking water;

(iii) The local geology and hydrology;

(iv) The operating pressure and whether a negative gradient is being maintained;

(v) The nature and volume of the injected fluid, the formation water, and the process by-products; and

(vi) The injection well density.

(k) If the permit application is for a well field with more than one well, the ultimate expected well field configuration shall be submitted on a drawing showing the area of review, and showing injection and recovery wells.

(l) Proposed operational procedures which include estimated average and maximum daily injection rates and injection pressures.

(m) Drilling and well testing plans, completion plans, and surface construction plans which meet the requirements of subparagraph (1)(b), (1)(c), and (1)(d) items 4. and 5. of rule 335-6-8-.11.

(n) A signature of a person who meets the requirements of a responsible official as indicated below:

1. In the case of a corporation, by a principal executive officer of at least the level of vice-president;

2. In the case of a partnership, by a general partner;

3. In the case of a sole proprietorship, by the owner;

4. In the case of a municipal, state, federal, or other public agency, by either a principal executive officer or ranking elected official.

(o) A signed certification by the responsible official described in subparagraph (1)(n) of the permit application as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information contained in the application, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(2) For any existing well field(s), the owner or operator of the well(s) or well field(s) shall, in addition to the information required by paragraph (1) of this rule, submit in duplicate the following information:

(a) Available past operation data, to include average and maximum daily injection rates, volume and characteristics of the fluids and/or pollutants injected, the average and maximum injection pressures, and annular pressures shall be submitted in a format that allows comparison of data such as injection rate versus corresponding injection pressure.

(b) The following cased hole logs and their interpretation, or substitute logs as agreed upon by the Department, to form base conditions for future well monitoring:

1. A combination cement bond, variable density, gamma ray, and casing collar locator log;

2. A high resolution temperature log performed after the well has been shut down for a minimum of three days or a thermal decay log;

3. A caliper log;

4. Any well logs run previously in the well to determine the past performance of the well system;

5. Other logs as the Department may require.

(c) A description of the actions planned to upgrade the well and meet the minimum requirements of paragraph (1) of this rule or other requirement determined by the Department and a proposed compliance schedule for completion of these actions.

(d) Proof of mechanical integrity of the well which shall demonstrate that there is no detectable leak in the casing, tubing, or packer and that there is no detectable movement of pollutants from the injection zone through vertical channels adjacent to the injection well bore. As a minimum the absence of leaks must be determined by the monitoring of annulus pressure or pressure test with liquid or gas. As a minimum, the absence of vertical pollutant migration must be determined by a temperature log or a noise or acoustic log. The owner or operator may submit a request for substitution of another test method to the Department. This request must be in such detail as to show that the proposed test method will reliably demonstrate mechanical integrity of the wells for which its use is proposed. Should the Department agree to the request, approval of the Administrator will be requested and must be obtained prior to substitution of the method. The owner or operator and the Department will apply methods and standards generally accepted in the industry. Reports on mechanical integrity will include description of the tests and methods used. In making the evaluation, the Department shall review all data submitted since the previous evaluation.

(3) For purpose of this rule, the area of review shall include all of that area within a one and one-half mile radius of a well or in the case of a well field, a circumscribing area the width of which is the lateral distance from the perimeter of the well field, unless the Department approves a smaller radius or width of not less than one-fourth mile. The Department may, on a case-by-case basis require a radius or width greater than one and one-half miles if available data indicate that a larger area of review is justified.

(4) The permit application will not be processed until a completed application is received by the Department with the appropriate permit fee in accordance with rule 335-1-6.

Author: Curt Johnson, Thad Pittman, Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 19, 1982; **Repealed:** April 11, 2002. **Readopted:** May 16, 2002. **Amended:** September 29, 2015

335-6-8-.10 Class V Well Permit Application Requirements.

(1) To apply for a Class V individual permit, an owner or operator of a new or existing well field(s) shall submit a permit application to the Department which shall include the following information:

(a) Name, address and phone number of the owner and, if different, the name, address and phone number of the property owner and operator.

(b) Facility name, address, phone number (if applicable) and physical location (if different from the address).

(c) A map(s) which shows the location of proposed injection well(s), public and private water supply wells, source water assessment areas meeting the requirements of rule 335-7-5, well head protection areas meeting the requirements of rule 335-7-12, surface waters and other pertinent surface features such as roads, natural or manmade drainage courses, residences, and other structures within the area of review.

(d) A description of the fluids and/or pollutants to be injected and proposed operational procedures which include estimated average and maximum daily injection rates and volume of fluids and/or pollutants to be injected.

(e) The design, plans, construction specifications and other pertinent information of the treatment system, injection well(s), sampling system, and ground water monitoring well(s) required by the Department. Monitoring wells shall be located and constructed in accordance with approved plans and shall conform to the following requirements:

1. The monitoring well configuration shall be designed to detect pollutant movement away from the well or well field;

2. The monitoring well plan shall be designed to detect pollution in the USDW into which injection is permitted and any other USDW which the Department determines may or has the potential to be impacted by the permitted injection and any associated facility or activity in the area of review;

3. An adequate number of monitoring wells shall extend into all USDW's, likely to be affected, to detect any movement of fluids and/or pollutants injected, process by-products or formation fluids into the USDW;

4. For the purposes of determining the bottom elevation of a subsurface fluid distribution system, the seasonal high ground water elevation or soil restrictive layer shall be determined either by measurement of ground water levels or natural soil features indicative of soil saturation. A minimum separation distance between the bottom elevation of a subsurface fluid distribution system and the seasonal high ground water elevation or soil restrictive feature shall be established by the Department based upon the

proposed disposal technology to allow for the protection of groundwater quality and for the proper functioning of the subsurface distribution system.

5. A plugging and abandonment plan may be required for a monitoring well when the Director deems it is necessary in order to prevent pollution of a USDW.

(f) Hydrogeological data determined to be necessary by the Department such as depth to ground water, direction of ground water flow, topographic description, physiographic province, etc.

(g) When required, the financial responsibility requirements in subparagraph (1)(h) of rule 335-6-8-.09 shall be demonstrated.

(h) A certification described in subparagraph (1)(o) of rule 335-6-8-.09 signed by the responsible official described by subparagraph (1)(n) of rule 335-6-8-.09.

(2) To apply for coverage under a Class V general permit, an owner or operator of a new or existing well field(s) shall submit a permit application to the Department which shall include the requirements of (a), (b), (d), and (h) of rule 335-6-8-.10(1) and the type of general permit under which coverage is requested.

(3) The Department may require submittal of additional information concerning any permit application when that information is required to evaluate the potential for pollution of a USDW or surface water or to determine permit conditions necessary to protect a USDW or surface water.

(4) A permit application will not be processed until a completed application is received by the Department with the appropriate permit fee in accordance with rule 335-1-6.

(5) A permit application for discharge of treated sanitary waste must include a demonstration of compliance with any applicable requirement for financial viability certification. Any permit application for which permit issuance has not occurred prior to July 28, 2009, must comply with this requirement prior to permit issuance.

(6) The Department may require a Class V experimental well for research or pilot projects relating to carbon sequestration to comply with all permitting and operational requirements of 335-6-8-.13 through 335-6-8-.27.

(7) A permit application for an ASR well(s) must include all applicable requirements of rule 335-6-8-.10 and include but not be limited to those items identified below. A separate permit application will be required for the construction and cycle testing phase of operation as well as for the full operational phase of the proposed ASR well.

(a) Identification and characterization of the aquifer into which injection is to occur to include hydrogeological and geochemical properties.

(b) Proposed method, rates and schedule of recovery from the aquifer for cycle testing and for full operation.

(c) Proposed use of the recovered water. The designated reuse facility must be permitted under chapter 335-6-20 or other applicable chapter of the ADEM Administrative Code.

(d) Proposed lateral and vertical extent of injected water within the aquifer.

(e) The proposed treatment to be provided to a water source proposed for injection.

(f) Complete water quality characterization for the water source proposed for injection. This must include but may not be limited to all substances and microorganisms for which primary and secondary maximum contaminant levels and monitoring requirements have been established for public water systems as required by Division 335-7 of the ADEM Administrative Code. Analyses shall also include Total Organic Carbon, Dissolved Organic Carbon, Total Suspended Solids, Total Kjeldahl Nitrogen, Ammonia Nitrogen, Carbonaceous Biochemical Oxygen Demand and Specific Conductance.

(g) Proposed monitoring plan to:

(i) Verify the lateral and vertical extent of injected water.

(ii) Verify quality of water to be injected, quality of injected water within the aquifer, and water quality of the surrounding aquifer(s).

(iii) Verify containment of injected water within the aquifer(s) designated for injection.

(iv) Monitor water level fluctuations within the aquifer(s) designated for injection and other aquifers as may be required.

(h) Any implemented or proposed institutional controls which may be used to prevent the use of the injected water(s) as a drinking water source by the public.

(i) The financial responsibility requirements in subparagraph (1)(h) of rule 335-6-8-.09 shall be demonstrated.

Author: Curt Johnson, Thad Pittman, Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 19, 1982; **Repealed:** April 11, 2002. **Readopted:** May 16, 2002. **Amended:** July 28, 2009; September 26, 2011; September 29, 2015.

335-6-8-.11 Class III Well Permit Requirements.

(1) A permit for any Class III injection well shall contain the following:

(a) Authorization to operate as follows:

1. Authorization to inject for a period not to exceed the life of the injection well field, but shall be reviewed at least once every five years.

2. When required by the Department, the well density in the permitted field and the area included in the well field shall be limited.

3. The requirements found in subparagraph (a) item 2. of rule 335-6-8-.12 shall apply.

(b) Construction and maintenance requirements as follows:

1. A well head shall be constructed so that a blow out preventer and workover rig can be placed over the well.

2. Injection shall be through casing.

3. Injection wells shall be double cased to a depth below the deepest USDW and shall be cased for the full depth of the well. Casing shall be designed for the expected life of the well when axial loading, diameter of casing, down hole pressures, corrosiveness of injected fluids and/or pollutants and formation fluids, temperatures to be encountered, and any other pertinent conditions are considered.

4. Injection wells shall be cemented from the surface to the upper limit of the injection zone. Cementing shall be conducted in such a manner and shall use a type and grade of cement such that all USDW's are protected from pollution by surface waters, other formation fluids, or fluids and/or pollutants injected and that the injection zone is isolated from all formations above it.

5. Deviation checks on all holes constructed by first drilling a pilot hole and then enlarging the pilot hole by reaming or another method shall be performed at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created.

6. Any annular spaces formed between casings or casing and injection tubing shall be filled with a noncorrosive fluid or inert gas under pressure.

7. The requirements found in subparagraph (b) items 1. through 3. of rule 335-6-8-.12 shall apply.

(c) Monitoring and operating requirements as follows:

1. Operating restrictions shall include, as a minimum, a maximum allowable injection pressure which shall preclude fracturing that could result in migration of fluids and/or pollutants from the injection zone.

2. The requirements found in subparagraph (c) items 1. through 8., and 12. of rule 335-6-8-.12 shall apply.

3. When required by the Department, injection pressure, annulus pressure, flow rate, and volume injected shall be monitored. Instrumentation shall be sufficient to provide the data required by the permit.

(d) Logging and well integrity requirements as follows:

1. In the case of a new well, the following logs and their interpretation, or substitute logs as agreed upon by the Department, shall be run before the casing is installed and submitted: resistivity, spontaneous potential, porosity, caliper, and gamma ray. This requirement shall also apply to a new well in a permitted well field.

2. In the case of a new well, the cased hole logs described in subparagraph (2)(b) items 1. through 4. of rule 335-6-8-.09 and their interpretation, or substitute logs as agreed upon by the Department shall be submitted. This requirement shall also apply to a new well in a permitted well field.

3. In the case of a new well, proof of mechanical integrity shall be submitted as described in subparagraph (2)(d) of rule 335-6-8-.09 prior to operation of the well.

4. The following information concerning the injection zone may be required to be calculated or determined:

i. Fluid pressure;

ii. Temperature;

iii. Fracture pressure;

iv. Other physical and chemical characteristics of the injection matrix;

v. Physical and chemical characteristics of the formation fluids.

5. The results obtained in subparagraph (1)(d) item 4. of this rule shall be used to determine the compatibility of the injection fluids and/or pollutants with the formation fluids and matrix. The Department will consider the results of the testing program prior to granting approval for the injection.

6. Cased hole logs described in subparagraph (2)(b) of rule 335-6-8-.09 or substitute logs as agreed upon by the Department shall be performed every five years and shall demonstrate proof of mechanical integrity.

The results and their interpretation shall be submitted to the Department. The Department may require these evaluations to be performed more frequently after considering the nature of the fluids and/or pollutants to be injected, the age of the well, or other conditions that may adversely affect the expected life of the well.

7. Logging requirements may be relaxed by the Department after consideration of the intended function, depth, construction, and other characteristics of the well, availability of similar data in the area of the drilling site, and the need for additional information that may arise from time to time as the construction of the well progresses.

(e) Records, reports and submittals as follows:

1. The permittee shall submit copies of all logs or other analyses performed and their interpretation to the Department not later than 28 days after completion of the logs and/or analyses.

2. The requirements found in subparagraph (d) items 1. through 5. of rule 335-6-8-.12.

(f) Plugging and abandonment as follows:

1. The requirements found in subparagraph (e) items 3. through 6. of rule 335-6-8-.12.

2. The permittee shall notify the Department at least 180 days prior to actual plugging of the well and submit for approval by the Department an updated plugging and abandonment plan. The plan shall be submitted to the Department at least 90 days prior to actual plugging of the well.

3. The plugging or abandonment plan shall be made a part of the permit.

4. The permittee shall correct any improperly sealed, completed, or abandoned well located within the area of review which extends into the injection zone or any other well which may cause pollution of a USDW. A schedule of compliance for taking corrective action will be established and included in the permit.

(g) Well or well field management as follows:

1. The permittee shall cease injection immediately upon determination that a well has malfunctioned and correct the malfunction prior to resumption of injection. Permittee shall notify the Department in writing within 5 days of the occurrence of any malfunction. This notification shall include a description of the malfunction, its cause, and the corrective action(s) taken. Notification within 24 hours shall be required if the malfunction results in pollution of a surface water or a USDW, when any noncompliance with a permit condition or malfunction of the injection system may cause fluid

migration into or between USDW's, or when monitoring or other information indicates that any fluid and/or pollutant may cause a violation of subparagraph (d) of rule 335-6-8-.05.

2. In the case of a new well, prior authorization shall be obtained from the Department for any change in the approved construction of the well.

3. Well data required by subparagraph (1)(d) items 1. and 3. of this rule shall be submitted for each new well constructed in the permitted field.

(h) Permit modification, revocation, suspension, and termination as follows:

1. The requirements found in subparagraph (f) items 1. through 3. of rule 335-6-8-.12 shall apply.

(i) General provisions as follows:

1. The requirements found in subparagraph (g) items 1. through 6. of rule 335-6-8-.12 shall apply.

2. The best management practices plan shall be made a part of the permit.

3. In the case of an existing well the following may be required:

(i) A schedule of compliance in accordance with 40 CFR § 144.53.

(ii) Special construction requirements.

4. For a new well, no injection may begin until:

(i) A notice of completion of construction and the information required to be gathered during construction having been received and reviewed by the Department and any changes in permit conditions such as maximum injection pressure, etc., have been determined.

(ii) Notification that all required corrections to other wells in the area of review are complete and have been received by the Department.

(iii) When a permit modification is necessary, the permittee has been issued a modified permit containing any change in permit conditions and has been informed in writing by the Department that injection may begin.

(iv) The permittee has been informed of any intention to inspect the well prior to operation.

Author: Curt Johnson, Thad Pittman, Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 19, 1982; **Repealed:** April 11, 2002. **Readopted:** May 16, 2002.

335-6-8-.12 Class V Well Permit Requirements. A permit for any Class V well shall contain the following:

(a) Authorization to operate as follows:

1. Authorization to inject for a period not to exceed five (5) years, except as provided for in paragraph (h) of this rule.

2. Only the fluids and/or pollutants described in the original permit application or any subsequent permit application approved by the Department shall be injected.

3. If the permittee desires to continue operation of the well past the expiration date, at least 180 days prior to expiration of a permit the permittee shall submit an application for reissuance of the permit.

4. Applications for reissuance shall comply with rule 335-6-8-.10, except that previously submitted information need not be submitted unless requested by the Department.

5. Permit reissuance procedures shall be in accordance with rules 335-6-8-.07 and 335-6-8-.08.

6. The terms and conditions of an existing permit are automatically extended pending reissuance of the permit if the permittee has submitted a timely and complete application.

(b) Construction and maintenance requirements as follows:

1. The permittee shall properly construct operate and maintain treatment systems, injection well(s), monitoring well(s), sampling systems, and other related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of the permit.

2. Treatment system structures, and electrical and mechanical equipment shall be protected from physical damage by the maximum expected one hundred (100) year flood. The treatment system shall remain fully operational, unless the flow of wastewater may be stored or eliminated, during a twenty-five (25) year flood. Treatment systems located in coastal areas subject to flooding by wave action shall be similarly protected from (100) year and twenty-five (25) year wave actions.

3. Department approval shall be obtained prior to constructing new wells, and modifying existing wells or surface structures.

4. When monitoring wells are required by the Department, an as built description and geologic log of the monitoring well(s) shall be obtained. The monitoring well(s) shall be completed and sampled prior to the use of the injection well.

(c) Monitoring and operating requirements as follows:

1. The permittee shall provide a method of obtaining grab and/or composite samples of fluids and/or pollutants after all treatment and prior to injection.

2. The permittee shall comply with applicable Federal and State hazardous waste management rules and regulations, and the permittee not inject any substance that is defined as hazardous or toxic by Federal or State laws or regulations or any substance not identified in the permit application. The proposed use of any substances other than those identified in the permit application must be reviewed and approved by the Department prior to use.

3. The permittee shall monitor injection(s) and monitoring well(s) as required by the Department.

4. When sampling is required by the Department, all sampling and analysis shall be in accordance with EPA approved methods and procedures in all cases where an approved method and procedure is in existence.

5. When EPA has not approved methods and procedures for any sampling and analysis required by this chapter, the method and procedure shall be stated by reference or verbatim in the permit, administrative order, directive, or plugging and abandonment plan requiring the monitoring.

6. Calibration of meters and other instruments used in monitoring shall be in accordance with the manufacturer's recommended procedure and frequency.

7. The permittee shall not exceed the limits that the Department has determined may cause, have reasonable potential to cause, or contribute to an exceedance of a narrative or numerical water quality standard for an individual fluid and/or pollutant.

8. The injection well shall function properly and, when required by the Department, fluids and/or pollutants shall not surface or saturate the uppermost soil layer.

9. When required by the Department, the permittee shall not operate any wastewater treatment plant unless the competency of the operator of such plant has been duly certified by the Department pursuant to the Alabama Water Pollution Control Act (AWPCA) and meets the requirements specified in rule 335-10-1.

10. When allowed by the Department, the permittee may bypass the treatment facilities if the bypass does not cause an injection that exceeds the limits of the permit and the bypass is necessary for essential maintenance to ensure efficient operation.

11. When allowed by the Department, the permittee may exceed permit limits due to an upset if no later than 24 hours after becoming aware of the upset, the permittee reports the occurrence and circumstances of the upset

to the Department and no later than five (5) days after becoming aware of the upset, the permittee furnishes the Department with evidence, including properly signed operating logs or other relevant evidence that an upset occurred; identification of the cause of the upset; the facility was being properly operated at the time of the upset; and the permittee took all reasonable steps to minimize and adverse impact on human health or the environment resulting from the upset.

12. When required by the Department, the permittee shall perform best management practices.

(d) Records, reports and submittals as follows:

1. The permittee shall retain all records concerning the data used to complete the permit application, the operation of the well, nature and composition of fluids and/or pollutants injected and ground water monitoring records for a period of at least three years from the date of the record(s), and shall deliver copies of any records to the Department if requested. Samples and measurements taken for monitoring, and records kept for documentation shall be representative of the activity monitored or documented. Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used;

(vi) The results of such analyses.

2. When required by the Department, the permittee shall submit to the Department, monitoring reports summarizing the results from fluid and/or pollutant monitoring, and injection well operation monitoring, not later than 28 days after the reporting period specified in the permit.

3. All reports required to be submitted to the Department by the permit and other information requested by the Department shall include the certification in subparagraph (d) item 4. of this rule signed by either the responsible official described in subparagraph (1)(n) of rule 335-6-8-.09, or a duly authorized representative of the responsible official. A person is a duly authorized representative only as follows:

(i) The authorization is made in writing by a person described in paragraph (1)(n) of rule 335-6-8-.09;

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity;

(iii) The written authorization is submitted to the Department.

4. The certification required in subparagraph (d) item 3. of this rule shall be as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information contained in the document, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

5. The permittee shall report to the Department any of the following:

(i) Any planned changes in the permitted facility or activity which may result in noncompliance with permit conditions;

(ii) Any planned transfer of ownership of the permitted facility by the person buying and the person selling the facility;

(iv) Compliance or noncompliance with interim and final requirements contained in any permit schedule of compliance within 14 days following each schedule date;

(v) Any relevant facts which the permittee becomes aware of which should have been submitted in a permit application, or corrections to incorrect data submitted in a permit application.

(e) Plugging and abandonment as follows:

1. The permittee shall notify the Department at least 180 days prior to well abandonment.

2. At least 90 days prior to abandonment, the permittee shall submit a plugging and abandonment plan to the Department which protects each USW from pollution by surface water and which prevents the movement of any pollutant or formation fluid from one USDW to another or from one formation to another and which isolates the injection zone.

3. Placement of cement may be by the Balance Method, Dump Bailer Method, the Two-Plug Method, or other method approved by the Department. Where required by the permit, the method to be used shall be approved by the Department prior to plugging. The well to be plugged shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method approved by the Department, prior to the placement of cement plugs.

4. When required by the Department, the permittee shall measure for the presence of contamination where it is most likely to be present at the site in accordance with procedures which are acceptable to the Department. In

selecting sample types, sample locations, and measurement methods, the permittee shall consider the method of plugging and abandonment, the nature of the fluid and/or pollutant injected, the depth to ground water, and other factors appropriate for identifying the presence of contamination. A report of the findings shall be submitted to the Department within 45 days of initiating the plugging and abandonment.

5. If contaminated soils and/or contaminated ground water is discovered as a result of subparagraph 4. of this rule, or by any other manner, the permittee shall submit a corrective action plan. Department approval of the plan shall be obtained before beginning aquifer cleanup procedures and ground water monitoring at the site.

6. Other precautions or actions may be required if deemed necessary by the Department to protect or restore a USDW.

(f) Permit modification, revocation, suspension, and termination as follows:

1. Permits may be modified, suspended, revoked, or terminated either at the request of any interested person (including the permittee) or upon the Department's initiative for any of the reasons specified below. All requests shall be in writing and shall contain facts or reasons supporting the request. The filing of a request for a permit modification, revocation and reissuance, or termination; or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(i) Violation of any provision of the permit or the chapter has occurred;

(ii) Information submitted for the purpose of obtaining the permit or influencing the permit conditions is found to be misrepresented, materially false or inaccurate;

(iii) Errors in calculations, typographical errors or clerical errors are found in the permit application or other information submitted for the purpose of obtaining a permit which materially affects permit conditions;

(iv) The Department has reason to believe that the permitting activity has resulted in pollution of an USDW or surface water or that pollution of a USDW or surface water is imminent;

(v) New information becomes known to the Department which, if available at the time the permit was issued, would have influenced the permitting decision or permit conditions;

(vi) Failure to meet conditions specified in the schedule of compliance contained in the permit;

(vii) New rules or regulations are promulgated which have a bearing upon the permitted operations;

(viii) Any other information not available at the time of permitting which may have a bearing upon the permitted operations;

(ix) The ownership of the facility is transferred to another person.

2. Modification, revocation, suspension, or termination of a permit shall not relieve the permittee of his responsibility to properly abandon the injection well.

3. If the Department tentatively decides to terminate a permit, the Department shall issue a notice of intent to terminate.

4. Permit requirements for an ASR well shall include but not be limited to the following:

(i) Recovery and use of water injected through an ASR well must occur as provided for in the permit. The Department may terminate, revoke, suspend, or modify the permit, or deny reissuance if recovery and use of injected water does not occur within a timeframe identified in the permit, and in accordance with all applicable permit conditions.

(ii). Water injected through an ASR well must not migrate beyond the aquifer designated in the permit and shall not go beyond the subsurface lateral and vertical extent designated in the permit. Monitoring as required by the Department, shall be performed by the permittee to verify these requirements are met. The Department may terminate, revoke, suspend, or modify the permit, or deny reissuance if the permittee does not maintain compliance with these requirements.

(g) General provisions as follows:

1. Any permittee authorized by permit to construct or operate an injection well shall allow access to their property and records by a duly authorized representative of the Department for the purpose of routine or other inspections and shall allow copying of records by a duly authorized representative of the Department. The duly authorized representative of the Department shall also be allowed to sample the fluids and/or pollutants to be injected, the processes and wastewater streams associated with the permitted well, and the monitoring wells.

2. When required by the Department, the permittee shall maintain financial resources in compliance with subparagraph (1)(g) of rule 335-6-8-.10 and furnish proof of this financial capability to the Department prior to beginning construction.

3. The permit shall not convey any property rights of any sort, or any exclusive privilege.

4. The permittee shall comply with all conditions in the permit.

5. The permittee shall halt or reduce injection if needed to maintain compliance with the conditions of the permit.

6. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit.

(h) The Department may require a Class V Experimental carbon sequestration well to comply with all permitting and operational requirements of 335-6-8-.13 through 335-6-8-.27. Authorization to inject for a Class V experimental carbon sequestration well may be for a period not to exceed 10 years.

Author: Curt Johnson, Thad Pittman, Sonja Massey, Joe Kelly, Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 19, 1982; **Repealed:** April 11, 2002. **Readopted:** May 16, 2002. **Amended:** July 28, 2009; September 26, 2011; September 29, 2015.

335-6-8-.13 Class VI Well Applicability and General Requirements.

(1) All rules of this chapter relating to Class VI wells apply to any wells used to inject carbon dioxide specifically for the purpose of geologic sequestration, i.e., the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations. Class VI requirements of this chapter shall only apply to carbon sequestration occurring through a permitted Class II well, as provided for in paragraphs (6), (8) and (9) of this rule.

(2) A permit for a Class VI well shall be issued for the operating life of the facility and the post-injection site care period. The Department shall review each issued Class VI well permit at least once every 5 years to determine whether it should be modified, revoked and reissued, terminated or a minor modification made.

(3) Construction of a new Class VI injection well is prohibited prior to the issuance of a permit which contains the construction requirements of 335-6-8-.18 and specific construction details approved by the Department in accordance with this chapter.

(4) Requirements prior to commencing injection. Injection may not begin through a permitted Class VI well until:

(a) Modification of the Class VI UIC permit authorizing construction to authorize Class VI injection well operation pursuant to 335-6-8-.08. The Class VI operating permit shall include all applicable requirements of this chapter regarding Class VI wells, including but not limited to, area of review

and area of review corrective action, operational requirements, maintenance of mechanical integrity, testing and monitoring, emergency and remedial response, plugging and abandonment and post-injection site care requirements for Class VI injection wells.

(b) Final injection well construction procedures and details demonstrating compliance with the requirements of 335-6-8-.18 have been submitted to the Department;

(c) All available logging and testing program data pursuant to the requirements of 335-6-8-.19 for a new Class VI injection well has been submitted to the Department;

(d) Mechanical integrity of the Class VI well has been demonstrated to the satisfaction of the Department pursuant to 335-6-8-.21;

(e) Any updates have been submitted to the Department for the proposed area of review and area of review corrective action plan, testing and monitoring plan, injection well plugging plan, post-injection site care and site closure plan, or the emergency and remedial response plan submitted under paragraph (1) of 335-6-8-.14, which are necessary to address new information collected during logging and testing of the Class VI injection well and the formation and any updates to the alternative post-injection site care timeframe demonstration submitted under paragraph (1) of 335-6-8-.14, which are necessary to address new information collected during the logging and testing of the Class VI injection well and the formation as required by 335-6-8-.19.

(f) The Department has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit. If the Department intends to inspect the well prior to authorizing injection operation, notice shall be given by the Department to the permittee.

(g) Notification has been received by the Department from the permittee that all required area of review corrective actions have been completed in the Class VI well area of review;

(h) Any other information has been submitted which the Department requests; and

(i) The Department has given written authorization for injection operation to begin.

(5) The construction, operation or maintenance of any non-experimental Class V geologic sequestration well is prohibited.

(6) All rules of this chapter relating to Class VI wells also apply to owners or operators of Class II carbon dioxide injection wells or Class V experimental carbon dioxide injection wells who seek to apply for a Class VI geologic sequestration permit. Owners or operators seeking to convert existing Class II or Class V experimental wells to Class VI geologic sequestration wells

must demonstrate to the Department that the wells were engineered and constructed to meet the requirements of 335-6-.18(1) and ensure protection of USDWs, in lieu of requirements of 335-6-.18(2) and 335-6-8-.19(1). A converted well must still meet all other requirements under 335-6-8-.18.

(7) By December 10, 2011, owners or operators of Class V geologic sequestration experimental technology wells no longer being used for experimental purposes that will continue injection of carbon dioxide for the purpose of geologic sequestration must apply for a Class VI permit.

(8) Owners or operators that are injecting carbon dioxide for the primary purpose of long-term storage into an oil and gas reservoir must apply for and obtain a Class VI geologic sequestration permit when there is an increased risk to USDWs compared to Class II operations and a Class VI permit is required. In determining if there is an increased risk to USDWs, the owner or operator must consider the factors specified in (9) below.

(9) The Department shall determine when there is an increased risk to USDWs compared to Class II operations and a Class VI permit is required. In order to make this determination the Department must consider the following:

(a) Increase in reservoir pressure within the injection zone(s);

(b) Increase in carbon dioxide injection rates;

(c) Decrease in reservoir production rates;

(d) Distance between the injection zone(s) and USDWs;

(e) Suitability of the Class II area of review delineation;

(f) Quality of abandoned well plugs within the area of review;

(g) The owner's or operator's plan for recovery of carbon dioxide at the cessation of injection;

(h) The source and properties of injected carbon dioxide; and

(i) Any additional site-specific factors as determined by the Department.

Author: Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: September 26, 2011.

335-6-8-.14 Class VI Well Permit Application and Application Review Requirements.

(1) Prior to the issuance of a permit for the construction and operation of a new Class VI well or the conversion of an existing Class II or Class V well to a Class VI well, the owner or operator shall submit to the Department; and pursuant to 335-6-8-.23(e), the owner or operator shall also submit to the EPA; and the Department shall consider, the following:

(a) Information required in 40 CFR Part 144.31(e)(1)through (6) which includes:

1. The activities conducted by the applicant which require it to obtain permits under the Resource Conservation and Recovery Act, the UIC program under the Safe Drinking Water Act, the National Pollutant Discharge Elimination System program under the Clean Water Act, or the Prevention of Significant Deterioration program under the Clean Air Act

2. Name, mailing address, and location of the facility for which the application is submitted.

3. Up to four SIC codes which best reflect the principal products or services provided by the facility.

4. The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

5. Whether the facility is located on Indian lands.

6. A listing of all permits or construction approvals received or applied for under any of the following Programs within the State of Alabama:

(i) Hazardous Waste Management program under RCRA.

(ii) UIC program under SDWA.

(iii) NPDES program under CWA.

(iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(v) Nonattainment program under the Clean Air Act.

(vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.

(viii) Dredge and fill permits under section 404 of CWA.

(ix) Other relevant environmental permits, including State permits.

(b) A map showing the location of the proposed or existing injection well, including locational coordinates, for which a permit is sought, and the applicable area of review consistent with 335-6-8-.16. Within the area of review, the map must show the number or name, and location of all injection wells, producing wells, abandoned wells, plugged wells or dry holes, deep stratigraphic boreholes, State-or EPA-approved subsurface cleanup sites, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells, other pertinent surface features including structures intended for human occupancy, State, Tribal and Territory boundaries, and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;

(c) Information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, including:

1. Maps and cross sections of the area of review;

2. The location, orientation, and properties of known or suspected faults and fractures that may transect the confining zone(s) in the area of review and a determination that they would not interfere with containment;

3. Data on the depth, areal extent, thickness, mineralogy, porosity, permeability, and capillary pressure of the injection and confining zone(s); including geology/facies changes based on field data which may include geologic cores, outcrop data, seismic surveys, well logs, and names and lithologic descriptions;

4. Geomechanical information on fractures, stress, ductility, rock strength, and insitu fluid pressures within the confining zone(s);

5. Information on the seismic history including the presence and depth of seismic sources and a determination that the seismicity would not interfere with containment; and

6. Geologic and topographic maps and cross sections illustrating regional geology, hydrogeology, and the geologic structure of the local area.

(d) A tabulation of all wells within the area of review which penetrate the injection or confining zone(s). Such data must include a description of each well's type, construction, date drilled, location, depth record of plugging and/or completion, and any additional information the Department may require;

(e) Maps and stratigraphic cross sections indicating the general vertical and lateral limits of all USDWs, water wells and springs within the area of review, their positions relative to the injection zone(s), and the direction of water movement, where known;

(f) Baseline geochemical data on subsurface formations, including all USDWs in the area of review;

(g) Proposed operating data for the proposed geologic sequestration site:

1. Average and maximum daily rate and volume and/or mass and total anticipated volume and/or mass of the carbon dioxide stream;

2. Average and maximum injection pressure;

3. The source(s) of the carbon dioxide stream; and

4. An analysis of the chemical and physical characteristics of the carbon dioxide stream.

(h) Proposed pre-operational formation testing program to obtain an analysis of the chemical and physical characteristics of the injection zone(s) and confining zone(s) and that meets the requirements at 335-6-8-.19;

(i) Proposed stimulation program, a description of stimulation fluids to be used and a determination that stimulation will not interfere with containment;

(j) Proposed procedure to outline steps necessary to conduct injection operation;

(k) Schematics or other appropriate drawings of the surface and subsurface construction details of the existing or proposed well;

(l) Injection well construction procedures that meet the requirements of 335-6-8-.18;

(m) Proposed area of review and corrective action plan that meets the requirements under 335-6-8-.16;

(n) A demonstration, satisfactory to the Department, that the applicant has met the financial responsibility requirements under 335-6-8-.17;

(o) Proposed testing and monitoring plan required by 335-6-8-.22;

(p) Proposed post-injection site care and site closure plan required by 335-6-8-.25.

(q) At the Department's discretion, a demonstration of an alternative post-injection site care timeframe required by 335-6-8-.25(3);

(r) Proposed emergency and remedial response plan required by 335-6-8-.26(1);

(s) A list of contacts, submitted to the Department, for those States, Tribes, and Territories identified to be within the area of review of the Class VI project based on information provided in paragraph 335-6-8-.14(1)(b); and

(t) Any other information requested by the Department

(2) The Department shall notify, in writing, any States, Tribes, or Territories within the area of review of the Class VI project based on information provided in paragraphs 335-6-8-.14(1)(b) and 335-6-8-.14(1)(s) of the permit application.

(3) Prior to granting approval for the operation of a Class VI well, the Department shall consider the following information:

(a) The final area of review based on modeling, using data obtained during logging and testing of the well and formation in the case of a Class II or Class V well for which a Class VI permit application is being submitted; or using data obtained during logging and testing of the well and the formation, as required by paragraphs (3)(b), (c), (d), (f), (g), and (j), of this rule.

(b) Any relevant updates, based on data obtained during logging and testing of the well and the formation as required by paragraphs (3)(c), (3)(d), (3)(f), (3)(g) and (3)(j) of this rule, to the information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, submitted to satisfy the requirements of paragraph (1)(c) of this rule;

(c) Information on the compatibility of the carbon dioxide stream with fluids in the injection zone(s) and minerals in both the injection and the confining zone(s), based on the results of the formation testing program, and with the materials used to construct the well;

(d) The results of the formation testing program required at paragraph (1)(h) of this rule;

(e) Proposed injection well construction procedures that meet the requirements of 335-6-8-.18;

(f) The status of corrective action on wells in the area of review;

(g) All available logging and testing program data on the well required by 335-6-8-.19;

(h) A proposal for demonstration of mechanical integrity pursuant to 335-6-8-.21;

(i) Any updates to the proposed area of review and corrective action plan, testing and monitoring plan, injection well plugging plan, post-injection site care and site closure plan, or the emergency and remedial response plan submitted under paragraph (1) of this rule, which are necessary to address new information collected during logging and testing of the well and the formation as

required by all paragraphs of this rule, and any updates to the alternative post-injection site care timeframe demonstration submitted under paragraph (1) of this rule, which are necessary to address new information collected during the logging and testing of the well and the formation as required by all paragraphs of this rule; and

(j) Any other information requested by the Department.

Author: Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: September 26, 2011.

335-6-8-.15 Class VI Well Minimum Criteria for Siting.

(1) Owners or operators of Class VI wells must demonstrate to the satisfaction of the Department that the wells will be sited in areas with a suitable geologic system. The owners or operators must demonstrate that the geologic system comprises:

(a) An injection zone(s) of sufficient areal extent, thickness, porosity, and permeability to receive the total anticipated volume of the carbon dioxide stream:

(b) Confining zone(s) free of transmissive faults or fractures and of sufficient areal extent and integrity to contain the injected carbon dioxide stream and displaced formation fluids and allow injection at proposed maximum pressures and volumes without initiating or propagating fractures in the confining zone(s).

(2) The Department may require owners or operators of Class VI wells to identify and characterize additional zones that will impede vertical fluid movement, are free of faults and fractures that may interfere with containment, allow for pressure dissipation, and provide additional opportunities for monitoring, mitigation, and remediation.

Author: Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: September 26, 2011.

335-6-8-.16 Class VI Well Area of Review and Area of Review Corrective Action.

(1) The area of review is the region surrounding the geologic sequestration project where USDWs may be endangered by the injection activity. The area of review is delineated using computational modeling that accounts for the physical and chemical properties of all phases of the injected

carbon dioxide stream and is based on available site characterization, monitoring, and operational data.

(2) The owner or operator of a Class VI well must prepare, maintain, and comply with a plan to delineate the area of review for a proposed geologic sequestration project, periodically reevaluate the delineation, and perform corrective action that meets the requirements of this section and is acceptable to the Department. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. As a part of the permit application for approval by the Department, the owner or operator must submit an area of review and corrective action plan that includes the following information:

(a) The method for delineating the area of review that meets the requirements of paragraph (3) of this section, including the model to be used, assumptions that will be made, and the site characterization data on which the model will be based;

(b) A description of:

1. The minimum fixed frequency, not to exceed five years, at which the owner or operator proposes to reevaluate the area of review;

2. The monitoring and operational conditions that would warrant a reevaluation of the area of review prior to the next scheduled reevaluation as determined by the minimum fixed frequency established in paragraph (2) (b) (1) of this section.

3. How monitoring and operational data (e.g. injection rate and pressure) will be used to inform an area of review reevaluation; and

4. How corrective action will be conducted to meet the requirements of paragraph (4) of this section, including what corrective action will be performed prior to injection and what, if any, portions of the area of review will have corrective action addressed on a phased basis and how the phasing will be determined; how corrective action will be adjusted if there are changes in the area of review; and how site access will be guaranteed for future corrective action.

(3) Owners or operators of Class VI wells must perform the following actions to delineate the area of review and identify all wells that require corrective action:

(a) Predict, using existing site characterization, monitoring and operational data, and computational modeling, the projected lateral and vertical migration of the carbon dioxide plume and formation fluids in the subsurface from the commencement of injection activities until the plume movement ceases, until pressure differentials sufficient to cause the movement of injected fluids or formation fluids into a USDW are no longer present, or until the end of a fixed time period as determined by the Department. The model must:

1. Be based on detailed geologic data collected to characterize the injection zone(s), confining zone(s) and any additional zone(s); and anticipated operating data, including injection pressures, rates, and total volumes over the proposed life of the geologic sequestration project;

2. Take into account any geologic heterogeneities, other discontinuities, data quality, and their possible impact on model predictions; and

3. Consider potential migration through faults, fractures, and artificial penetrations.

(b) Using methods approved by the Department, identify all penetrations, including active and abandoned wells and underground mines, in the area of review that may penetrate the confining zone(s). Provide a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Department may require; and

(c) Determine which abandoned wells in the area of review have been plugged in a manner that prevents the movement of carbon dioxide or other fluids that may endanger USDWs, including use of materials compatible with the carbon dioxide stream.

(4) Owners or operators of Class VI wells must perform corrective action on all wells in the area of review that are determined to need corrective action, using methods designed to prevent the movement of fluid into or between USDWs, including use of materials compatible, with the carbon dioxide stream, where appropriate.

(5) At the minimum fixed frequency, not to exceed five years, as specified in the area of review and corrective action plan, or when monitoring and operational conditions warrant, owners and operators must:

(a) Reevaluate the area of review in the same manner specified in paragraph (3)(a) of this rule;

(b) Identify all wells in the reevaluated area of review that require corrective action in the same manner specified in paragraph (3) of this rule:

(c) Perform corrective action on wells requiring corrective action in the reevaluated area of review in the same manner specified in paragraph (4) of this rule; and

(d) Submit an amended area of review and corrective action plan or demonstrate to the Department through monitoring data and modeling results that no amendment to the area of review and corrective action plan is needed. Any amendments to the area of review and corrective action plan must be approved by the Department, must be incorporated into the permit, and are

subject to the permit modification requirements at rule 335-6-8-.08 of this chapter, as appropriate.

(6) The emergency and remedial response plan (as required by rule 335-6-8-.26 and the demonstration of financial responsibility (as described by 335-6-8-.17 must account for the area of review delineated as specified in paragraph (3)(a) of this section, or the most recently evaluated area of review delineated under paragraph (5) of this section, regardless of whether or not corrective action in the area of review is phased.

(7) All modeling inputs and data used to support area of review reevaluations under paragraph (5) of this section shall be retained for 10 years.

Author: Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: September 26, 2011.

335-6-8-.17 Class VI Well Financial Responsibility Requirements.

(1) The owner or operator must demonstrate and maintain financial responsibility as determined by the Department that meets the following conditions:

(a) The financial responsibility instrument(s) used must be from the following list of qualifying instruments:

1. Trust Funds.

2. Surety Bonds.

3. Letter of Credit.

4. Insurance.

5. Self Insurance (i.e., Financial Test and Corporate Guarantee).

6. Escrow Account.

7. Any other instrument(s) satisfactory to the Department.

(b) The qualifying instrument(s) must be sufficient to cover the cost of:

1. Corrective action (that meets the requirements of 335-6-8-.16;
2. Injection well plugging (that meets the requirements of 335-6-8-.24;

3. Post injection site care and site closure (that meets the requirements of 335-6-8-.25; and

4. Emergency and remedial responses (that meet the requirements of 335-6-8-.26.

(c) The financial responsibility instrument(s) must be sufficient to address endangerment of underground sources of drinking water.

(d) The qualifying financial responsibility instrument(s) must comprise protective conditions of coverage.

1. Protective conditions of coverage must include at a minimum cancellation, renewal, and continuation provisions, specifications on when the provider becomes liable following a notice of cancellation if there is a failure to renew with a new qualifying financial instrument, and requirements for the provider to meet a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.

(i) Cancellation−for purposes of this part, an owner or operator must provide that their financial mechanism may not cancel, terminate, or fail to renew except for failure to pay such financial instrument. If there is a failure to pay the financial instrument, the financial institution may elect to cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the owner or operator and the Department. The cancellation must not be final for 120 days after receipt of cancellation notice. The owner or operator must provide an alternate financial responsibility demonstration within 60 days of notice of cancellation, and if an alternate financial responsibility demonstration is not acceptable (or possible), any funds from the instrument being cancelled must be released within 60 days of notification by the Department.

(ii) Renewal−for the purposes of this part, owners or operators must renew all financial instruments, if an instrument expires, for the entire term of the geologic sequestration project. The instrument may be automatically renewed as long as the owner or operator has the option of renewal at the face amount of the expiring instrument. The automatic renewal of the instrument must, at a minimum, provide the holder with the option of renewal at the face amount of the expiring financial instrument.

(iii) Cancellation, termination, or failure to renew may not occur and the financial instrument will remain in full force and effect in the event that on or before the date of expiration: The Department deems the facility abandoned; or the permit is terminated or revoked or a new permit is denied; or closure is ordered by the Department or a U.S. district court or other court of competent jurisdiction; or the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or the amount due is paid.

(e) The qualifying financial responsibility instrument(s) must be approved by the Department.

1. The Department shall consider and approve the financial responsibility demonstration for all phases of the geologic sequestration project prior to issuance of a Class VI permit 335-6-8-.14.

2. The owner or operator must provide any updated information related to their financial responsibility instrument(s) on an annual basis and if there are any changes, the Department must evaluate, within a reasonable time, the financial responsibility demonstration to confirm that the instrument(s) used remain adequate for use. The owner or operator must maintain financial responsibility requirements regardless of the status of the Department's review of the financial responsibility demonstration.

3. The Department may disapprove the use of a financial instrument if he determines that it is not sufficient to meet the requirements of this section.

(f) The owner or operator may demonstrate financial responsibility by using one or multiple qualifying financial instruments for specific phases of the geologic sequestration project.

1. In the event that the owner or operator combines more than one instrument for a specific geologic sequestration phase (e.g., well plugging), such combination must be limited to instruments that are not based on financial strength or performance (i.e., self insurance or performance bond), for example trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, escrow account, and insurance. In this case, it is the combination of mechanisms, rather than the single mechanism, which must provide financial responsibility for an amount at least equal to the current cost estimate.

2. When using a third-party instrument to demonstrate financial responsibility, the owner or operator must provide a proof that the third-party providers either have passed financial strength requirements based on credit ratings; or has met a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.

3, An owner or operator using certain types of third-party instruments must establish a standby trust to enable the Department to be party to the financial responsibility agreement without the Department being the beneficiary of any funds. The standby trust fund must be used along with other financial responsibility instruments (e.g., surety bonds, letters of credit, or escrow accounts) to provide a location to place funds if needed.

4. An owner or operator may deposit money to an escrow account to cover financial responsibility requirements; this account must segregate funds sufficient to cover estimated costs for Class VI (geologic sequestration) financial responsibility from other accounts and uses.

5. An owner or operator or its guarantor may use self insurance to demonstrate financial responsibility for geologic sequestration projects. In order to satisfy this requirement the owner or operator must meet a Tangible Net Worth of an amount approved by the Department, have a Net working

capital and tangible net worth each at least six times the sum of the current well plugging, post injection site care and site closure cost, have assets located in the United States amounting to at least 90 per cent of total assets or at least six times the sum of the current well plugging, post injection site care and site closure cost, and must submit a report of its bond rating and financial information annually. In addition, the owner or operator must either: Have a bond rating test of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or meet all of the following five financial ratio thresholds: A ratio of total liabilities to net worth less than 2.0; a ratio of current assets to current liabilities greater than 1.5; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; A ratio of current assets minus current liabilities to total assets greater than -0.1; and a net profit (revenues minus expenses) greater than 0.

6. An owner or operator who is not able to meet corporate financial test criteria may arrange a corporate guarantee by demonstrating that its corporate parent meets the financial test requirements on its behalf. The parent's demonstration that it meets the financial test requirements is insufficient if it has not also guaranteed to fulfill the obligations for the owner or operator.

7. An owner or operator may obtain an insurance policy to cover the estimated costs of geologic sequestration activities requiring financial responsibility. This insurance policy must be obtained from a third-party provider.

(2) The requirement to maintain adequate financial responsibility and resources is directly enforceable regardless of whether the requirement is a condition of the permit.

(a) The owner or operator must maintain financial responsibility and resources until:

1. The Department receives and approves the completed post-injection site care and site closure plan; and

2. The Department approves site closure.

(b) The owner or operator may be released from a financial instrument in the following circumstances:

1. The owner or operator has completed the phase of the geologic sequestration project for which the financial instrument was required and has fulfilled all its financial obligations as determined by the Department, including obtaining financial responsibility for the next phase of the geologic sequestration project, if required: or

2. The owner or operator has submitted a replacement financial instrument and received written approval from the Department accepting the

new financial instrument and releasing the owner or operator from the previous financial instrument.

(3) The owner or operator must have a detailed written estimate, in current dollars, of the cost of performing corrective action on wells in the area of review, plugging the injection well(s), post-injection site care and site closure, and emergency and remedial response.

(a) The cost estimate must be performed for each phase separately and must be based on the costs to the regulatory agency of hiring a third party to perform the required activities. A third party is a party who is not within the corporate structure of the owner or operator.

(b) During the active life of the geological sequestration project, the owner or operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with paragraph (1) of this section and provide this adjustment to the Department. The owner or operator must also provide to the Department written updates of adjustments to the cost estimate within 60 days of any amendments to the area of review and corrective action plan (335-6-8-.16), the injection well plugging plan (335-6-8-.24), the post-injection site care and site closure plan (335-6-8-.25), and the emergency and remedial response plan (335-6-8-.26).

(c) The Department must approve any decrease or increase to the initial cost estimate. During the active life of the geologic sequestration project, the owner or operator must revise the cost estimate no later than 60 days after the Department has approved the request to modify the area of review and corrective action plan (335-6-8-.16), the injection well plugging plan (335-6-8-.24), the post-injection site care and site closure plan (335-6-8-.25), and the emergency and response plan 335-6-8-.26), if the change in the plan increases the cost. If the change to the plans decreases the cost, any withdrawals of funds must be approved by the Department. Any decrease to the value of the financial assurance instrument must first be approved by the Department. The revised cost estimate must be adjusted for inflation as specified in paragraph (3)(b) of this section.

(d) Whenever the current cost estimate increases to an amount greater than the face amount of a financial instrument currently in use, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Department, or obtain other financial responsibility instruments to cover the increase. Whenever the current cost estimate decreases, the face amount of the financial assurance instrument may be reduced to the amount of the current cost estimate only after the owner or operator has received written approval from the Department.

(4) The owner or operator must notify the Department by certified mail of adverse financial conditions such as bankruptcy that may affect the

ability to carry out injection well plugging and post-injection site care and site closure.

(a) In the event that the owner or operator or the third party provider of a financial responsibility instrument is going through bankruptcy, the owner or operator must notify the Department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U. S. Code, naming the owner or operator as debtor, within 10 days after the commencement of the proceeding.

(b) A guarantor of a corporate guarantee must make such a notification to the Department if he/she is named as debtor, as required under the terms of the corporate guarantee.

(c) An owner or operator who fulfills the requirements of paragraph (1) of this section by obtaining a trust fund, surety bond, letter of credit, escrow account, or insurance policy will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee of the institution issuing the trust fund, surety bond, letter of credit, escrow account, or insurance policy. The owner or operator must establish other financial assurance within 60 days after such an event.

(5) The owner or operator must provide an adjustment of the cost estimate to the Department within 60 days of notification by the Department, if the Department determines during the annual evaluation of the qualifying financial responsibility instrument(s) that the most recent demonstration is no longer adequate to cover the cost of corrective action (as required by (335-6-8-.17), injection well plugging (as required by 335-6-8-.24), post-injection site care and site closure (as required by 335-6-8-.25), and emergency and remedial response (as required by 335-6-8-.26).

(6) The Department must approve the use and length of pay-in-periods for trust funds or escrow accounts.

Author: Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: September 26, 2011.

335-6-8-.18 Class VI Well Construction Requirements.

(1) The owner or operator must demonstrate that all Class VI wells are constructed and completed to:

(a) Prevent the movement of fluids into or between USDWs or into any unauthorized zones;

(b) Permit the use of appropriate testing devices and workover tools; and

(c) Permit continuous monitoring of the annulus space between the injection tubing and long string casing.

(2) Casing and Cementing of Class VI Wells.

(a) Casing and cement or other materials used in the construction of each Class VI well must have sufficient structural strength and be designed for the life of the geologic sequestration project. All well materials must be compatible with fluids with which the materials may be expected to come into contact and must meet or exceed standards developed for such materials by the American Petroleum Institute, ASTM International, or comparable standards acceptable to the Department. The casing and cementing program must be designed to prevent the movement of fluids into or between USDWs. In order to allow the Department to determine and specify casing and cementing requirements, the owner or operator must provide the following information:

1. Depth to the injection zone(s);

2. Injection pressure, external pressure, internal pressure, and axial loading;

3. Hole size;

4. Size and grade of all casing strings (wall thickness, external diameter, nominal weight, length, joint specification, and construction material);

5. Corrosiveness of the carbon dioxide stream and formation fluids;

6. Down-hole temperatures;

7. Lithology of injection and confining zone(s);

8. Type or grade of cement and cement additives; and

9. Quantity, chemical composition, and temperature of the carbon dioxide stream.

(b) Surface casing must extend through the base of the lowermost USDW and be cemented to the surface through the use of a single or multiple strings of casing and cement.

(c) At least one long string casing, using a sufficient number of centralizers, must extend to the injection zone and must be cemented by circulating cement to the surface in one or more stages.

(d) Circulation of cement may be accomplished by staging. The Department may approve an alternative method of cementing in cases where

the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate by using logs that the cement does not allow fluid movement behind the well bore.

(e) Cement and cement additives must be compatible with the carbon dioxide stream and formation fluids and of sufficient quality and quantity to maintain integrity over the design life of the geologic sequestration project. The integrity and location of the cement shall be verified using technology capable of evaluating cement quality radially and identifying the location of channels to ensure that USDWs are not endangered.

(3) Tubing and packer.

(a) Tubing and packer materials used in the construction of each Class VI well must be compatible with fluids with which the materials may be expected to come into contact and must meet or exceed standards developed for such materials by the American Petroleum Institute, ASTM International, or comparable standards acceptable to the Department.

(b) All owners or operators of Class VI wells must inject fluids through tubing with a packer set at a depth opposite a cemented interval at the location approved by the Department.

(c) In order for the Department to determine and specify requirements for tubing and packer, the owner or operator must submit the following information:

1. Depth of setting;

2. Characteristics of the carbon dioxide stream (chemical content, corrosiveness, temperature, and density) and formation fluids;

3. Maximum proposed injection pressure;

4. Maximum proposed annular pressure;

5. Proposed injection rate (intermittent or continuous) and volume and/or mass of the carbon dioxide stream;

6. Size of tubing and casing; and

7. Tubing tensile, burst, and collapse strengths.

Author: Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: September 26, 2011.

335-6-8-.19 Class VI Well Logging, Sampling and Testing Requirements Prior to Injection Well Operation.

(1) During the drilling and construction of a Class VI injection well, the owner or operator must run appropriate logs, surveys and tests to determine or verify the depth, thickness, porosity, permeability, and lithology of, and the salinity of any formation fluids in all relevant geologic formations to ensure conformance with the injection well construction requirements under 335-6-8-.18 and to establish accurate baseline data against which future measurements may be compared. The owner or operator must submit to the Department a descriptive report prepared by a knowledgeable log analyst that includes an interpretation of the results of such logs and tests. At a minimum, such logs and tests must include:

(a) Deviation checks during drilling on all holes constructed by drilling a pilot hole which is enlarged by reaming or another method. Such checks must be at sufficiently frequent intervals to determine the location of the borehole and to ensure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling; and

(b) Before and upon installation of the surface casing:

1. Resistivity, spontaneous potential, and caliper logs before the casing is installed; and

2. A cement bond and variable density log to evaluate cement quality radially, and a temperature log after the casing is set and cemented.

(c) Before and upon installation of the long string casing:

1. Resistivity, spontaneous potential, porosity, caliper, gamma ray, fracture finder logs, and any other logs the Department requires for the given geology before the casing is installed; and

2. A cement bond and variable density log, and a temperature log after the casing is set and cemented.

(d) A series of tests designed to demonstrate the internal and external mechanical integrity of injection wells, which may include:

1. A pressure test with liquid or gas;

2. A tracer survey such as oxygen-activation logging;

3. A temperature or noise log;

4. A casing inspection log, and

(e) Any alternative methods that provide equivalent or better information and that are required by and/or approved of by the Department.

(2) The owner or operator must take whole cores or sidewall cores of the injection zone and confining system and formation fluid samples from the injection zone(s), and must submit to the Department a detailed report prepared by a log analyst that includes: Well log analyses (including well logs), core analyses, and formation fluid sample information. The Department may accept information on cores from nearby wells if the owner or operator can demonstrate that core retrieval is not possible and that such cores are representative of conditions at the well. The Department may require the owner or operator to core other formations in the borehole.

(3) The owner or operator must record the fluid temperature, pH, conductivity, reservoir pressure, and static fluid level of the injection zone(s).

(4) At a minimum, the owner or operator must determine or calculate the following information concerning the injection and confining zone(s):

(a) Fracture pressure;

(b) Other physical and chemical characteristics of the injection and confining zone(s); and

(c) Physical and chemical characteristics of the formation fluids in the injection zone(s).

(5) Upon completion, but prior to operation, the owner or operator must conduct the following tests to verify hydrogeologic characteristics of the injection zone(s):

(a) A pressure fall-off test; and,

(b) A pump test; or

(c) Injectivity tests.

(6) The owner or operator must provide the Department with the opportunity to witness all logging and testing conducted pursuant to requirements of this chapter for Class VI wells. The owner or operator must submit a schedule of such activities to the Department 30 days prior to conducting the first test and submit any changes to the schedule 30 days prior to the next scheduled test.

Author: Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: September 26, 2011.

335-6-8-.20 Class VI Well Operating Requirements.

(1) Except during stimulation, the owner or operator must ensure that injection pressure does not exceed 90 percent of the fracture pressure of

the injection zone(s) so as to ensure that the injection does not initiate new fractures or propagate existing fractures in the injection zone(s). In no case may injection pressure initiate fractures in the confining zone(s) or cause the movement of injection or formation fluids that endangers a USDW. Pursuant to requirements at 335-6-8-.14(1)(i), all stimulation programs must be approved by the Department as part of the permit application and incorporated into the permit.

(2) Injection between the outermost casing protecting USDWs and the well bore is prohibited.

(3) The owner or operator must fill the annulus between the tubing and the long string casing with a non-corrosive fluid approved by the Department. The owner or operator must maintain on the annulus a pressure that exceeds the operating injection pressure, unless the Department determines that such requirement might harm the integrity of the well or endanger USDWs.

(4) Other than during periods of well workover (maintenance) approved by the Department in which the sealed tubing-casing annulus is disassembled for maintenance or corrective procedures, the owner or operator must maintain mechanical integrity of the injection well at all times.

(5) The owner or operator must install and use:

(a) Continuous recording devices to monitor: The injection pressure; the rate, volume and/or mass, and temperature of the carbon dioxide stream; and the pressure on the annulus between the tubing and the long string casing and annulus fluid volume; and

(b) Alarms and automatic surface shut-off systems or, at the discretion of the Department, down-hole shut-off systems (*e.g.*, automatic shut-off, check valves) for onshore wells or, other mechanical devices that provide equivalent protection; and

(c) Alarms and automatic down-hole shut-off systems for wells located offshore but within State territorial waters, designed to alert the operator and shut-in the well when operating parameters such as annulus pressure, injection rate, or other parameters diverge beyond permitted ranges and/or gradients specified in the permit.

(6) If a shutdown (*i.e.*, down-hole or at the surface) is triggered or a loss of mechanical integrity is discovered, the owner or operator must immediately investigate and identify as expeditiously as possible the cause of the shutoff. If, upon such investigation, the well appears to be lacking mechanical integrity, or if monitoring required under paragraph (5) of this rule otherwise indicates that the well may be lacking mechanical integrity, the owner or operator must:

(a) Immediately cease injection;

(b) Take all steps reasonably necessary to determine whether there may have been a release of the injected carbon dioxide stream or formation fluids into any unauthorized zone;

(c) Notify the Department within 24 hours;

(d) Restore and demonstrate mechanical integrity to the satisfaction of the Department prior to resuming injection; and

(e) Notify the Department when injection can be expected to resume.

Author: Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: September 26, 2011.

335-6-8-.21 Class VI Well Mechanical Integrity Requirements.

(1) Operation of a Class VI well without mechanical integrity is prohibited. Mechanical integrity must be demonstrated to the satisfaction of the Department. A Class VI well has mechanical integrity if:

(a) There is no significant leak in the casing, tubing, or packer; and

(b) There is no significant fluid movement into a USDW through channels adjacent to the injection well bore.

(2) To evaluate the absence of significant leaks under paragraph (1)(a) of this section, owners or operators must, following an initial annulus pressure test, continuously monitor injection pressure, rate, injected volumes; pressure on the annulus between tubing and long-string casing; and annulus fluid volume as specified in 335-6-8-.20(5);

(3) At least once per year, the owner or operator must use one of the following methods to determine the absence of significant fluid movement under paragraph (1)(b) of this section:

(a) An approved tracer survey such as an oxygen-activation log; or

(b) A temperature or noise log.

(4) If required by the Department, at a frequency specified in the testing and monitoring plan required at 335-6-8-.22, the owner or operator must run a casing inspection log to determine the presence or absence of corrosion in the long-string casing.

(5) The Department may require any other test to evaluate mechanical integrity under paragraphs (1)(a) or (1)(b) of this rule. Also, the Department may allow the use of a test to demonstrate mechanical integrity other than those listed above with written approval of the Administrator. To

obtain approval for a new mechanical integrity test, the Department must submit a written request to the Administrator setting forth the proposed test and all technical data supporting its use. The Administrator may approve the request if he or she determines that it will reliably demonstrate the mechanical integrity of wells for which its use is proposed.

(6) In conducting and evaluating the tests enumerated in this section or others to be allowed by the Department, the owner or operator and the Department must apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Department, he/she shall include a description of the test(s) and the method(s) used. In making his/her evaluation, the Department must review monitoring and other test data submitted since the previous evaluation.

(7) The Department may require additional or alternative tests if the results presented by the owner or operator under paragraphs (1) through (4) of this section are not satisfactory to the Department to demonstrate that there is no significant leak in the casing, tubing, or packer, or to demonstrate that there is no significant movement of fluid into a USDW resulting from the injection activity as stated in paragraphs (1)(a) and (b) of this rule.

Author: Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: September 26, 2011.

335-6-8-.22 Class VI Well Testing and Monitoring Requirements.

(1) The owner or operator of a Class VI well must prepare, maintain, and comply with a testing and monitoring plan to verify that the geologic sequestration project is operating as permitted and is not endangering USDWs. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The testing and monitoring plan must be submitted with the permit application, for Department approval, and must include a description of how the owner or operator will meet the requirements of this rule, including accessing sites for all necessary monitoring and testing during the life of the project. Testing and monitoring associated with geologic sequestration projects must, at a minimum include:

(a) Analysis of the carbon dioxide stream with sufficient frequency to yield data representative of its chemical and physical characteristics;

(b) Installation and use, except during well workovers as defined in 335-6-8-.20(4), of continuous recording devices to monitor injection pressure, rate, and volume; the pressure on the annulus between the tubing and the long string casing; and the annulus fluid volume added;

(c) Corrosion monitoring of the well materials for loss of mass, thickness, cracking, pitting, and other signs of corrosion, which must be performed on a quarterly basis to ensure that the well components meet the minimum standards for material strength and performance set forth in 335-6-8-.18(2), by:

1. Analyzing coupons of the well construction materials placed in contact with the carbon dioxide stream; or

2. Routing the carbon dioxide stream through a loop constructed with the material used in the well and inspecting the materials in the loop; or

3. Using an alternative method approved by the Department;

(d) Periodic monitoring of the ground water quality and geochemical changes above the confining zone(s) that may be a result of carbon dioxide movement through the confining zone(s) or additional identified zones including:

1. The location and number of monitoring wells based on specific information about the geologic sequestration project, including injection rate and volume, geology, the presence of artificial penetrations, and other factors; and

2. The monitoring frequency and spatial distribution of monitoring wells based on baseline geochemical data that has been collected under 335-6-8-.14(1)(f) and on any modeling results in the area of review evaluation required by 335-6-8-.16(3).

(e) A demonstration of external mechanical integrity pursuant to 335-6-8-.21(3) at least once per year until the injection well is plugged; and, if required by the Department, a casing inspection log pursuant to requirements at 335-6-8-.21(4) at a frequency established in the testing and monitoring plan;

(f) A pressure fall-off test at least once every five years unless more frequent testing is required by the Department based on site-specific information;

(g) Testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure (*e.g.*, the pressure front) by using:

1. Direct methods in the injection zone(s); and,

2. Indirect methods (*e.g.*, seismic, electrical, gravity, or electromagnetic surveys and/or down-hole carbon dioxide detection tools), unless the Department determines, based on site-specific geology, that such methods are not appropriate;

(h) The Department may require surface air monitoring and/or soil gas monitoring to detect movement of carbon dioxide that could endanger a USDW.

1. Design of Class VI surface air and/or soil gas monitoring must be based on potential risks to USDWs within the area of review;

2. The monitoring frequency and spatial distribution of surface air monitoring and/or soil gas monitoring must be decided using baseline data, and the monitoring plan must describe how the proposed monitoring will yield useful information on the area of review delineation and/or compliance with standards under 335-6-8-.05 of this chapter;

3. If an owner or operator demonstrates that monitoring employed under §§ 98.440 to 98.449 (Clean Air Act, 42 U.S.C. 7401 *et seq.*) accomplishes the goals of paragraphs (h)(1) and (2) of this section, and meets the requirements pursuant to 335-6-8-.23(1)(c)(5), the Department must approve the use of monitoring employed under §§ 98.440 to 98.449 if surface air/soil gas monitoring is required by the Department. Compliance with §§ 98.440 to 98.449 pursuant to this provision is considered a condition of the Class VI permit;

(i) Any additional monitoring, as required by the Department, necessary to support, upgrade, and improve computational modeling of the area of review evaluation required under 335-6-8-.16(3) and to determine compliance with standards under 335-6-8-.05 of this chapter;

(j) The owner or operator shall periodically review the testing and monitoring plan to incorporate monitoring data collected under any requirements for Class VI wells of this chapter, operational data collected under 335-6-8-.20, and the most recent area of review reevaluation performed under 335-6-8-.16(5). In no case shall the owner or operator review the testing and monitoring plan less often than once every five years. Based on this review, the owner or operator shall submit an amended testing and monitoring plan or demonstrate to the Department that no amendment to the testing and monitoring plan is needed. Any amendments to the testing and monitoring plan must be approved by the Department, must be incorporated into the permit, and are subject to the permit modification requirements at 335-6-8-.08 of this chapter, as appropriate. Amended plans or demonstrations shall be submitted to the Department as follows:

1. Within one year of an area of review reevaluation;

2. Following any significant changes to the facility, such as addition of monitoring wells or newly permitted injection wells within the area of review, on a schedule determined by the Department; or

3. When required by the Department.

(k) A quality assurance and surveillance plan for all testing and monitoring requirements.

Author: Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: September 26, 2011.

335-6-8-.23 Class VI Well Reporting Requirements.

(1) The owner or operator must provide the following reports to the Department, and to EPA, at a minimum, on a semi-annual basis, and as specified in paragraph (e) of this section, for each permitted Class VI well. The Department and EPA may each specify a more frequent schedule for submittal of the following reports:

(a) Reports containing:

1. Any changes to the physical, chemical, and other relevant characteristics of the carbon dioxide stream from the proposed operating data;

2. Monthly average, maximum, and minimum values for injection pressure, flow rate and volume, and annular pressure;

3. A description of any event that exceeds operating parameters for annulus pressure or injection pressure specified in the permit;

4. A description of any event which triggers a shut-off device required pursuant to 335-6-8-.20(5) and the response taken;

5. The monthly volume and/or mass of the carbon dioxide stream injected over the reporting period and the volume injected cumulatively over the life of the project;

6. Monthly annulus fluid volume added; and

7. The results of monitoring prescribed under 335-6-8-.22.

(b) Report, within 30 days, the results of:

1. Periodic tests of mechanical integrity;

2. Any well workover; and,

3. Any other test of the injection well conducted by the permittee if required by the Department.

(c) Report, within 24 hours:

1. Any evidence that the injected carbon dioxide stream or associated pressure front may cause an endangerment to a USDW;

2. Any noncompliance with a permit condition, or malfunction of the injection system, which may cause fluid migration into or between USDWs;

3. Any triggering of a shut-off system (*i.e.*, down-hole or at the surface);

4. Any failure to maintain mechanical integrity; or

5. Pursuant to compliance with the requirements at 335-6-8-.22(h) for surface air/soil gas monitoring or other monitoring technologies, if required by the Department, any release of carbon dioxide to the atmosphere or biosphere.

(d) Owners or operators must notify the Department in writing 30 days in advance of:

1. Any planned well workover;

2. Any planned stimulation activities, other than stimulation for formation testing conducted under 335-6-8-.14; and

3. Any other planned test of the injection well conducted by the permittee.

(e) Owners or operators must submit all required reports, submittals, and notifications relating to Class VI injection well facilities and activities, required by this chapter, to EPA in an electronic format approved by EPA.

(f) Records shall be retained by the owner or operator as follows:

1. All data collected under 335-6-8-.14 for Class VI permit applications shall be retained throughout the life of the geologic sequestration project and for 10 years following site closure.

2. Data on the nature and composition of all injected fluids collected pursuant to 335-6-8-.22(1)(a) shall be retained until 10 years after site closure. The Department may require the owner or operator to deliver the records to the Department at the conclusion of the retention period.

3. Monitoring data collected pursuant to 335-6-8-.22(1)(b) through (i) shall be retained for 10 years after it is collected.

4. Well plugging reports, post-injection site care data, including, if appropriate, data and information used to develop the demonstration of the alternative post-injection site care timeframe, and the site closure report collected pursuant to requirements at 335-6-8-.25(6) and (8) shall be retained for 10 years following site closure.

5. The Department has authority to require the owner or operator to retain any records required in this subpart for longer than 10 years after site closure.

Author: Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: September 26, 2011.

335-6-8-.24 Class VI Well Plugging Requirements.

(1) At the conclusion of CO2 injection activities, the injection well must be permanently plugged, permanently removed from service, and cannot be converted to any other type of use.

(2) Prior to the well plugging, the owner or operator must flush each Class VI injection well with a buffer fluid, determine bottomhole reservoir pressure, and perform a final external mechanical integrity test.

(3) The owner or operator of a Class VI well must prepare, maintain, and comply with a well plugging plan that is acceptable to the Department. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The well plugging plan must be submitted as part of the permit application and must include the following information:

(a) Appropriate tests or measures for determining bottomhole reservoir pressure;

(b) Appropriate testing methods to ensure external mechanical integrity as specified in 335-6-8-.21;

(c) The type and number of plugs to be used;

(d) The placement of each plug, including the elevation of the top and bottom of each plug;

(e) The type, grade, and quantity of material to be used in plugging. The material must be compatible with the carbon dioxide stream; and

(f) The method of placement of the plugs.

(4) The owner or operator must notify the Department, in writing, at least 60 days before plugging of a well. At this time, if any changes have been made to the original well plugging plan, the owner or operator must also provide the proposed revisions to the well plugging plan. The Department may allow for a shorter notice period. Any amendments to the injection well plugging plan must be approved by the Department, must be incorporated into the permit, and are subject to the permit modification requirements of 335-6-8-.08.

(5) Within 60 days after plugging, the owner or operator must submit a plugging report to the Department, and to the EPA, pursuant to rule 335-6-8-.23(e). The report must be certified as accurate by the owner or operator and by the person who performed the plugging operation (if other than the owner or operator.) The owner or operator shall retain the well plugging report for 10 years following site closure.

Author: Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: September 26, 2011.

335-6-8-.25 Class VI Well Post-Injection Site Care and Site Closure Requirements.

(1) The owner or operator of a Class VI well must prepare, maintain, and comply with a plan for post-injection site care and site closure that meets the requirements of paragraph (1)(b) of this rule and is acceptable to the Department. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

(a) The owner or operator must submit the post-injection site care and site closure plan as a part of the permit application to be approved by the Department.

(b) The post-injection site care and site closure plan must include the following information:

1. The pressure differential between pre-injection and predicted post-injection pressures in the injection zone(s);

2. The predicted position of the carbon dioxide plume and associated pressure front at site closure as demonstrated in the area of review evaluation required under 335-6-8-.16(3)(a);

3. A description of post-injection monitoring location, methods, and proposed frequency;

4. A proposed schedule for submitting post-injection site care monitoring results to the Department and to EPA pursuant to 335-6-8-.23(1)(e); and,

5. The duration of the post-injection site care timeframe and, if approved by the Department, the demonstration of the alternative post-injection site care timeframe that ensures non-endangerment of USDWs.

(c) Upon cessation of injection, owners or operators of Class VI wells must either submit an amended post-injection site care and site closure plan or demonstrate to the Department through monitoring data and modeling results

that no amendment to the plan is needed. Any amendments to the post-injection site care and site closure plan must be approved by the Department, be incorporated into the permit, and are subject to the permit modification requirements at 335-6-8-.08 of this chapter, as appropriate.

(d) At any time during the life of the geologic sequestration project, the owner or operator may modify and resubmit the post-injection site care and site closure plan for the Department's approval within 30 days of such change.

(2) The owner or operator shall monitor the site following the cessation of injection to show the position of the carbon dioxide plume and pressure front and demonstrate that USDWs are not being endangered.

(a) Following the cessation of injection, the owner or operator shall continue to conduct monitoring as specified in the Department-approved post-injection site care and site closure plan for at least 50 years or for the duration of the alternative timeframe approved by the Department pursuant to requirements in paragraph (3) of this rule, unless he/she makes a demonstration under (2)(b) of this rule. The monitoring must continue until the geologic sequestration project no longer poses an endangerment to USDWs and the demonstration under (2)(b) of this section is submitted and approved by the Department.

(b) If the owner or operator can demonstrate to the satisfaction of the Department before 50 years or prior to the end of the approved alternative timeframe based on monitoring and other site-specific data, that the geologic sequestration project no longer poses an endangerment to USDWs, the Department may approve an amendment to the post-injection site care and site closure plan to reduce the frequency of monitoring or may authorize the site closure before the end of the 50-year period or prior to the end of the approved alternative timeframe, where he or she has substantial evidence that the geologic sequestration project no longer poses a risk of endangerment to USDWs.

(c) Prior to authorization for site closure, the owner or operator must submit to the Department for review and approval a demonstration, based on monitoring and other site-specific data, that no additional monitoring is needed to ensure that the geologic sequestration project does not pose an endangerment to USDWs.

(d) If the demonstration in paragraph (2)(c) of this section cannot be made (*i.e.*, additional monitoring is needed to ensure that the geologic sequestration project does not pose an endangerment to USDWs) at the end of the 50-year period or at the end of the approved alternative timeframe, or if the Department does not approve the demonstration, the owner or operator must submit to the Department a plan to continue post-injection site care until a demonstration can be made and approved by the Department.

(3) *Demonstration of alternative post-injection site care timeframe*. At the Department's discretion, the Department may approve, in consultation with

EPA, an alternative post-injection site care timeframe other than the 50 year default, if an owner or operator can demonstrate during the permitting process that an alternative post-injection site care timeframe is appropriate and ensure non-endangerment of USDWs. The demonstration must be based on significant, site-specific data and information including all data and information collected pursuant to 335-6-8-.14 and 335-6-8-.15, and must contain substantial evidence that the geologic sequestration project will no longer pose a risk of endangerment to USDWs at the end of the alternative post-injection site care timeframe.

(a) A demonstration of an alternative post-injection site care timeframe must include consideration and documentation of:

1. The results of computational modeling performed pursuant to delineation of the area of review under 335-6-8-.16;

2. The predicted timeframe for pressure decline within the injection zone, and any other zones, such that formation fluids may not be forced into any USDWs; and/or the timeframe for pressure decline to pre-injection pressures;

3. The predicted rate of carbon dioxide plume migration within the injection zone, and the predicted timeframe for the cessation of migration;

4. A description of the site-specific processes that will result in carbon dioxide trapping including immobilization by capillary trapping, dissolution, and mineralization at the site;

5. The predicted rate of carbon dioxide trapping in the immobile capillary phase, dissolved phase, and/or mineral phase;

6. The results of laboratory analyses, research studies, and/or field or site-specific studies to verify the information required in 335-6-8-.25(3)(a)4 and 335-6-8-.25(3)(a)5 of this rule;

7. A characterization of the confining zone(s) including a demonstration that it is free of transmissive faults, fractures, and micro-fractures and of appropriate thickness, permeability, and integrity to impede fluid (*e.g.*, carbon dioxide, formation fluids) movement;

8. The presence of potential conduits for fluid movement including planned injection wells and project monitoring wells associated with the proposed geologic sequestration project or any other projects in proximity to the predicted/modeled, final extent of the carbon dioxide plume and area of elevated pressure;

9. A description of the well construction and an assessment of the quality of plugs of all abandoned wells within the area of review;

10. The distance between the injection zone and the nearest USDWs above and/or below the injection zone; and

11. Any additional site-specific factors required by the Department.

(b) Information submitted to support the demonstration in paragraph (3)(a) of this rule must meet the following criteria:

1. All analyses and tests performed to support the demonstration must be accurate, reproducible, and performed in accordance with the established quality assurance standards;

2. Estimation techniques must be appropriate and EPA-certified test protocols must be used where available;

3. Predictive models must be appropriate and tailored to the site conditions, composition of the carbon dioxide stream and injection and site conditions over the life of the geologic sequestration project;

4. Predictive models must be calibrated using existing information (*e.g.*, at Class II, or Class V experimental technology well sites) where sufficient data are available;

5. Reasonably conservative values and modeling assumptions must be used and disclosed to the Department whenever values are estimated on the basis of known, historical information instead of site-specific measurements;

6. An analysis must be performed to identify and assess aspects of the alternative post-injection site care timeframe demonstration that contribute significantly to uncertainty. The owner or operator must conduct sensitivity analyses to determine the effect that significant uncertainty may contribute to the modeling demonstration.

7. An approved quality assurance and quality control plan must address all aspects of the demonstration; and,

8. Any additional criteria required by the Department.

(4) *Notice of intent for site closure*. The owner or operator must notify the Department in writing at least 120 days before site closure. At this time, if any changes have been made to the original post-injection site care and site closure plan, the owner or operator must also provide the revised plan. The Department may allow for a shorter notice period.

(5) After the Department has authorized site closure, the owner or operator must plug all monitoring wells in a manner which will not allow movement of injection or formation fluids that endangers a USDW.

(6) The owner or operator must submit a site closure report to the Department within 90 days of site closure, which must thereafter be retained at a location designated by the Department for 10 years. The report must include:

(a) Documentation of appropriate injection and monitoring well plugging as specified in 335-6-8-.24 and paragraph (5) of this rule. The owner or operator must provide a copy of a survey plat which has been submitted to the local zoning authority designated by the Department. The plat must indicate the location of the injection well relative to permanently surveyed benchmarks. The owner or operator must also submit a copy of the plat to the Regional Administrator of the appropriate EPA Regional Office;

(b) Documentation of appropriate notification and information to such State, local, and Tribal authorities that have authority over drilling activities to enable such State, local, and Tribal authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the injection and confining zone(s); and

(c) Records reflecting the nature, composition, and volume of the carbon dioxide stream.

(7) Each owner or operator of a Class VI injection well must record a notation on the deed to the facility property or any other document that is normally examined during title search that will in perpetuity provide any potential purchaser of the property the following information:

(a) The fact that land has been used to sequester carbon dioxide;

(b) The name of the State agency, local authority, and/or Tribe with which the survey plat was filed, as well as the address of the Environmental Protection Agency Regional Office to which it was submitted; and

(c) The volume of fluid injected, the injection zone or zones into which it was injected, and the period over which injection occurred.

(8) The owner or operator must retain for 10 years following site closure, records collected during the post-injection site care period. The owner or operator must deliver the records to the Department at the conclusion of the retention period, and the records must thereafter be retained at a location designated by the Department for that purpose.

Author: Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: September 26, 2011.

335-6-8-.26 Class VI Well Emergency and Remedial Response Requirements.

(1) As part of the permit application, the owner or operator must provide the Department with an emergency and remedial response plan that describes actions the owner or operator must take to address movement of the injection or formation fluids that may cause an endangerment to a USDW

during construction, operation, and post-injection site care periods. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

2. If the owner or operator obtains evidence that the injected carbon dioxide stream and associated pressure front may cause an endangerment to a USDW, the owner or operator must:

(a) Immediately cease injection;

(b) Take all steps reasonably necessary to identify and characterize any release;

(c) Notify the Department within 24 hours; and

(d) Implement the emergency and remedial response plan approved by the Department.

3. The Department may allow the operator to resume injection prior to remediation if the owner or operator demonstrates that the injection operation will not endanger USDWs.

4. The owner or operator shall periodically review the emergency and remedial response plan developed under paragraph (1) of this rule. In no case shall the owner or operator review the emergency and remedial response plan less often than once every five years. Based on this review, the owner or operator shall submit an amended emergency and remedial response plan or demonstrate to the Department that no amendment to the emergency and remedial response plan is needed. Any amendments to the emergency and remedial response plan must be approved by the Department, must be incorporated into the permit, and are subject to the permit modification requirements at 335-6-8-.08 of this chapter, as appropriate. Amended plans or demonstrations shall be submitted to the Department as follows:

(a) Within one year of the area of review reevaluation;

(b) Following any significant changes to the facility, such as addition of injection or monitoring wells, on a schedule determined by the Department; or

(c) When required by the Department.

Author: Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: September 26, 2011.

335-6-8-.27 Class VI Well Permit Requirements. The following conditions apply to all Class VI permits. All conditions applicable to all permits shall be

incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to the applicable rule will be given in the permit.

(1) Duty to comply. The permittee must comply with all conditions of the permit. Any permit non-compliance constitutes a violation of this chapter and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification.

(2) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(3) Duty to mitigate. The permittee shall take all necessary steps to minimize or correct any adverse impact on a USDW, the environment, or the health of persons, in accordance with the requirements of rule 335-6-8-.05(2) and rule 335-6-8-.06.

(4) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit.

(5) Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated non-compliance, does not stay any permit condition.

(6) Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

(7) Duty to provide information. The permittee shall furnish to the Department, within a time specified, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit.

(8) Inspection and entry. The permittee shall allow an authorized representative of the Department, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance, any substances or parameters at any location.

(9) Monitoring and records. The following monitoring and recordkeeping requirements shall apply:

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) EPA approved analytical methods shall be used for all sampling and analytical requirements. If there is no EPA approved method for a monitoring parameter, the Department reserves the right to approve the analytical method to be used.

(c) The permittee shall retain records of all monitoring information, including the following:

(i) Calibration and maintenance records and all original strip chart recording for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 10 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Department at any time; and

(ii) The nature and composition of all injected fluids collected pursuant to 335-6-8-.22(1)(a) shall be retained until 10 years after site closure pursuant to 335-6-8-.23(1)(f)2. The Department may require the owner or operator to deliver the records to the Department at the conclusion of the retention period.

(d) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(e) Owners or operators of Class VI wells shall also retain records as specified in rules 335-6-8-.16(7), 335-6-8-.23(1)(f), 335-6-8-.24(5), 335-6-8-.25(6), and 335-6-8-.25(8)

(10) Signatory requirement. All applications, reports, or information submitted to the Department shall be signed and certified:

(a) For a corporation, by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means;

(i) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or

(ii) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures

(b) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(c) For a municipality, State. Federal, or other public agency, by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

(i) The chief executive officer of the agency, or

(ii) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(11) Reports. All reports required by permits and other information requested by the Department shall be signed by a person described in paragraph (10) of this rule, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in paragraph (10) of this rule;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may be either a named individual or any individual occupying a named position); and

(c) The written authorization is submitted to the Department.

(12) Changes in authorization. If an authorization under paragraph (11) of this rule is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (11) if this rule must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(13) Certification. Any person signing a document under paragraph (10) or (11) of this rule shall make the following certification:

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

(14) Reporting requirements

(a) Compliance with 335-6-8-.23. The permittee shall comply with all requirements of 335-6-8-.23. All Class VI program reports shall be consistent with reporting requirements set forth in 335-6-8-.23.

(b) Planned Changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility.

(c) Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements

(d) Transfers. The permittee shall report any proposed change of ownership to the Department. This permit is not transferable to any person except by modification of the permit or revocation and reissuance of the permit pursuant to 335-6-8-.08 to change the name of the permittee and incorporate such other requirements as may be necessary under the requirements of this chapter.

(e) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit. Monitoring reports shall be submitted to the Department not later than 28 days after the reporting period specified in the permit.

(f) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in

any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(g) Twenty-four hour reporting. The permittee shall report within 24 hours, any noncompliance which may endanger the health of persons or the environment, including:

1. Any monitoring or other information which indicates that any contaminant may cause the pollution of a USDW, surface waters, or soils which could result in the pollution of a USDW or surface waters; or

2. Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs.

(h) Any circumstance or event which requires 24 hour reporting pursuant to paragraph (14)(g) of this rule shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance.

(i) Other noncompliance. The permittee shall report all instances of noncompliance not otherwise reported under paragraph (14) of this rule, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (14)(h) of this rule.

(j) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

(15) The requirements of rules 335-6-8-.13(1) through (4) and 335-6-8-.14 through 335-6-8-.26 shall be incorporated into any Class VI permit, either expressly or by reference. If incorporated by reference, a specific citation to the applicable rule will be given in the permit.

(16) The permit duration for a Class VI well shall be for the operating life of the facility and the post-injection site care period. The Department shall review each issued Class VI well UIC permit at least once every 5 years to determine whether it should be modified, revoked and reissued, terminated or a minor modification made as provided in 335-6-8-.08.

(17) Construction of a new Class VI injection well is prohibited prior to the issuance of a permit which contains the construction requirements of 335-6-8-.18 and specific construction details approved by the Department in accordance with this chapter, pursuant to 335-6-8-.05 (1)(b). Changes in

construction plans during construction may be approved by the Department as a minor modification.

(18) Requirements prior to commencing injection. Injection may not begin through a permitted Class VI well until:

(a) Modification of the Class VI UIC permit authorizing construction to authorize Class VI injection well operation pursuant to 335-6-8-.08. The Class VI operating permit shall include all applicable requirements of this chapter regarding Class VI wells, including but not limited to, area of review and area of review corrective action, operational requirements, maintenance of mechanical integrity, testing and monitoring, emergency and remedial response, plugging and abandonment and post-injection site care requirements for Class VI injection wells.

(b) Final injection well construction procedures and details demonstrating compliance with the requirements of 335-6-8-.18 have been submitted to the Department;

(c) All available logging and testing program data pursuant to the requirements of 335-6-8-.19 for a new Class VI injection well has been submitted to the Department;

(d) Mechanical integrity of the Class VI well has been demonstrated to the satisfaction of the Department pursuant to 335-6-8-.21;

(e) Any updates have been submitted to the Department for the proposed area of review and area of review corrective action plan, testing and monitoring plan, injection well plugging plan, post-injection site care and site closure plan, or the emergency and remedial response plan submitted under paragraph (1) of 335-6-8-.14, which are necessary to address new information collected during logging and testing of the Class VI injection well and the formation and any updates to the alternative post-injection site care timeframe demonstration submitted under paragraph (1) of 335-6-8-.14, which are necessary to address new information collected during the logging and testing of the Class VI injection well and the formation as required by 335-6-8-.19.

(f) The Department has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit. If the Department intends to inspect the well prior to authorizing injection operation, notice shall be given by the Department to the permittee.

(g) Notification has been received by the Department from the permittee that all required area of review corrective actions have been completed in the Class VI well area of review;

(h) Any other information has been submitted which the Department requests; and

(i) The Department has given written authorization for injection operation to begin.

(19) Plugging. The permittee shall notify the Department in writing at least 60 days prior to plugging of a well. The Department may allow for a shorter notice period.

(a) The permittee shall comply with all requirements of 335-6-8-.24 and 335-6-8-.25. The plugging and post-injection site care and site closure plans must be approved by the Department and shall be a part of the permit.

(b) Any amendments to the plugging and post-injection site care and site closure plans must be approved by the Department, must be incorporated into the permit and are subject to the permit modification requirements of 335-6-8-.08.

(c) Within 60 days after plugging, the permittee must submit a plugging report to the Department pursuant to 335-6-8-.24. The plugging report shall be certified as accurate by the person who performed the plugging operation. Such report shall consist of:

(i) A statement that the well was plugged in accordance with the plan which is included in the permit; or

(ii) Where actual plugging differed from the plan previously submitted, a description of all differences shall be submitted to the Department.

(d) For the purposes of this paragraph, temporary or intermittent cessation of injection operations is not abandonment as long as all requirements for active wells are met.

(e) After a cessation of operations of two years the owner or operator shall plug the well in accordance with the approved plan unless the permittee:

(i) Provides notice to the Department;

(ii) Describes actions or procedures, satisfactory to the Department, that the permittee will take to ensure that the well will not endanger USDWs during the period of temporary abandonment. These actions and procedures shall include compliance with all requirements applicable to active Class VI injection wells unless waived by the Department.

(20) Duty to establish and maintain mechanical integrity.

(a) The owner or operator of a Class VI well permitted under this chapter shall establish mechanical integrity prior to commencing injection. Thereafter the owner or operator of a Class VI well must maintain mechanical integrity pursuant to 335-6-8-.21.

(b) When the Department determines that a Class VI well lacks mechanical integrity pursuant to 335-6-8-.21, the Department shall give

written notice of such determination to the permittee. The Department may require immediate cessation of injection.

(c) Operation of a Class VI well which lacks mechanical integrity is prohibited until the permittee can again demonstrate mechanical integrity to the satisfaction of the Department pursuant to 335-6-8-.21.

(d) The Department may allow plugging of a well which lacks mechanical integrity, pursuant to the requirements of 335-6-8-.24 or require the permittee to take such actions as are necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The permittee may not resume injection until receiving written notification from the Department that mechanical integrity has again been adequately demonstrated.

(21) In the case of an existing well the following may be required;

(a) A schedule of compliance in accordance with 40 CFR Part 144.53

(b) Construction requirements necessary to achieve compliance.

(22) Area of review corrective action. Area of review corrective action shall be performed in accordance with a plan approved pursuant to 335-6-8-.16. The area of review and corrective action plan shall be established, maintained, reviewed and revised pursuant to 335-6-8-.16, and is subject to approval by the Department.

(23) A Class VI injection well permit shall include maximum injection volumes and/or pressures necessary to assure that fractures are not initiated in the confining zone, that injected fluids do not migrate into any USDW, that formation fluids are not displaced into any USDW, and must require compliance with the Class VI operating requirements of 335-6-8-.20.

(24) Financial Responsibility. The permittee shall show evidence of such financial responsibility to the Department by the submission of a qualifying instrument pursuant to 335-6-8-.17. The owner or operator of a Class VI well must comply with the financial responsibility requirements set forth in 335-6-8-.17, until:

(a) The well has been plugged in accordance with an approved plugging plan pursuant to 335-6-8-.24; submitted a plugging report; and has met all post-injection site care requirements of 335-6-8-.25 ; or

(b) The transferor of a permit has received notice from the Department that the owner or operator receiving transfer of the permit, the new permittee, has demonstrated financial responsibility for the well.

(25) Additional conditions.

(a) The Department shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into underground sources of drinking water;

(b) The Department shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all state statutory or regulatory requirements relating to Class VI injection wells. An applicable requirement is any requirement which takes effect prior to the modification or revocation and reissuance of a permit, pursuant to 335-6-8-.08.

(26) Modification or revocation and reissuance of permit. When the Department receives any information from such sources as a facility inspection, information submitted by the permittee, a request for modification or revocation and reissuance under 40 CFR Part 124.5, or conducts a review of the permit file, the Department may determine whether or not one or more of the causes listed in subparagraphs (a) and (b) of this paragraph for modification or revocation and reissuance or both exist. If cause exists, the Department may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this rule, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision. See 40 CFR Part 124.5(c)(2). If cause does not exist under this paragraph or paragraph (27) of this rule, the Department shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in paragraph (27) of this rule for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and the public notice procedures in 335-6-8-.08 must be followed.

(a) Causes for modification. The following are causes for modification. For Class VI wells the following may be causes for revocation and reissuance as well as modification;

1. Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

2. Information. The permit may be modified for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

3. New regulations. The standards or regulations on which the permit was based have been changed by promulgation of new or amended standards or regulations or by judicial decision after the permit was issued.

4. Compliance schedules. The Department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

5. Additional causes for modification of permits for Class VI wells:

(i) Area of review reevaluation under 335-6-8-.16;

(ii) Any amendments to the testing and monitoring plan under 335-6-8-.22;

(iii) Any amendments to the injection well plugging plan under 335-6-8-.24;

(iv) Any amendments to the post-injection site care and site closure plan under 335-6-8-.25;

(v) Any amendments to the emergency and remedial response plan under 335-6-8-.26; or

(vi) A review of monitoring and/or testing results conducted in accordance with permit requirements;

(b) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under paragraph (28) of this rule and the Department determines that modification or revocation and reissuance is appropriate.

2. The Department has received notification, pursuant to 335-6-8-.27(14)(d) of a proposed transfer.

(c) Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

(27) Minor modifications of permit. Upon the consent of the permittee, the Department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this paragraph, without following the procedures of 335-6-8-.08. Any permit modification not processed as a minor modification under this section must be made for cause and follow the procedures of 335-6-8-.08 with the preparation of a draft permit and completion of public notice procedures. Minor modifications may only;

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

(d) Allow for a change in ownership or operational control of a facility where the Department determines that no other change in the permit is

necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Department.

(e) Change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the Department, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification.

(f) Change construction requirements approved by the Department pursuant to 335-6-8-.27(17), provided that any such alteration shall comply with the requirements of 335-6-8-.27(27), 335-6-8-.27 (17), and 335-6-8-.18.

(g) Amend a Class VI injection well testing and monitoring plan, plugging plan, post-injection site care and site closure plan, or emergency and remedial response plan where the modifications merely clarify or correct the plan, as determined by the Department.

(28) Termination of permit.

(a) The Department may terminate a permit during its term, or deny a permit renewal application for the following causes:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(b) The Department shall follow the applicable procedures in 335-6-8-.08 in terminating any permit for cause under this section.

Author: Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: September 26, 2011.

335-6-8-.28 Technical Submittals and Other Reports to the Department.

(1) Studies, engineering reports, plans and specifications, plugging and abandonment plans, well logs, drilling logs, and other technical submittals required by this chapter involve the practice of engineering and/or land surveying, as those terms are defined in Code of Alabama 1975, as amended, §§ 34-11-1 to 34-11-37; and/or the practice of geology, as that term is defined in Code of Alabama 1975, as amended, §§ 34-41-1 to 34-41-24. It is the responsibility of any person preparing or submitting such submissions to

ensure compliance with these laws and any regulations promulgated thereunder, as may be required by the State Board of Registration for Professional Engineers and Land Surveyors and/or the Alabama Board of Licensure for Professional Geologists. All submissions, or parts thereof, which are required by State law to be prepared by a licensed engineer, land surveyor, or geologist, must include the engineer's, land surveyor's, and/or geologist's signature and/or seal, as required by the applicable licensure laws.

(2) Technical submittals and other reports, other than permit applications for Class III and Class V wells, shall include the certification in subparagraph (d) item 4. of rule 335-6-8-.12 and the signature of the responsible official described in subparagraph (1)(n) of rule 335-6-8-.09, or a duly authorized representative of the responsible official in accordance with item 3. of rule 335-6-8-.12. For Class VI wells, technical submittals, reports and permit applications must meet the certification and signature requirements of 335-6-8-.27(10) through 335-6-8-.27(13).

Author: Curt Johnson, Thad Pittman, Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 19, 1982; **Repealed:** April 11, 2002. **Readopted:** May 16, 2002. **Amended:** September 26, 2011**.**

335-6-8-.29 Coordination with EPA. Copies of permit applications, permits, inspection reports, monitoring reports, and compilations of various other information concerning the UIC program shall be submitted to EPA by the Department in accordance with Federal regulations and/or State/EPA UIC Memorandum of Agreement.

Author: Curt Johnson, Thad Pittman, Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 19, 1982; **Repealed:** April 11, 2002. **Readopted:** May 16, 2002. **Amended:** September 26, 2011**.**

335-6-8-.30 Confidentiality. The public shall have access to applications, public notices, fact sheets, draft, general and final permits and written comments on these documents. Other permit related forms shall not be released to the extent that they contain confidential information. Information determined to be data describing fluids and/or pollutants injected or to be injected shall not be classified confidential. Any trade secret information shall be classified as confidential information. All matters involving public access to information and protection of confidential information shall be handled in accordance with chapter 335-6-1.

Author: Curt Johnson, Thad Pittman, Sonja Massey.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 19, 1982; **Repealed:** April 11, 2002. **Readopted:** May 16, 2002. **Amended:** July 28, 2009; September 26, 2011.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER DIVISION - WATER QUALITY PROGRAM

CHAPTER 335-6-9
SURFACE MINING RULES

TABLE OF CONTENTS

335-6-9-.01 Purpose
335-6-9-.02 Definitions
335-6-9-.03 Pollution Abatement and/or Prevention Plan
335-6-9-.04 Acceptance of Plan
335-6-9-.05 Permit Required
335-6-9-.06 Special Limitations
335-6-9-.07 Setbacks
335-6-9-.08 Implementation

335-6-9-.01 Purpose. This chapter is promulgated in order to protect, maintain and improve the quality of waters of the state and to provide for the prevention, abatement and control of new or existing water pollution associated with surface mining operations.

Author: Joe Myers.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 10, 1982. **Amended:** October 10, 1984.

335-6-9-.02 Definitions. The following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:

(a) "Advance Prospecting" shall mean the removal of overburden for the purpose of determining the location, quality or quantity of a natural deposit in an area not to exceed two acres per forty acre tract.

(b) "Discharge" shall mean any addition of any pollution to any stream.

(c) "Non-point Source Pollution" shall mean sources, other than point sources, from which pollution is or may be added to any stream.

(d) "NPDES Rules" shall mean applicable National Pollutant Discharge Elimination System rules of the Department.

(e) "Overburden" shall mean the strata or material overlying a natural deposit of coal, lignite, bauxite, gravel, gold, marble, or any other mineral in its

natural state, and shall mean such strata or material both before and after its removal by surface mining.

(f) "Pit" shall mean any tract of land from which overburden has been or is being removed for the purpose of surface mining.

(g) "Point Source Pollution" shall mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit or well from which pollution is or may be added to any stream.

(h) "Sedimentation Basin, Settling Pond or Collection Pool" shall mean any natural or artificial structure, depression or body of water into which waters used in any phase of the mineral washing process are discharged for treatment, to include solids removal, pH adjustment or other necessary operations.

(i) "Stream" shall mean any body of water having a drainage area in excess of one square mile.

(j) "Surface Mining" shall mean all or any part of the process of recovering coal, lignite, iron, clay, sand, bauxite, gravel, ores, gold, marble or any other material or mineral by removal of such mineral from the surface or by removal or displacement of the strata or material which overlies such mineral deposits in its natural condition, and shall include but not be limited to the open-pit or open-cut method, the auger method and the highwall mining method. As used in this chapter, "surface mining" shall not be interpreted to include dredging operations or advance prospecting.

(k) "Surface Mining Operation" shall mean all of the premises, facilities, roads and equipment used for the process of surface mining in a designated area.

(l) "Surface Mining Operator" shall mean any person, firm, corporation or partnership engaged in or controlling a surface mining operation including any agent or independent contractor engaged in surface mining under a contract with such person, firm, corporation or partnership.

Author: Joe Myers.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 10, 1974. **Amended:** January 10, 1981; October 10, 1984.

335-6-9-.03 Pollution Abatement and/or Prevention Plan.

(1) All surface mining operations shall be conducted in such a manner as to minimize their impact on water quality to avoid contravention of applicable water quality standards. To this end, all surface mine operators shall provide the Department with a pollution abatement and/or prevention plan.

(2) The pollution abatement and/or prevention plan shall be prepared and certified by a registered professional engineer, licensed to practice engineering in the State of Alabama, as required by chapter 335-6-3, and shall be submitted in a format acceptable to the Department's staff. The plan shall include, as a minimum, the following:

(a) Name and address of the operator and a legal description of the area to be mined.

(b) General information, including name and affiliation of company, number of employees, products(s) to be mined, hours of operation and water supply and disposition.

(c) Topographic map showing location of mine, preparation plant, settling basin and all wastewater discharge points.

(d) Method and plan for diverting surface water runoff from operational areas and mineral and refuse storage piles.

(e) Narrative account of operation(s) explaining and/or defining raw materials, processes and products. Blockline or schematic diagrams indicating points of waste origin and its collection and disposal shall be included.

(f) Quantity and characteristics of waste after treatment with respect to flow, suspended solids, total iron and pH.

(g) Description of waste treatment facilities, pretreatment measures and recovery systems including expected life of sedimentation basins and schedules for cleaning or proper abandonment of such basins. If earthen sedimentation basins are a portion of the treatment scheme, plans for the construction of these facilities should meet minimum construction criteria as found in the Guidelines in Appendix A.

(h) A plan to eliminate or minimize sediment and other pollutants from haul roads must be included and should meet minimum design criteria as established by the Guidelines in Appendix B.

(i) Location of all streams in or adjacent to the mining area and those measures which will be taken to minimize the impact on water quality when the mining operation is located in close proximity to such streams. Such measures may include but not be limited to setbacks, buffer strips or screens.

(j) Those measures to be employed to minimize the effect of any non-point source pollution which may be generated as a result of the surface mining operation.

(k) All pollution abatement facilities must be certified by the design engineer as being constructed in accordance with the approved plans.

(l) The applicant shall specify if the proposed mining operation is to be constructed in the watershed of an impoundment classified as a public water supply or a direct tributary thereon.

(m) The Department shall publish, and revise as necessary, guidelines which shall be the basis for formulating pollution abatement and/or prevention plans required by this chapter.

(n) Any other information required for NPDES permit applications under applicable NPDES rules.

Author: Joe Myers.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 14, 1974. **Amended:** January 13, 1978; October 19, 1979; January 10, 1981; October 10, 1984.

335-6-9-.04 Acceptance of Plan. Upon review of the plan required in rule 335-6-9-.03, the Department shall notify the operator, in writing, of the acceptance or rejection of his plan. If such plan is accepted, the Department shall issue a permit to conduct the mining operation and operate any waste treatment facility required in the plan. If such plan is not accepted, the applicant shall be advised of the reasons of such rejection.

Author: Joe Myers.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 14, 1974. **Amended:** January 10, 1981; October 10, 1984.

335-6-9-.05 Permit Required.

(1) All surface mining operations must have an NPDES permit issued by the Department pursuant to this chapter. Such permits shall conform with, and be issued in accordance with, NPDES rules.

(2) The permit to conduct any surface mining operation shall be based on a determination by the Department that the pollution abatement and/or prevention plan and accompanying data submitted by the applicant is adequate to provide for protection of water quality in and adjacent to the area of operations and the pollution abatement and/or prevention plan and any amendments or modifications thereto shall become a part of the permit upon its acceptance.

(3) Any waste treatment facility required in the pollution abatement and/or prevention plan shall be specifically identified in the permit and any special conditions applicable to the operation of such facilities shall be included.

(4) Effluent limitations, for point source pollution, monitoring requirements and compliance schedules, if necessary for each applicant, will be specified in the permit conditions.

(5) Permits issued pursuant to this rule shall be valid for a period of five years from the date of issuance, unless suspended, modified or revoked.

Author: Joe Myers.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 14, 1974. **Amended:** January 13, 1978; October 19, 1979; January 10, 1981; October 10, 1984.

335-6-9-.06 Special Limitations.

(1) No operator shall conduct his operation in such a manner as to place, or cause to be placed into a stream, soil, rock, trees, overburden or any other debris or material associated with mining operations.

(2) No untreated wastewater from a mineral preparation plant, washing operation or contaminated surface runoff from mineral storage piles or refuse piles shall be discharged into any stream.

(3) All water which is used to wash coal, gravel or other minerals shall be directed to specially constructed sedimentation basins or abandoned mines. The location and construction of such basins and/or the utilization of any abandoned mine for disposal, must be approved by the Department.

(4) No earthen sedimentation basin utilized in conjunction with mining operations shall be abandoned without staff approval or without release of all reclamation bonds by either the Alabama Surface Mining Commission or the Alabama Department of Industrial Relations. The Department staff shall be notified in writing of the intent to either abandon, reclaim or permanently leave sediment ponds with such notification including those measures to be taken by the operator to comply with this chapter.

(5) In no event shall effluent limitations applicable to any waste treatment facility be less stringent than any applicable state law, rule, interim rule, guideline, or interim guideline, or any federal law, regulation, interim regulation, guideline or interim guideline, whichever is the more stringent, which is in effect at the time permit conditions for such facilities are derived.

Author: Joe Myers.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 14, 1974. **Amended:** January 13, 1978; January 10, 1981; October 10, 1984.

335-6-9-.08

335-6-9-.07 Setbacks.

(1) All setbacks established under Alabama Law are incorporated by reference.

(2) Setbacks on other water courses shall be determined as necessary to protect water quality.

Author: Joe Myers.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 14, 1974. **Amended:** January 13, 1978; January 10, 1981; October 10, 1984.

335-6-9-.08 Implementation.

(1) Applicants who wish to begin a new operation shall comply with the provisions of this chapter prior to commencing such operation.

(2) Those surface mining operators currently holding valid waste discharge permits for mineral preparation or washing facilities or surface mining permits, as issued by the Alabama Water Improvement Commission, need not apply for a new permit for such facilities until notified of any necessary revisions, deletions, additions or other changes needed to bring such permits in compliance with this chapter.

Author: Joe Myers.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: June 14, 1974. **Amended:** January 13, 1978; January 10, 1981; October 10, 1984.

GUIDELINES FOR MINIMIZING THE EFFECTS OF SURFACE MINING AND SURFACE EFFECTS OF UNDERGROUND MINING ON WATER QUALITY

Recognizing that there are wide variations in the circumstances and conditions surrounding and arising out of the strip mining and underground mining processes, such variables include but not limited to topography, climatic conditions, location of material deposits and soil types, the rules adopted by the Department are of a broad, general nature. They have been designed to provide flexibility to both the Department and the mine operator in preparing a plan of operation with each plan being tailored to a specific set of conditions. The following guidelines should be used as minimum criteria in formulating any pollution abatement and/or prevention plan required by rule 335-6-9-.03 adopted by the Department and for any plan which the technical staff may require to minimize the surface effects of underground mining on water quality.

APPENDIX A

Sedimentation Controls

(1) Pollution abatement facilities should be designed and constructed so as to control both spoil runoff and pit drainage.

(2) Pit drainage and spoil runoff should be diverted through the sedimentation basin by means of diversion ditches or normal drainage patterns. In cases where it is not practical to use this system, then natural vegetation, vegetative windrows, hay berms, earthen berms or other equally effective systems may be utilized.

(3) The sediment basin should have a minimum capacity to store 0.25 acre feet/acre of disturbed area in the drainage area. The basin shall be cleaned out when the sediment accumulation approaches 60 percent of the design capacity. All trees, boulders and other obstructions must be removed from the basin during the initial construction phase to facilitate clean-out.

(4) The dam for the sediment basin should be designed and built using the following as minimum criteria:

(a) the top of the dam should be no less than 12 feet wide.

(b) the slope on either side of the dam should be no steeper than 3:1.

(c) the dam should be constructed wide a cutoff trench at least 8 feet wide. The side slopes should be no less than 1:1. The cutoff trench shall be located on the dam centerline and be of sufficient depth (not less than 2 feet) to extend into a relatively impervious layer of soil or to bedrock and shall be filled with a relatively impervious material from which the core of the dam shall be constructed.

(d) the entire embankment and cutoff trench shall be compacted to 95 percent density, based on standard proctor as outlined in ASTM.

(e) the material placed in the embankment should be free to sod, roots, stones over 6 inches in diameter and other objectionable materials. The fill material should be placed and spread over the entire fill area, starting at the lowest point of the foundation, in layers not to exceed 12 inches in thickness. Construction of the fill should be undertaken only at such times that the moisture content of the fill material will permit satisfactory compaction in accordance with subparagraph (4)(d) above.

(f) the spillpipe should be seized to adequately carry the expected peak flow from a one-year frequency storm.

(g) the spillpipes should be made of a material capable of withstanding chemical reactions caused by the quality of the water being discharged.

(h) the spillpipe should be equipped with a device, or constructed, such to ensure that subsurface withdrawal is accomplished in order to ensure that no floating solids are discharged.

(i) the spillpipes should be equipped with anti-seep collars at each joint which radiate at least 2 feet from the pipe in all directions. The collars and their connections to the pipe should be watertight.

(j) a splash pad or riprap should be placed under the discharge of the spillpipe, or the location of the discharge set, so as to ensure that the discharge does not erode the dam.

(k) the emergency spillway should be designed to safely carry the expected peak flow from a 25 year, 24 hour storm or shorter duration. When designing spillways that are in the drainage course of a public water supply, then 50 years, 24 hour or shorter duration data should be used. The slope of the entrance and exit to the emergency overflow should not exceed 3 percent. The emergency overflow should be constructed with a control section at least 20 feet long. The side slopes of the emergency overflow should not be steeper than 2:1. The emergency overflow should be riprapped or concreted in order to prevent erosion.

(l) there should be a minimum of 1 1/2 feet of freeboard between the normal overflow and the emergency overflow. There should be at least 1 1/2 feet of freeboard between the maximum design flow elevation in the emergency overflow and the top of the dam.

(m) if basins are built in series, then the emergency overflow for each should be designed to accommodate the entire drainage area.

(n) the dam should be sowed with both perennial and annual grasses in order to ensure erosion is minimized. Hay bails or riprap should be placed at the toe of the dam immediately upon completion of construction.

(5) Areas in which surface mined minerals are stockpiled, and areas in which refuse resulting from any type of mining operation is or has been deposited, should be provided with diversion ditches or other appropriate methods of intercepting surface water in such a way as to minimize the possibility of sediment laden, acidic or toxic waters from such areas, being deposited into a stream.

APPENDIX B

Haul Roads

(1) In order to minimize sediment from haulroads:

(a) no sustained grade should exceed 10 percent;

(b) the maximum grade should not exceed 15 percent for 300 feet;

(c) there should not be more than 300 feet of 15 percent maximum grade for each 1,000 feet of road constructed;

(d) the haul road, wherever possible, should be located so that runoff from the road enters a sediment basin constructed for the mining operation.

(e) outer slopes for haul roads out of the permitted area should not be steeper than 2:1 and should be seeded with annual and perennial grasses with at least 80 percent cover to avoid erosion. Where this is not possible, basins, hay filters or diversion ditches should be cut, built or placed to intercept runoff. Details outlining control measures must be included with the abatement plan.

(2) Stream crossings should be avoided; however, any crossings which are necessary and which meet technical staff approval should be detailed with drawings and any other pertinent data in the pollution abatement plan, using best engineering practices.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER DIVISION - WATER QUALITY PROGRAM

CHAPTER 335-6-10
WATER QUALITY CRITERIA

TABLE OF CONTENTS

335-6-10-.01 Purpose
335-6-10-.02 Definitions
335-6-10-.03 Water Use Classifications
335-6-10-.04 Antidegradation Policy
335-6-10-.05 General Conditions Applicable to All Water Quality Criteria
335-6-10-.06 Minimum Conditions Applicable to All State Waters
335-6-10-.07 Toxic Pollutant Criteria Applicable to State Waters
335-6-10-.08 Waste Treatment Requirements
335-6-10-.09 Specific Water Quality Criteria
335-6-10-.10 Special Designations
335-6-10-.11 Water Quality Criteria Applicable to Specific Lakes
335-6-10-.12 Implementation of the Antidegradation Policy

335-6-10-.01 Purpose.

(1) Title 22, Section 22-22-1 et seq., Code of Alabama 1975, includes as its purpose "... to conserve the waters of the State and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to provide for the prevention, abatement and control of new or existing water pollution; and to cooperate with other agencies of the State, agencies of other states and the federal government in carrying out these objectives."

(2) Water quality criteria, covering all legitimate water uses, provide the tools and means for determining the manner in which waters of the State may be best utilized, provide a guide for determining waste treatment requirements, and provide the basis for standards of quality for State waters and portions thereof. Water quality criteria are not intended to freeze present uses of water, nor to exclude other uses not now possible. They are not a device to insure the lowest common denominator of water quality, but to encourage prudent use of the State's water resources and to enhance their quality and productivity commensurate with the stated purpose of Title 22, Section 22-22-1 et seq., Code of Alabama 1975.

(3) Water quality criteria herein set forth have been developed by the Commission for those uses of surface waters known and expected to exist over the State. They are based on present scientific knowledge, experience and judgment. Characteristics or parameters included in the criteria are those of

fundamental significance to a determination of water quality and are those which are and can be routinely monitored and compared to data that are generally available. It is the intent that these criteria will be applied only after reasonable opportunity for mixture of wastes with receiving waters has been afforded. The reasonableness of the opportunity for mixture of wastes and receiving waters shall be judged on the basis of the physical characteristics of the receiving waters and approval by the Department of the method in which the discharge is physically made.

Author: James E. McIndoe.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: May 5, 1967. **Amended:** June 19, 1967; July 17, 1972; February 26, 1973; May 30, 1977; December 19, 1977; February 4, 1981; March 2, 1990; April 3, 1991.

335-6-10-.02 Definitions.

(1) "Commission" means the Environmental Management Commission, established by the Environmental Management Act, Code of Alabama 1975, §§ 22-22A-1 to 22-22A-16.

(2) "Department" means the Alabama Department of Environmental Management, established by the Alabama Environmental Management Act, Code of Alabama 1975, §§ 22-22A-1 to 22-22A-16.

(3) "Existing Uses" means those legitimate beneficial uses of a water body attained in fact on or after November 28, l975, whether or not they are included as classified uses in ADEM Administrative Code rule 335-6-11-.02.

(4) "Industrial Waste" means liquid or other wastes resulting from any process of industry, manufacture, trade or business or from the development of natural resources.

(5) "NPDES" means National Pollutant Discharge Elimination System.

(6) "Other Wastes" means all other substances, whether liquid, gaseous or solid, from all other sources including, but not limited to, any vessels, or other conveyances traveling or using the waters of this State, except industrial wastes or sewage, which may cause pollution of any waters of the State.

(7) "Pollutant" includes but is not limited to dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. Pollutant does not mean (a) sewage from vessels; or (b) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in

association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State, and if the Department determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(8) "Pollution" means the discharge of a pollutant or combination of pollutants.

(9) "Sewage" means water-carried human wastes from residences, buildings, industrial establishments or other places including, but not limited to, any vessels, or other conveyances traveling or using the waters of this State, together with such ground, surface, storm or other waters as may be present.

(10) "State Waters" or "Waters of the State" means all waters of any river, stream, watercourse, pond, lake, coastal, or surface water, wholly or partially within the State, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership or corporation unless such waters are used in interstate commerce.

Author: James E. McIndoe.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: May 5, 1967. **Amended:** June 19, 1967; July 17, 1972; February 26, 1973; May 30, 1977; December 19, 1977; February 4, 1981; March 2, 1990; April 3, 1991.

335-6-10-.03 Water Use Classifications.

(1) Outstanding Alabama Water

(2) Public Water Supply

(3) Swimming and Other Whole Body Water-Contact Sports

(4) Shellfish Harvesting

(5) Fish and Wildlife

(6) Limited Warmwater Fishery

(7) Agricultural and Industrial Water Supply

Author: James E. McIndoe.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: May 5, 1967. **Amended:** June 19, 1967; July 17, 1972; February 26, 1973; May 30, 1977; December 19, 1977; February 4, 1981; December 30, 1992; September 7, 2000.

335-6-10-.04 Antidegradation Policy.

(1) The purpose and intent of the water quality standards is to conserve the waters of the State of Alabama and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; and to provide for the prevention, abatement and control of new or existing water pollution.

(2) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Uses and the water quality to support such uses were established through public participation in the initial establishment, and periodic review, of water quality standards. Should the Department determine that an existing use is not encompassed in the classification of a waterbody, that use shall be recognized.

(3) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected, except that a new or increased discharge of pollutants may be allowed, after intergovernmental coordination and public participation pursuant to applicable permitting and management processes, when the person proposing the new or increased discharge of pollutants demonstrates that the proposed discharge is necessary for important economic or social development. In such cases, water quality adequate to protect existing uses fully shall be maintained. All new and existing point source discharges shall be subject to the highest statutory and regulatory requirements, and nonpoint source discharges shall use best management practices adequate to protect water quality consistent with the Department's nonpoint source control program.

(4) Where high quality waters constitute an outstanding National resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(5) Developments constituting a new or increased source of thermal pollution shall assure that such release will not impair the propagation of a balanced indigenous population of fish and aquatic life.

(6) In applying these policies and requirements, the State of Alabama will recognize and protect the interests of the federal government. Toward this end the Department will consult and cooperate with the Environmental Protection Agency on all matters affecting the federal interest.

Author: James E. McIndoe.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: May 5, 1967. **Amended:** June 19, 1967; July 17, 1972; February 26, 1973; May 30, 1977; December 19, 1977; February 4, 1981; March 2, 1990; April 3, 1991.

335-6-10-.05 General Conditions Applicable to All Water Quality Criteria.

(1) The quality of any waters receiving sewage, industrial wastes or other wastes, regardless of their use, shall be such as will not cause the best usage of any other waters to be adversely affected by such sewage, industrial wastes or other wastes.

(2) Tests or analytical procedures to determine compliance or noncompliance with water quality criteria shall be in accordance with the methods specified in 40 CFR 136.3 (2003). Where other tests or analytical procedures are found to be more applicable and satisfactory, these may be used upon acceptance and approval by the Department.

(3) In making any tests or analytical determinations to determine compliance or noncompliance with water quality criteria, samples shall be collected in such manner and at such locations approved by a duly authorized representative of the Department as being representative of the receiving waters after reasonable opportunity for dilution and mixture with the wastes discharged thereto. Mixing zones, i.e., that portion of the receiving waters where mixture of effluents and natural waters take place, shall not preclude passage of free-swimming and drifting aquatic organisms to the extent that their populations are significantly affected.

(4) Natural waters may, on occasion, have characteristics outside of the limits established by these criteria. The criteria contained herein relate to the condition of waters as affected by the discharge of sewage, industrial wastes or other wastes, not to conditions resulting from natural forces.

(5) All waters, where attainable, shall be suitable for recreation in and on the waters during the months of June through September except that recreational use is not recommended in the vicinity of discharges or other conditions which the Department or the Department of Public Health does not control.

(6) Where necessary to attain compliance with a new water quality standard, existing permits for the discharge of wastewaters shall be modified or reissued to limit the discharge of a substance causing or contributing to the failure of a water of the state to meet the new standard. Compliance with the modified limit shall be required as soon as practical, but in all cases within three years of the adoption of the new standard.

Author: James E. McIndoe.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: May 5, 1967. **Amended:** June 19, 1967; July 17, 1972; February 26, 1973; May 30, 1977; December 19, 1977; February 4, 1981; March 2, 1990; April 3, 1991; January 14, 2005.

335-6-10-.06 Minimum Conditions Applicable to All State Waters. The following minimum conditions are applicable to all State waters, at all places and at all times, regardless of their uses:

(a) State waters shall be free from substances attributable to sewage, industrial wastes or other wastes that will settle to form bottom deposits which are unsightly, putrescent or interfere directly or indirectly with any classified water use.

(b) State waters shall be free from floating debris, oil, scum, and other floating materials attributable to sewage, industrial wastes or other wastes in amounts sufficient to be unsightly or interfere directly or indirectly with any classified water use.

(c) State waters shall be free from substances attributable to sewage, industrial wastes or other wastes in concentrations or combinations which are toxic or harmful to human, animal or aquatic life to the extent commensurate with the designated usage of such waters.

Author: James E. McIndoe.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: May 5, 1967. **Amended:** June 19, 1967; July 17, 1972; February 26, 1973; May 30, 1977; December 19, 1977; February 4, 1981.

335-6-10-.07 Toxic Pollutant Criteria Applicable to State Waters.

(1) The U. S. Environmental Protection Agency has listed the chemical constituents given in Table 1 as toxic pollutants pursuant to Section 307(a)(1) of the Federal Water Pollution Control Act (FWPCA). Concentrations of these toxic pollutants in State waters shall not exceed the criteria indicated in Table 1 to the extent commensurate with the designated usage of such waters.

(a) The freshwater and marine aquatic life criteria for certain pollutants are dependent on hardness or pH. For these pollutants, the criteria are given by the following equations. In the hardness-dependent equations for metals, a conversion factor converts the total recoverable value to a criterion expressed as the dissolved fraction in the water column. All numeric values listed for metals in Table 1 at the end of this chapter are expressed as dissolved metals unless otherwise noted.

1. Cadmium

(i) freshwater acute aquatic life:

$$\text{conc. } (\mu g/l) = (e^{(1.0166[\ln(\text{hardness in mg/l as } CaCO_3)]-3.924)})(CF); \quad \textbf{(Eq. 1)}$$

$$\text{conversion factor (CF)} = 1.136672-[\ln(\text{hardness})(0.041838)]$$

(ii) freshwater chronic aquatic life:

conc. (µg/l) = $(e^{(0.7409[\ln(\text{hardness in mg/l as } CaCO_3)]-4.719)})(CF)$; **(Eq. 2)**

conversion factor (CF) = 1.101672-[ln(hardness)(0.041838)]

2. Chromium (trivalent)

(i) freshwater acute aquatic life:

conc. (µg/l) = $(e^{(0.8190[\ln(\text{hardness in mg/l as } CaCO_3)]+3.7256)})(CF)$; **(Eq. 3)**

conversion factor (CF) = 0.316

(ii) freshwater chronic aquatic life:

conc. (µg/l) = $(e^{(0.8190[\ln(\text{hardness in mg/l as } CaCO_3)]+0.6848)})(CF)$; **(Eq. 4)**

conversion factor (CF) = 0.860

3. Copper

(i) freshwater acute aquatic life:

conc. (µg/l) = $(e^{(0.9422[\ln(\text{hardness in mg/l as } CaCO_3)]-1.700)})(CF)$; **(Eq. 5)**

conversion factor (CF) = 0.960

(ii) freshwater chronic aquatic life:

conc. (µg/l) = $(e^{(0.8545[\ln(\text{hardness in mg/l as } CaCO_3)]-1.702)})(CF)$; **(Eq. 6)**

conversion factor (CF) = 0.960

4. Lead

(i) freshwater acute aquatic life:

conc. (µg/l) = $(e^{(1.273[\ln(\text{hardness in mg/l as } CaCO_3)]-1.460)})(CF)$; **(Eq. 7)**

conversion factor (CF) = 1.46203-[ln(hardness)(0.145712)]

(ii) freshwater chronic aquatic life:

conc. (µg/l) = $(e^{(1.273[\ln(\text{hardness in mg/l as } CaCO_3)]-4.705)})(CF)$; **(Eq. 8)**

conversion factor (CF) = 1.46203-[ln(hardness)(0.145712)]

5. Nickel

(i) freshwater acute aquatic life:

conc. (µg/l) = $(e^{(0.8460[\ln(\text{hardness in mg/l as } CaCO_3)]+2.255)})(CF)$; **(Eq. 9)**

conversion factor (CF) = 0.998

(ii) freshwater chronic aquatic life:

conc. (µg/l) = $(e^{(0.8460[\ln(\text{hardness in mg/l as } CaCO_3)]+0.0584)})(CF)$; **(Eq. 10)**

conversion factor (CF) = 0.997

6. Pentachlorophenol

(i) freshwater acute aquatic life:

conc. (µg/l) = $e^{[1.005(pH)-4.869]}$ **(Eq. 11)**

(ii) freshwater chronic aquatic life:

conc. (µg/l) = $e^{[1.005(pH)-5.134]}$ **(Eq. 12)**

7. Silver

(i) freshwater acute aquatic life:

conc. (µg/l) = $(e^{(1.72[\ln(\text{hardness in mg/l as } CaCO_3)]-6.59)})(CF)$; **(Eq. 13)**

conversion factor (CF) = 0.85

8. Zinc

(i) freshwater acute aquatic life:

conc. (µg/l) = $(e^{(0.8473[\ln(\text{hardness in mg/l as } CaCO_3)]+0.884)})(CF)$; **(Eq. 14)**

conversion factor (CF) = 0.978

(ii) freshwater chronic aquatic life:

conc. (µg/l) = $(e^{(0.8473[\ln(\text{hardness in mg/l as } CaCO_3)]+0.884)})(CF)$; **(Eq. 15)**

conversion factor (CF) = 0.986

(b) The marine aquatic life criteria apply only to interstate and coastal waters of the Mobile River - Mobile Bay Basin and interstate and coastal waters of the Perdido River Basin, as identified in rule 335-6-11-.02 of the Department's regulations. The acute aquatic life criteria apply to all waters of the State. The chronic aquatic life criteria apply only to waters classified Outstanding Alabama Water, Public Water Supply, Swimming and Other Whole Body Water-Contact Sports, Shellfish Harvesting, Fish and Wildlife, and Limited Warmwater Fishery, as identified in rule 335-6-11-.02 of the Department's regulations.

(c) For the purpose of establishing effluent limitations pursuant to chapter 335-6-6 of the Department's regulations, the minimum 7-day low flow that occurs once in 10 years ($7Q_{10}$) shall be the basis for applying the chronic aquatic life criteria, except as noted in rule 335-6-10-.09(6), and the minimum 1-day low flow that occurs once in 10 years ($1Q_{10}$) shall be the basis for applying the acute aquatic life criteria, except as noted in rule 335-6-10-.09(7)(c)(5). Where a permit specifies a minimum flow greater than $7Q_{10}$, the specified minimum flow may be used as the basis for applying the acute and chronic aquatic life criteria for that permit.

(d) Except as noted in Table 1, two human health criteria are provided for each pollutant--a criterion for consumption of water and fish, and a criterion for consumption of fish only. For certain pollutants, the human health criterion for consumption of water and fish may represent a maximum contaminant level (MCL) developed under the Safe Drinking Water Act.

1. For pollutants classified by the U.S. Environmental Protection Agency as non-carcinogens, the criteria shall be given by the following equations, except where numeric values are given in Table 1.

(i) Consumption of water and fish:

conc. (mg/l) = (HBW x RfD x RSC)/[(FCR x BCF) + WCR] **(Eq. 16)**

(ii) Consumption of fish only:

conc. (mg/l) = (HBW x RfD x RSC)/(FCR x BCF) **(Eq. 17)**

where (in Equations 16 and 17):

HBW = human body weight, set at 70 kg

RfD = reference dose, in mg/(kg-day)

RSC = relative source contribution

FCR = fish consumption rate, set at 0.030 kg/day

BCF = bioconcentration factor, in l/kg

WCR = water consumption rate, set at 2 l/day

(iii) The values used for the reference dose (RfD) shall be values available through the U.S. Environmental Protection Agency's Integrated Risk Information System (IRIS), and values used for the bioconcentration factor (BCF) and relative source contribution (RSC) shall be values contained in ambient water quality criteria documents published by the U.S. Environmental Protection Agency, except where other values are established pursuant to

subparagraph (1)(g). The RfD, RSC, and BCF values for specific pollutants are provided in Appendix A.

2. For pollutants classified by the U.S. Environmental Protection Agency as carcinogens, the criteria shall be given by the following equations, except where numeric values are given in Table 1.

(i) Consumption of water and fish:

conc. (mg/l) = (HBW x RL)/(CPF x [(FCR x BCF) + WCR]) **(Eq. 18)**

(ii) Consumption of fish only:

conc. (mg/l) = (HBW x RL)/(CPF x FCR x BCF) **(Eq. 19)**

where (in Equations 18 and 19):

HBW = human body weight, set at 70 kg

RL = risk level, set at 1×10^{-6} (except for arsenic which is set at 1×10^{-5})

CPF = cancer potency factor, in (kg-day)/mg

FCR = fish consumption rate, set at 0.030 kg/day

BCF = bioconcentration factor, in l/kg

WCR = water consumption rate, set at 2 l/day

(iii) The values used for the cancer potency factor (CPF) shall be values available through the U.S. Environmental Protection Agency's Integrated Risk Information System (IRIS), and values used for the bioconcentration factor (BCF) shall be values contained in ambient water quality criteria documents published by the U.S. Environmental Protection Agency, except where other values are established pursuant to subparagraph (1)(g). The CPF and BCF values for specific pollutants are provided in Appendix A.

(e) The criteria given in Table 1 for consumption of water and fish, or computed from equation 16 or equation 18 for consumption of water and fish, shall apply only to those waters of the State classified Public Water Supply, as identified in rule 335-6-11-.02 of the Department's regulations. The criteria given in Table 1 for consumption of fish only, or computed from equation 17 or equation 19 for consumption of fish only, shall apply to all waters of the State.

(f) For the purposes of establishing effluent limitations pursuant to chapter 335-6-6 of the Department's regulations, the minimum 7-day low flow that occurs once in 10 years ($7Q_{10}$) shall be the basis for applying the human health criteria for pollutants classified as non-carcinogens, and the mean annual flow shall be the basis for applying the human health criteria for

pollutants classified as carcinogens; except that where a permit specifies a minimum flow greater than $7Q_{10}$, the specified minimum flow may be used as the basis for applying the human health criteria for pollutants classified as non-carcinogens for that permit.

(g) Numeric criteria may be computed by the Department from equations 16, 17, 18, and 19 using values for the reference dose (RfD), relative source contribution (RSC), cancer potency factor (CPF), and bioconcentration factor (BCF) determined by the Department in consultation with the State Department of Public Health after review of information available from sources other than the U.S. Environmental Protection Agency's Integrated Risk Information System (IRIS) or ambient water quality criteria documents. Such criteria, or the RfD, RSC, CPF, and BCF values used to compute criteria, shall not be effective until adopted following established rulemaking procedures.

Author: James E. McIndoe.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: March 2, 1990. **Amended:** April 3, 1991; May 28, 1992; August 29, 1994; May 30, 1997; September 7, 2000; January 12, 2001; January 14, 2005; September 21, 2005; May 29, 2007; May 27, 2008; November 25, 2008; April 1, 2014.

335-6-10-.08 Waste Treatment Requirements. The following treatment requirements apply to all industrial waste discharges, sewage treatment plants, and combined waste treatment plants:

(a) As a minimum, secondary treatment, "equivalent to secondary treatment", or alternate levels as provided for in rules and regulations promulgated by the U.S. Environmental Protection Agency at 40 CFR Part 133 (2013), shall be applied to all sanitary waste discharges. The term "secondary treatment" is applied to biologically degradable waste and is interpreted to mean a facility which at design flow is capable of removing substantially all floating and settleable solids and to achieve a minimum removal of 85 percent of both the 5-day biochemical oxygen demand and suspended solids which, in the case of municipal wastes, is generally considered to produce an effluent quality containing a BOD_5 concentration of 30 mg/l and a suspended solids concentration of 30 mg/l. For municipal waste treatment facilities with effluent concentration limitations that are more stringent than secondary treatment, minimum removal of 85 percent of both the 5-day biochemical oxygen demand and suspended solids shall be at the Department's discretion. Equivalent to secondary treatment and alternate levels shall be defined by the U.S. Environmental Protection Agency at 40 CFR Part 133 (2013). Disinfection, where necessary, will also be required. Waste treatment requirements also include those established under the provisions of Sections 301, 304, 306, and 307 of the Federal Water Pollution Control Act (FWPCA). In addition, the Department may require secondary treatment of biologically degradable industrial wastewaters when the application of guidelines published under federal law do not produce a similar reduction in the parameters of concern. In

the application of this requirement, consideration will be given to efficiencies achieved through in-process improvements.

(b) In all cases an analysis of water use and flow characteristics for the receiving stream shall be provided to determine the degree of treatment required. Where indicated by the analysis, a higher degree of treatment may be required.

(c) The minimum 7-day low flow that occurs once in 10 years shall be the basis for design criteria.

Author: James E. McIndoe.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: May 5, 1967. **Amended:** June 19, 1967; July 17, 1972; February 26, 1973; May 30, 1977; December 19, 1977; February 4, 1981; March 2, 1990; April 3, 1991; January 14, 2005; April 1, 2014.

335-6-10-.09 Specific Water Quality Criteria.

(1) **OUTSTANDING ALABAMA WATER**

(a) Best usage of waters: activities consistent with the natural characteristics of the waters.

(b) Conditions related to best usage:

1. High quality waters that constitute an outstanding Alabama resource, such as waters of state parks and wildlife refuges and waters of exceptional recreational or ecological significance, may be considered for classification as an Outstanding Alabama Water (OAW).

(c) Specific criteria:

1. Sewage, industrial wastes, or other wastes:

(i) Existing point source discharges to an Outstanding Alabama Water shall be allowed; however, within three years of assignment of the OAW classification or at permit renewal, whichever is later, existing point sources shall be required to meet the effluent limitations specified for new point source discharges in subparagraph (ii) hereof.

(ii) New point source discharges or expansions of existing point source discharges shall not be allowed unless a thorough evaluation of all practicable treatment and disposal alternatives by the permit applicant has demonstrated to the satisfaction of the Department that there is no feasible alternative to discharge to the waters classified OAW. At a minimum, domestic wastewater discharges shall be required to meet monthly average effluent limitations of 15 mg/l biochemical oxygen demand (5-day), 3 mg/l ammonia nitrogen, and 6 mg/l dissolved oxygen, and shall be required to provide

disinfection of the effluent. Non-domestic wastewater discharges shall be required to provide a comparably stringent level of treatment as determined by the Department.

(iii) Effluent limitations for new point source discharges or expansions of existing point source discharges to waters upstream of, or tributary to, waters classified OAW shall be established by the Department such that the impact of the discharge within the waters classified OAW is no greater than if the discharge occurred at the OAW boundary at the treatment levels specified in subparagraph (ii) hereof.

(iv) All NPDES permits shall contain toxics limits that will ensure compliance with all applicable water quality standards. Such limits shall be acute and chronic toxicity limits for individual toxic substances, whole effluent toxicity limits, or both. For permittees subject to whole effluent toxicity limitations, both acute and chronic testing will be required. Whole effluent acute toxicity will be demonstrated if the effluent causes more than 10 percent mortality of test organisms when tested at an effluent concentration of 100 percent. For permittees whose discharge will result in an in-stream waste concentration of 10 percent or more, whole effluent chronic toxicity limits will be based on an in-stream concentration of 100 percent; for permittees whose discharge will result in an in-stream waste concentration of less than 10 percent, whole effluent chronic toxicity limits will be based on the in-stream waste concentration.

(v) Nonpoint source discharges shall use best management practices adequate to protect water quality consistent with the Department's nonpoint source control program.

(vi) All NPDES permits and nonpoint sources shall incorporate or employ water pollution prevention or waste reduction measures as established by the Department.

2. pH: sewage, industrial wastes or other wastes shall not cause the pH to deviate more than one unit from the normal or natural pH, nor be less than 6.0, nor greater than 8.5. For salt waters and estuarine waters to which this classification is assigned, wastes as herein described shall not cause the pH to deviate more than one unit from the normal or natural pH, nor be less than 6.5, nor greater than 8.5.

3. Temperature:

(i) The maximum temperature in streams, lakes, and reservoirs, other than those in river basins listed in subparagraph (ii) hereof, shall not exceed 90 °F.

(ii) The maximum temperature in streams, lakes, and reservoirs in the Tennessee and Cahaba River Basins, and for that portion of the Tallapoosa River Basin from the tailrace of Thurlow Dam at Tallassee downstream to the junction of the Coosa and Tallapoosa Rivers which has been classified by the

Alabama Department of Conservation and Natural Resources as supporting smallmouth bass, sauger, or walleye, shall not exceed 86 °F.

(iii) The maximum in-stream temperature rise above ambient water temperature due to the addition of artificial heat by a discharger shall not exceed 5 °F in streams, lakes, and reservoirs in non-coastal and non-estuarine areas.

(iv) The maximum in-stream temperature rise above ambient water temperature due to the addition of artificial heat by a discharger shall not exceed 4 °F in coastal or estuarine waters during the period October through May, nor shall the rise exceed 1.5 °F during the period June through September.

(v) In lakes and reservoirs there shall be no withdrawal from, nor discharge of heated waters to, the hypolimnion unless it can be shown that such discharge or withdrawal will be beneficial to water quality.

(vi) In all waters the normal daily and seasonal temperature variations that were present before the addition of artificial heat shall be maintained, and there shall be no thermal block to the migration of aquatic organisms.

(vii) Thermal permit limitations in NPDES permits may be less stringent than those required by subparagraphs (i) - (iv) hereof when a showing by the discharger has been made pursuant to Section 316 of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. § 1251 et seq. or pursuant to a study of an equal or more stringent nature required by the State of Alabama authorized by Title 22, Section 22-22-9(c), Code of Alabama 1975, that such limitations will assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, in and on the body of water to which the discharge is made. Any such demonstration shall take into account the interaction of the thermal discharge component with other pollutants discharged.

4. Dissolved oxygen:

(i) For a diversified warm water biota, including game fish, daily dissolved oxygen concentrations shall not be less than 5.5 mg/l at all times; except under extreme conditions due to natural causes, it may range between 5.5 mg/l and 4 mg/l, provided that the water quality is favorable in all other parameters. The normal seasonal and daily fluctuations shall be maintained above these levels. In no event shall the dissolved oxygen level be less than 4 mg/l due to hydroelectric turbine discharges from existing hydroelectric generation impoundments. All new hydroelectric generation impoundments, including addition of new hydroelectric generation units to existing impoundments, shall be designed so that the discharge will contain at least 5.5 mg/l dissolved oxygen where practicable and technologically possible. The Environmental Protection Agency, in cooperation with the State of Alabama and parties responsible for impoundments, shall develop a program to improve the design of existing facilities.

(ii) In coastal waters, surface dissolved oxygen concentrations shall not be less than 5.5 mg/l, except where natural phenomena cause the value to be depressed.

(iii) In estuaries and tidal tributaries, dissolved oxygen concentrations shall not be less than 5.5 mg/l, except in dystrophic waters or where natural conditions cause the value to be depressed.

(iv) In the application of dissolved oxygen criteria referred to above, dissolved oxygen shall be measured at a depth of 5 feet in waters 10 feet or greater in depth; and for those waters less than 10 feet in depth, dissolved oxygen criteria will be applied at mid-depth.

5. Toxic substances attributable to sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances, as will not exhibit acute toxicity or chronic toxicity, as demonstrated by effluent toxicity testing or by application of numeric criteria given in rule 335-6-10-.07, to fish and aquatic life, including shrimp and crabs in estuarine or salt waters or the propagation thereof.

6. Taste, odor, and color-producing substances attributable to sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances, as will not exhibit acute toxicity or chronic toxicity, as demonstrated by effluent toxicity testing or by application of numeric criteria given in rule 335-6-10-.07, to fish and aquatic life, including shrimp and crabs in estuarine and salt waters or adversely affect the propagation thereof; impair the palatability or marketability of fish and wildlife or shrimp and crabs in estuarine and salt waters; or unreasonably affect the aesthetic value of waters for any use under this classification.

7. Bacteria: in non-coastal waters, bacteria of the *E. coli* group shall not exceed a geometric mean of 126 colonies/100 ml nor exceed a maximum of 235 colonies/100 ml in any sample. In coastal waters, bacteria of the enterococci group shall not exceed a geometric mean of 35 colonies/100 ml nor exceed a maximum of 104 colonies/100 ml in any sample. The geometric mean shall be calculated from no less than five samples collected at a given station over a 30-day period at intervals not less than 24 hours.

8. Radioactivity: the concentrations of radioactive materials present shall not exceed the requirements of the State Department of Public Health.

9. Turbidity: there shall be no turbidity of other than natural origin that will cause substantial visible contrast with the natural appearance of waters or interfere with any beneficial uses which they serve. Furthermore, in no case shall turbidity exceed 50 Nephelometric units above background. Background will be interpreted as the natural condition of the receiving waters without the influence of man-made or man-induced causes. Turbidity levels caused by natural runoff will be included in establishing background levels.

(2) **PUBLIC WATER SUPPLY**

(a) Best usage of waters: source of water supply for drinking or food-processing purposes.*

(b) Conditions related to best usage: the waters, if subjected to treatment approved by the Department equal to coagulation, sedimentation, filtration and disinfection, with additional treatment if necessary to remove naturally present impurities, and which meet the requirements of the Department, will be considered safe for drinking or food-processing purposes.

(c) Other usage of waters: it is recognized that the waters may be used for incidental water contact and recreation during June through September, except that water contact is strongly discouraged in the vicinity of discharges or other conditions beyond the control of the Department or the Alabama Department of Public Health.

(d) Conditions related to other usage: the waters, under proper sanitary supervision by the controlling health authorities, will meet accepted standards of water quality for outdoor swimming places and will be considered satisfactory for swimming and other whole body water-contact sports.

(e) Specific criteria:

1. Sewage, industrial wastes, or other wastes: none which are not effectively treated or controlled in accordance with rule 335-6-10-.08.

2. pH: sewage, industrial wastes or other wastes shall not cause the pH to deviate more than one unit from the normal or natural pH, nor be less than 6.0, nor greater than 8.5.

3. Temperature:

(i) The maximum temperature in streams, lakes, and reservoirs, other than those in river basins listed in subparagraph (ii) hereof, shall not exceed 90 °F.

(ii) The maximum temperature in streams, lakes, and reservoirs in the Tennessee and Cahaba River Basins, and for that portion of the Tallapoosa River Basin from the tailrace of Thurlow Dam at Tallassee downstream to the junction of the Coosa and Tallapoosa Rivers which has been designated by the Alabama Department of Conservation and Natural Resources as supporting smallmouth bass, sauger, or walleye, shall not exceed 86 °F.

(iii) The maximum in-stream temperature rise above ambient water temperature due to the addition of artificial heat by a discharger shall not

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* **NOTE:** In determining the safety or suitability of waters for use as sources of water supply for drinking or food-processing purposes after approved treatment, the Commission will be guided by the physical and chemical standards specified by the Department.

exceed 5 °F in streams, lakes, and reservoirs in non-coastal and non-estuarine areas.

(iv) The maximum in-stream temperature rise above ambient water temperature due to the addition of artificial heat by a discharger shall not exceed 4 °F in coastal or estuarine waters during the period October through May, nor shall the rise exceed 1.5 °F during the period June through September.

(v) In lakes and reservoirs there shall be no withdrawal from, nor discharge of heated waters to, the hypolimnion unless it can be shown that such discharge or withdrawal will be beneficial to water quality.

(vi) In all waters the normal daily and seasonal temperature variations that were present before the addition of artificial heat shall be maintained, and there shall be no thermal block to the migration of aquatic organisms.

(vii) Thermal permit limitations in NPDES permits may be less stringent than those required by subparagraphs (i) - (iv) hereof when a showing by the discharger has been made pursuant to Section 316 of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C.§ 1251 et seq. or pursuant to a study of an equal or more stringent nature required by the State of Alabama authorized by Title 22, Section 22-22-9(c), Code of Alabama, 1975, that such limitations will assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, in and on the body of water to which the discharge is made. Any such demonstration shall take into account the interaction of the thermal discharge component with other pollutants discharged.

4. Dissolved oxygen:

(i) For a diversified warm water biota, including game fish, daily dissolved oxygen concentrations shall not be less than 5 mg/l at all times; except under extreme conditions due to natural causes, it may range between 5 mg/l and 4 mg/l, provided that the water quality is favorable in all other parameters. The normal seasonal and daily fluctuations shall be maintained above these levels. In no event shall the dissolved oxygen level be less than 4 mg/l due to discharges from existing hydroelectric generation impoundments. All new hydroelectric generation impoundments, including addition of new hydroelectric generation units to existing impoundments, shall be designed so that the discharge will contain at least 5 mg/l dissolved oxygen where practicable and technologically possible. The Environmental Protection Agency, in cooperation with the State of Alabama and parties responsible for impoundments, shall develop a program to improve the design of existing facilities.

(ii) In coastal waters, surface dissolved oxygen concentrations shall not be less than 5 mg/l, except where natural phenomena cause the value to be depressed.

(iii) In estuaries and tidal tributaries, dissolved oxygen concentrations shall not be less than 5 mg/l, except in dystrophic waters or where natural conditions cause the value to be depressed.

(iv) In the application of dissolved oxygen criteria referred to above, dissolved oxygen shall be measured at a depth of 5 feet in waters 10 feet or greater in depth; and for those waters less than 10 feet in depth, dissolved oxygen criteria will be applied at mid-depth.

5. Toxic substances; color producing; heated liquids; or other deleterious substances attributable to sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances, and only such temperatures as will not render the waters unsafe or unsuitable as a source of water supply for drinking or food-processing purposes, or exhibit acute toxicity or chronic toxicity, as demonstrated by effluent toxicity testing or by application of numeric criteria given in rule 335-6-10-.07, to fish, wildlife and aquatic life, or adversely affect the aesthetic value of waters for any use under this classification.

6. Taste and odor producing substances attributable to sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as will not cause taste and odor difficulties in water supplies which cannot be corrected by treatment as specified under subparagraph (b), or impair the palatability of fish.

7. Bacteria:

(i) In non-coastal waters, bacteria of the *E. coli* group shall not exceed a geometric mean of 548 colonies/100 ml; nor exceed a maximum of 2,507 colonies/100 ml in any sample. The geometric mean shall be calculated from no less than five samples collected at a given station over a 30-day period at intervals not less than 24 hours. In coastal waters, bacteria of the enterococci group shall not exceed a maximum of 275 colonies/100 ml in any sample.

(ii) For incidental water contact and recreation during June through September, the bacterial quality of water is acceptable when a sanitary survey by the controlling health authorities reveals no source of dangerous pollution and when the geometric mean *E. coli* organism density does not exceed 126 colonies/100 ml nor exceed a maximum of 487 colonies / 100 ml in any single sample in non-coastal waters. In coastal waters, bacteria of the enterococci group shall not exceed a geometric mean of 35 colonies/100 ml nor exceed a maximum of 158 colonies/100 ml in any sample. The geometric mean shall be calculated from no less than five samples collected at a given station over a 30-day period at intervals not less than 24 hours. When the geometric mean bacterial organism density exceeds these levels, the bacterial water quality shall be considered acceptable only if a second detailed sanitary survey and evaluation discloses no significant public health risk in the use of the waters. Waters in the immediate vicinity of discharges of sewage or other wastes likely to contain bacteria harmful to humans, regardless of the degree of treatment

afforded these wastes, are not acceptable for swimming or other whole body water-contact sports.

8. Radioactivity: no radionuclide or mixture of radionuclides shall be present at concentrations greater than those specified by the requirements of the State Department of Public Health.

9. Turbidity: there shall be no turbidity of other than natural origin that will cause substantial visible contrast with the natural appearance of waters or interfere with any beneficial uses which they serve. Furthermore, in no case shall turbidity exceed 50 Nephelometric units above background. Background will be interpreted as the natural condition of the receiving waters, without the influence of man-made or man-induced causes. Turbidity levels caused by natural runoff will be included in establishing background levels.

(3) **SWIMMING AND OTHER WHOLE BODY WATER-CONTACT SPORTS**

(a) Best usage of waters: swimming and other whole body water-contact sports.*

(b) Conditions related to best usage: the waters, under proper sanitary supervision by the controlling health authorities, will meet accepted standards of water quality for outdoor swimming places and will be considered satisfactory for swimming and other whole body water-contact sports. The quality of waters will also be suitable for the propagation of fish, wildlife and aquatic life. The quality of salt waters and estuarine waters to which this classification is assigned will be suitable for the propagation and harvesting of shrimp and crabs.

(c) Specific criteria:

1. Sewage, industrial wastes, or other wastes: none which are not effectively treated or controlled in accordance with rule 335-6-10-.08.

2. pH: sewage, industrial wastes or other wastes shall not cause the pH to deviate more than one unit from the normal or natural pH, nor be less than 6.0, nor greater than 8.5. For estuarine waters and salt waters to which this classification is assigned, wastes as described herein shall not cause the pH to deviate more than one unit from the normal or natural pH, nor be less than 6.5, nor greater than 8.5.

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* **NOTE**: In assigning this classification to waters intended for swimming and water-contact sports, the Commission will take into consideration the relative proximity of discharges of wastes and will recognize the potential hazards involved in locating swimming areas close to waste discharges. The Commission will not assign this classification to waters, the bacterial quality of which is dependent upon adequate disinfection of waste and where the interruption of such treatment would render the water unsafe for bathing.

3. Temperature:

(i) The maximum temperature in streams, lakes, and reservoirs, other than those in river basins listed in subparagraph (ii) hereof, shall not exceed 90 °F.

(ii) The maximum temperature in streams, lakes, and reservoirs in the Tennessee and Cahaba River Basins, and for that portion of the Tallapoosa River Basin from the tailrace of Thurlow Dam at Tallassee downstream to the junction of the Coosa and Tallapoosa Rivers which has been designated by the Alabama Department of Conservation and Natural Resources as supporting smallmouth bass, sauger, or walleye, shall not exceed 86 °F.

(iii) The maximum in-stream temperature rise above ambient water temperature due to the addition of artificial heat by a discharger shall not exceed 5 °F in streams, lakes, and reservoirs in non-coastal and non-estuarine areas.

(iv) The maximum in-stream temperature rise above ambient water temperature due to the addition of artificial heat by a discharger shall not exceed 4 °F in coastal or estuarine waters during the period October through May, nor shall the rise exceed 1.5 °F during the period June through September.

(v) In lakes and reservoirs there shall be no withdrawal from, nor discharge of heated waters to, the hypolimnion unless it can be shown that such discharge or withdrawal will be beneficial to water quality.

(vi) In all waters the normal daily and seasonal temperature variations that were present before the addition of artificial heat shall be maintained, and there shall be no thermal block to the migration of aquatic organisms.

(vii) Thermal permit limitations in NPDES permits may be less stringent than those required by subparagraphs (i) - (iv) hereof when a showing by the discharger has been made pursuant to Section 316 of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. § 1251 et seq. or pursuant to a study of an equal or more stringent nature required by the State of Alabama authorized by Title 22, Section 22-22-9(c), Code of Alabama, 1975, that such limitations will assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, in and on the body of water to which the discharge is made. Any such demonstration shall take into account the interaction of the thermal discharge component with other pollutants discharged.

4. Dissolved oxygen:

(i) For a diversified warm water biota, including game fish, daily dissolved oxygen concentrations shall not be less than 5 mg/l at all times; except under extreme conditions due to natural causes, it may range between 5 mg/l and 4 mg/l, provided that the water quality is favorable in all other parameters. The normal seasonal and daily fluctuations shall be maintained above these levels. In no event shall the dissolved oxygen level be less than 4 mg/l due to discharges from existing hydroelectric generation impoundments. All new hydroelectric generation impoundments, including addition of new hydroelectric generation units to existing impoundments, shall be designed so that the discharge will contain at least 5 mg/l dissolved oxygen where practicable and technologically possible. The Environmental Protection Agency, in cooperation with the State of Alabama and parties responsible for impoundments, shall develop a program to improve the design of existing facilities.

(ii) In coastal waters, surface dissolved oxygen concentrations shall not be less than 5 mg/l, except where natural phenomena cause the value to be depressed.

(iii) In estuaries and tidal tributaries, dissolved oxygen concentrations shall not be less than 5 mg/l, except in dystrophic waters or where natural conditions cause the value to be depressed.

(iv) In the application of dissolved oxygen criteria referred to above, dissolved oxygen shall be measured at a depth of 5 feet in waters 10 feet or greater in depth; and for those waters less than 10 feet in depth, dissolved oxygen criteria will be applied at mid-depth.

5. Toxic substances; color producing substances; odor producing substances; or other deleterious substances attributable to sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as will not render the water unsafe or unsuitable for swimming and water-contact sports; exhibit acute toxicity or chronic toxicity, as demonstrated by effluent toxicity testing or by application of numeric criteria given in rule 335-6-10-.07, to fish, wildlife, and aquatic life or, where applicable, shrimp and crabs; impair the palatability of fish, or where applicable, shrimp and crabs; impair the waters for any other usage established for this classification or unreasonably affect the aesthetic value of waters for any use under this classification.

6. Bacteria:

(i) Waters in the immediate vicinity of discharges of sewage or other wastes likely to contain bacteria harmful to humans, regardless of the degree of

treatment afforded these wastes*, are not acceptable for swimming or other whole body water-contact sports.

(ii) In all other areas, the bacterial quality of water is acceptable when a sanitary survey by the controlling health authorities reveals no source of dangerous pollution and when the geometric mean *E. coli* organism density does not exceed 126 colonies/100 ml nor exceed a maximum of 235 colonies/100 ml in any sample in non-coastal waters. In coastal waters, bacteria of the enterococci group shall not exceed a geometric mean of 35 colonies/100 ml nor exceed a maximum of 104 colonies/100 ml in any sample. The geometric mean shall be calculated from no less than five samples collected at a given station over a 30-day period at intervals not less than 24 hours. When the geometric mean bacterial organism density exceeds these levels, the bacterial water quality shall be considered acceptable only if a second detailed sanitary survey and evaluation discloses no significant public health risk in the use of the waters.

(iii) The policy of nondegradation of high quality waters shall be stringently applied to bacterial quality of recreational waters.

7. Radioactivity: the concentrations of radioactive materials present shall not exceed the requirement of the State Department of Public Health.

8. Turbidity: there shall be no turbidity of other than natural origin that will cause substantial visible contrast with the natural appearance of waters or interfere with any beneficial uses which they serve. Furthermore, in no case shall turbidity exceed 50 Nephelometric units above background. Background will be interpreted as the natural condition of the receiving waters, without the influence of man-made or man-induced causes. Turbidity levels caused by natural runoff will be included in establishing background levels.

(4) **SHELLFISH HARVESTING**

(a) Best usage of waters: propagation and harvesting of shellfish for sale or use as a food product.

(b) Conditions related to best usage: waters will meet the sanitary and bacteriological standards included in the *National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish: 2011 Revision*, published by the Food and Drug Administration, U.S. Department of Health and Human Services and the requirements of the State Department of Public Health. The

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* **NOTE**: In assigning this classification to waters intended for swimming and water-contact sports, the Commission will take into consideration the relative proximity of discharges of wastes and will recognize the potential hazards involved in locating swimming areas close to waste discharges. The Commission will not assign this classification to waters, the bacterial quality of which is dependent upon adequate disinfection of waste and where the interruption of such treatment would render the water unsafe for bathing.

waters will also be of a quality suitable for the propagation of fish and other aquatic life, including shrimp and crabs.

(c) Other usage of waters: it is recognized that the waters may be used for incidental water contact and recreation during June through September, except that water contact is strongly discouraged in the vicinity of discharges or other conditions beyond the control of the Department or the Alabama Department of Public Health.

(d) Conditions related to other usage: the waters, under proper sanitary supervision by the controlling health authorities, will meet accepted standards of water quality for outdoor swimming places and will be considered satisfactory for swimming and other whole body water-contact sports.

(e) Specific criteria:

1. Sewage, industrial wastes, or other wastes: none which are not effectively treated in accordance with rule 335-6-10-.08.

2. pH: sewage, industrial wastes or other wastes shall not cause the pH to deviate more than one unit from the normal or natural pH, nor be less than 6.5, nor greater than 8.5.

3. Temperature:

(i) The maximum temperature in streams, lakes, and reservoirs, other than those in river basins listed in subparagraph (ii) hereof, shall not exceed 90 °F.

(ii) The maximum temperature in streams, lakes, and reservoirs in the Tennessee and Cahaba River Basins, and for that portion of the Tallapoosa River Basin from the tailrace of Thurlow Dam at Tallassee downstream to the junction of the Coosa and Tallapoosa Rivers which has been designated by the Alabama Department of Conservation and Natural Resources as supporting smallmouth bass, sauger, or walleye, shall not exceed 86 °F.

(iii) The maximum in-stream temperature rise above ambient water temperature due to the addition of artificial heat by a discharger shall not exceed 5 °F in streams, lakes, and reservoirs in non-coastal and non-estuarine areas.

(iv) The maximum in-stream temperature rise above ambient water temperature due to the addition of artificial heat by a discharger shall not exceed 4 °F in coastal or estuarine waters during the period October through May, nor shall the rise exceed 1.5 °F during the period June through September.

(v) In lakes and reservoirs there shall be no withdrawal from, nor discharge of heated waters to, the hypolimnion unless it can be shown that such discharge or withdrawal will be beneficial to water quality.

(vi) In all waters the normal daily and seasonal temperature variations that were present before the addition of artificial heat shall be maintained, and there shall be no thermal block to the migration of aquatic organisms.

(vii) Thermal permit limitations in NPDES permits may be less stringent than those required by subparagraphs (i) - (iv) hereof when a showing by the discharger has been made pursuant to Section 316 of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. § 1251 et seq. or pursuant to a study of an equal or more stringent nature required by the State of Alabama authorized by Title 22, Section 22-22-9(c), Code of Alabama, 1975, that such limitations will assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, in and on the body of water to which the discharge is made. Any such demonstration shall take into account the interaction of the thermal discharge component with other pollutants discharged.

4. Dissolved oxygen:

(i) For a diversified warm water biota, including game fish, daily dissolved oxygen concentrations shall not be less than 5 mg/l at all times; except under extreme conditions due to natural causes, it may range between 5 mg/l and 4 mg/l, provided that the water quality is favorable in all other parameters. The normal seasonal and daily fluctuations shall be maintained above these levels. In no event shall the dissolved oxygen level be less than 4 mg/l due to discharges from existing hydroelectric generation impoundments. All new hydroelectric generation impoundments, including addition of new hydroelectric generation units to existing impoundments, shall be designed so that the discharge will contain at least 5 mg/l dissolved oxygen where practicable and technologically possible. The Environmental Protection Agency, in cooperation with the State of Alabama and parties responsible for impoundments, shall develop a program to improve the design of existing facilities.

(ii) In coastal waters, surface dissolved oxygen concentrations shall not be less than 5 mg/l, except where natural phenomena cause the value to be depressed.

(iii) In estuaries and tidal tributaries, dissolved oxygen concentrations shall not be less than 5 mg/l, except in dystrophic waters or where natural conditions cause the value to be depressed.

(iv) In the application of dissolved oxygen criteria referred to above, dissolved oxygen shall be measured at a depth of 5 feet in waters 10 feet or greater in depth; and for those waters less than 10 feet in depth, dissolved oxygen criteria will be applied at mid-depth.

5. Toxic substances attributable to sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances, as will not exhibit acute toxicity or chronic toxicity, as demonstrated by effluent toxicity testing or by application of numeric criteria

given in rule 335-6-10-.07, to fish and aquatic life, including shrimp and crabs; or affect the marketability of fish and shellfish, including shrimp and crabs.

6. Color, taste, and odor-producing substances and other deleterious substances attributable to sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances, as will not exhibit acute toxicity or chronic toxicity, as demonstrated by effluent toxicity testing or by application of numeric criteria given in rule 335-6-10-.07, to fish and shellfish, including shrimp and crabs; adversely affect marketability or palatability of fish and shellfish, including shrimp and crabs; or unreasonably affect the aesthetic value of waters for any use under this classification.

7. Bacteria:

(i) Not to exceed the limits specified in the *National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish: 2011 Revision,* published by the Food and Drug Administration, U. S. Department of Health and Human Services.

(ii) For incidental water contact and recreation during June through September, the bacterial quality of water is acceptable when a sanitary survey by the controlling health authorities reveals no source of dangerous pollution and when the geometric mean *E. coli* organism density does not exceed 126 colonies/100 ml nor exceed a maximum of 235 colonies/100 ml in any sample in non-coastal waters. In coastal waters, bacteria of the enterococci group shall not exceed a geometric mean of 35 colonies/100 ml nor exceed a maximum of 104 colonies/100 ml in any sample. The geometric mean shall be calculated from no less than five samples collected at a given station over a 30-day period at intervals not less than 24 hours. When the geometric mean bacterial organism density exceeds these levels, the bacterial water quality shall be considered acceptable only if a second detailed sanitary survey and evaluation discloses no significant public health risk in the use of the waters. Waters in the immediate vicinity of discharges of sewage or other wastes likely to contain bacteria harmful to humans, regardless of the degree of treatment afforded these wastes, are not acceptable for swimming or other whole body water-contact sports.

8. Radioactivity: the concentrations of radioactive materials present shall not exceed the requirements of the State Department of Public Health.

9. Turbidity: there shall be no turbidity of other than natural origin that will cause substantial visible contrast with the natural appearance of waters or interfere with any beneficial uses which they serve. Furthermore, in no case shall turbidity exceed 50 Nephelometric units above background. Background will be interpreted as the natural condition of the receiving waters without the influence of man-made or man-induced causes. Turbidity levels caused by natural runoff will be included in establishing background levels.

(5) **FISH AND WILDLIFE**

(a) Best usage of waters: fishing, propagation of fish, aquatic life, and wildlife, and any other usage except for swimming and water-contact sports or as a source of water supply for drinking or food-processing purposes.

(b) Conditions related to best usage: the waters will be suitable for fish, aquatic life and wildlife propagation. The quality of salt and estuarine waters to which this classification is assigned will also be suitable for the propagation of shrimp and crabs.

(c) Other usage of waters: it is recognized that the waters may be used for incidental water contact and recreation during June through September, except that water contact is strongly discouraged in the vicinity of discharges or other conditions beyond the control of the Department or the Alabama Department of Public Health.

(d) Conditions related to other usage: the waters, under proper sanitary supervision by the controlling health authorities, will meet accepted standards of water quality for outdoor swimming places and will be considered satisfactory for swimming and other whole body water-contact sports.

(e) Specific criteria:

1. Sewage, industrial wastes, or other wastes: none which are not effectively treated in accordance with rule 335-6-10-.08.

2. pH: sewage, industrial wastes or other wastes shall not cause the pH to deviate more than one unit from the normal or natural pH, nor be less than 6.0, nor greater than 8.5. For salt waters and estuarine waters to which this classification is assigned, wastes as herein described shall not cause the pH to deviate more than one unit from the normal or natural pH, nor be less than 6.5, nor greater than 8.5.

3. Temperature:

(i) The maximum temperature in streams, lakes, and reservoirs, other than those in river basins listed in subparagraph (ii) hereof, shall not exceed 90° F.

(ii) The maximum temperature in streams, lakes, and reservoirs in the Tennessee and Cahaba River Basins, and for that portion of the Tallapoosa River Basin from the tailrace of Thurlow Dam at Tallassee downstream to the junction of the Coosa and Tallapoosa Rivers which has been designated by the Alabama Department of Conservation and Natural Resources as supporting smallmouth bass, sauger, or walleye, shall not exceed 86 °F.

(iii) The maximum in-stream temperature rise above ambient water temperature due to the addition of artificial heat by a discharger shall not

exceed 5 °F in streams, lakes, and reservoirs in non-coastal and non-estuarine areas.

(iv) The maximum in-stream temperature rise above ambient water temperature due to the addition of artificial heat by a discharger shall not exceed 4 °F in coastal or estuarine waters during the period October through May, nor shall the rise exceed 1.5 °F during the period June through September.

(v) In lakes and reservoirs there shall be no withdrawal from, nor discharge of heated waters to, the hypolimnion unless it can be shown that such discharge or withdrawal will be beneficial to water quality.

(vi) In all waters the normal daily and seasonal temperature variations that were present before the addition of artificial heat shall be maintained, and there shall be no thermal block to the migration of aquatic organisms.

(vii) Thermal permit limitations in NPDES permits may be less stringent than those required by subparagraphs (i) - (iv) hereof when a showing by the discharger has been made pursuant to Section 316 of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. § 1251 et seq. or pursuant to a study of an equal or more stringent nature required by the State of Alabama authorized by Title 22, Section 22-22-9(c), Code of Alabama, 1975, that such limitations will assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, in and on the body of water to which the discharge is made. Any such demonstration shall take into account the interaction of the thermal discharge component with other pollutants discharged.

4. Dissolved oxygen:

(i) For a diversified warm water biota, including game fish, daily dissolved oxygen concentrations shall not be less than 5 mg/l at all times; except under extreme conditions due to natural causes, it may range between 5 mg/l and 4 mg/l, provided that the water quality is favorable in all other parameters. The normal seasonal and daily fluctuations shall be maintained above these levels. In no event shall the dissolved oxygen level be less than 4 mg/l due to discharges from existing hydroelectric generation impoundments. All new hydroelectric generation impoundments, including addition of new hydroelectric generation units to existing impoundments, shall be designed so that the discharge will contain at least 5 mg/l dissolved oxygen where practicable and technologically possible. The Environmental Protection Agency, in cooperation with the State of Alabama and parties responsible for impoundments, shall develop a program to improve the design of existing facilities.

(ii) In coastal waters, surface dissolved oxygen concentrations shall not be less than 5 mg/l, except where natural phenomena cause the value to be depressed.

(iii) In estuaries and tidal tributaries, dissolved oxygen concentrations shall not be less than 5 mg/l, except in dystrophic waters or where natural conditions cause the value to be depressed.

(iv) In the application of dissolved oxygen criteria referred to above, dissolved oxygen shall be measured at a depth of 5 feet in waters 10 feet or greater in depth; and for those waters less than 10 feet in depth, dissolved oxygen criteria will be applied at mid-depth.

5. Toxic substances attributable to sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances, as will not exhibit acute toxicity or chronic toxicity, as demonstrated by effluent toxicity testing or by application of numeric criteria given in rule 335-6-10-.07, to fish and aquatic life, including shrimp and crabs in estuarine or salt waters or the propagation thereof.

6. Taste, odor, and color-producing substances attributable to sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances, as will not exhibit acute toxicity or chronic toxicity, as demonstrated by effluent toxicity testing or by application of numeric criteria given in rule 335-6-10-.07, to fish and aquatic life, including shrimp and crabs in estuarine and salt waters or adversely affect the propagation thereof; impair the palatability or marketability of fish and wildlife or shrimp and crabs in estuarine and salt waters; or unreasonably affect the aesthetic value of waters for any use under this classification.

7. Bacteria:

(i) In non-coastal waters, bacteria of the *E. coli* group shall not exceed a geometric mean of 548 colonies/100 ml; nor exceed a maximum of 2,507 colonies/100 ml in any sample. In coastal waters, bacteria of the enterococci group shall not exceed a maximum of 275 colonies/100 ml in any sample. The geometric mean shall be calculated from no less than five samples collected at a given station over a 30-day period at intervals not less than 24 hours.

(ii) For incidental water contact and recreation during June through September, the bacterial quality of water is acceptable when a sanitary survey by the controlling health authorities reveals no source of dangerous pollution and when the geometric mean *E. coli* organism density does not exceed 126 colonies/100 ml nor exceed a maximum of 487 colonies/100 ml in any sample in non-coastal waters. In coastal waters, bacteria of the enterococci group shall not exceed a geometric mean of 35 colonies/100 ml nor exceed a maximum of 158 colonies/100 ml in any sample. The geometric mean shall be calculated from no less than five samples collected at a given station over a 30-day period at intervals not less than 24 hours. When the geometric bacterial coliform organism density exceeds these levels, the bacterial water quality shall be considered acceptable only if a second detailed sanitary survey and evaluation discloses no significant public health risk in the use of the waters. Waters in the immediate vicinity of discharges of sewage or other wastes likely to contain

bacteria harmful to humans, regardless of the degree of treatment afforded these wastes, are not acceptable for swimming or other whole body water-contact sports.

8. Radioactivity: the concentrations of radioactive materials present shall not exceed the requirements of the State Department of Public Health.

9. Turbidity: there shall be no turbidity of other than natural origin that will cause substantial visible contrast with the natural appearance of waters or interfere with any beneficial uses which they serve. Furthermore, in no case shall turbidity exceed 50 Nephelometric units above background. Background will be interpreted as the natural condition of the receiving waters without the influence of man-made or man-induced causes. Turbidity levels caused by natural runoff will be included in establishing background levels.

(6) **LIMITED WARMWATER FISHERY**

(a) The provisions of the Fish and Wildlife water use classification at rule 335-6-10-.09(5) shall apply to the Limited Warmwater Fishery water use classification, except as noted below. Unless alternative criteria for a given parameter are provided in paragraph (e) below, the applicable Fish and Wildlife criteria at paragraph 10-.09(5)(e) shall apply year-round. At the time the Department proposes to assign the Limited Warmwater Fishery classification to a specific waterbody, the Department may apply criteria from other classifications within this chapter if necessary to protect a documented, legitimate existing use.

(b) Best usage of waters (May through November): agricultural irrigation, livestock watering, industrial cooling and process water supplies, and any other usage, except fishing, bathing, recreational activities, including water-contact sports, or as a source of water supply for drinking or food-processing purposes.

(c) Conditions related to best usage (May through November):

1. The waters will be suitable for agricultural irrigation, livestock watering, and industrial cooling waters. The waters will be usable after special treatment, as may be needed under each particular circumstance, for industrial process water supplies. The waters will also be suitable for other uses for which waters of lower quality will be satisfactory.

2. This category includes watercourses in which natural flow is intermittent, or under certain conditions non-existent, and which may receive treated wastes from existing municipalities and industries. In such instances, recognition is given to the lack of opportunity for mixture of the treated wastes with the receiving stream for purposes of compliance. It is also understood in considering waters for this classification that urban runoff or natural conditions may impact any waters so classified.

(d) Other usage of waters: none recognized.

(e) Specific criteria:

1. Dissolved oxygen (May through November): treated sewage, industrial wastes, or other wastes shall not cause the dissolved oxygen to be less than 3.0 mg/l. In the application of dissolved oxygen criteria referred to above, dissolved oxygen shall be measured at a depth of 5 feet in waters 10 feet or greater in depth; and for those waters less than 10 feet in depth, dissolved oxygen criteria will be applied at mid-depth.

2. Toxic substances and taste-, odor-, and color-producing substances attributable to treated sewage, industrial wastes, and other wastes: only such amounts as will not render the waters unsuitable for agricultural irrigation, livestock watering, industrial cooling, and industrial process water supply purposes; interfere with downstream water uses; or exhibit acute toxicity or chronic toxicity, as demonstrated by effluent toxicity testing or by application of numeric criteria given in rule 335-6-10-.07, to fish and aquatic life, including shrimp and crabs in estuarine or salt waters or the propagation thereof. For the purpose of establishing effluent limitations pursuant to chapter 335-6-6 of the Department's regulations, the minimum 7-day low flow that occurs once in 2 years ($7Q_2$) shall be the basis for applying the chronic aquatic life criteria. The use of the $7Q_2$ low flow for application of chronic criteria is appropriate based on the historical uses and/or flow characteristics of streams to be considered for this classification.

3. Bacteria: In non-coastal waters, bacteria of the *E. coli* group shall not exceed a geometric mean of 548 colonies/100 ml; nor exceed a maximum of 2,507 colonies/100 ml in any sample. In coastal waters, bacteria of the enterococci group shall not exceed a maximum of 275 colonies/100 ml in any sample. The geometric mean shall be calculated from no less than five samples collected at a given station over a 30-day period at intervals not less than 24 hours.

(7) **AGRICULTURAL AND INDUSTRIAL WATER SUPPLY**

(a) Best usage of waters: agricultural irrigation, livestock watering, industrial cooling and process water supplies, and any other usage, except fishing, bathing, recreational activities, including water-contact sports, or as a source of water supply for drinking or food-processing purposes.

(b) Conditions related to best usage:

(i) The waters, except for natural impurities which may be present therein, will be suitable for agricultural irrigation, livestock watering, industrial cooling waters, and fish survival. The waters will be usable after special treatment, as may be needed under each particular circumstance, for industrial process water supplies. The waters will also be suitable for other uses for which waters of lower quality will be satisfactory.

(ii) This category includes watercourses in which natural flow is intermittent and non-existent during droughts and which may, of necessity,

receive treated wastes from existing municipalities and industries, both now and in the future. In such instances, recognition must be given to the lack of opportunity for mixture of the treated wastes with the receiving stream for purposes of compliance. It is also understood in considering waters for this classification that urban runoff or natural conditions may impact any waters so classified.

(c) Specific criteria:

1. Sewage, industrial wastes, or other wastes: none which are not effectively treated or controlled in accordance with rule 335-6-10-.08.

2. pH: sewage, industrial wastes or other wastes shall not cause the pH to deviate more than one unit from the normal or natural pH, nor be less than 6.0, nor greater than 8.5. For salt waters and estuarine waters to which this classification is assigned, wastes as herein described shall not cause the pH to deviate more than one unit from the normal or natural pH, nor be less than 6.5, nor greater than 8.5.

3. Temperature: the maximum temperature rise above natural temperatures due to the addition of artificial heat shall not exceed 5 °F in streams, lakes, and reservoirs, nor shall the maximum water temperature exceed 90 °F.

4. Dissolved oxygen: sewage, industrial wastes, or other wastes shall not cause the dissolved oxygen to be less than 3.0 mg/l. In the application of dissolved oxygen criteria referred to above, dissolved oxygen shall be measured at a depth of 5 feet in waters 10 feet or greater in depth; and for those waters less than 10 feet in depth, dissolved oxygen criteria will be applied at mid-depth.

5. Color, odor, and taste-producing substances, toxic substances, and other deleterious substances, including chemical compounds attributable to sewage, industrial wastes, and other wastes: only such amounts as will not render the waters unsuitable for agricultural irrigation, livestock watering, industrial cooling, industrial process water supply purposes, and fish survival, nor interfere with downstream water uses. For the purpose of establishing effluent limitations pursuant to chapter 335-6-6 of the Department's regulations, the minimum 7-day low flow that occurs once in 10 years ($7Q_{10}$) shall be the basis for applying the acute aquatic life criteria. The use of the $7Q_{10}$ low flow for application of acute criteria is appropriate based on the historical uses and/or flow characteristics of streams to be considered for this classification.

6. Bacteria: In non-coastal waters, bacteria of the E. coli group shall not exceed a geometric mean of 700 colonies/100 ml; nor exceed a maximum of 3,200 colonies/100 ml in any sample. In coastal waters, bacteria of the enterococci group shall not exceed a maximum of 500 colonies/100 ml in any sample. The geometric mean shall be calculated from no less than five samples

collected at a given station over a 30-day period at intervals not less than 24 hours.

7. Radioactivity: the concentrations of radioactive materials present shall not exceed the requirements of the State Department of Public Health.

8. Turbidity: there shall be no turbidity of other than natural origin that will cause substantial visible contrast with the natural appearance of waters or interfere with any beneficial uses which they serve. Furthermore, in no case shall turbidity exceed 50 Nephelometric units above background. Background will be interpreted as the natural condition of the receiving waters without the influence of man-made or man-induced causes. Turbidity levels caused by natural runoff will be included in establishing background levels.

Author: James E. McIndoe.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: May 5, 1967. **Amended:** June 19, 1967; July 17, 1972; February 26, 1973; May 30, 1977; December 19, 1977; February 4, 1981; March 2, 1990; April 3, 1991; December 30, 1992; September 7, 2000; May 27, 2004; January 14, 2005; January 19, 2010; January 18, 2011; April 1, 2014.

335-6-10-.10 Special Designations.

(1) **OUTSTANDING NATIONAL RESOURCE WATER**

(a) Designation:

1. High quality waters that constitute an outstanding National resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, may be considered for designation as an Outstanding National Resource Water (ONRW). For waters designated as ONRW, existing water quality shall be maintained and protected.

(b) Specific Criteria:

1. Sewage, industrial wastes or other wastes:

(i) No new point source discharges or expansions of existing point source discharges to Outstanding National Resource Waters shall be allowed.

(ii) Existing point source discharges to the Outstanding National Resource Water shall be allowed provided they are treated or controlled in accordance with applicable laws and regulations.

(iii) New point source discharges or expansions of existing point source discharges to waters upstream of, or tributary to, Outstanding National Resource Waters shall be regulated in accordance with applicable laws and

regulations, including compliance with water quality criteria for the use classification applicable to the particular water. However, no new point source discharge or expansion of an existing point source discharge to waters upstream of, or tributary to, Outstanding National Resource Waters shall be allowed if such discharge would not maintain and protect water quality within the Outstanding National Resource Water.

(iv) Nonpoint source discharges shall use best management practices adequate to protect water quality consistent with the Department's nonpoint source control program.

(2) **TREASURED ALABAMA LAKE**

(a) Designation:

1. High quality waters within impoundments and natural lakes that constitute an exceptional resource, such as waters of state parks and wildlife refuges and waters of exceptional whole body water-contact recreation, water supply or rare and extraordinary ecological significance, may be considered for designation as a Treasured Alabama Lake (TAL); provided that such waters are fully supporting their classified uses at the time of the TAL designation. For waters designated as TAL, existing water quality shall be maintained and protected pursuant to the State's Antidegradation Policy and Implementation Procedures in rules 335-6-10-.04 and 335-6-10-.12.

(b) Specific Criteria:

1. Sewage, industrial wastes or other wastes:

(i) Existing point source discharges to a TAL shall be allowed.

(ii) New point source discharges or expansions of existing point source discharges shall not be allowed unless a thorough evaluation of all practicable treatment and disposal alternatives by the permit applicant has demonstrated to the satisfaction of the Department that there is no feasible alternative to discharge to the waters designated TAL. Continuous point source wastewater discharges shall be required to meet water quality based effluent limitations necessary to protect the designated uses of the waters, and shall provide disinfection of the effluent to achieve bacteria levels consistent with the swimming use when the discharge contains domestic sewage. New major continuous point source wastewater discharges or expansions of existing major continuous point source wastewater discharges shall, at a minimum, be required to meet a monthly average effluent limitation of 1.0 mg/l total phosphorus. Stormwater discharges subject to the Department's NPDES regulations shall employ best management practices adequate to protect water quality. Applications for construction stormwater permits shall include a Construction Best Management Practices Plan (CBMPP).

(iii) Nonpoint source discharges shall use best management practices adequate to protect water quality consistent with the Department's nonpoint source control program.

Author: James E. McIndoe; Lynn Sisk.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: April 3, 1991. **Amended:** May 23, 2011.

335-6-10-.11 Water Quality Criteria Applicable to Specific Lakes.

(1) For certain lakes and reservoirs, waterbody-specific criteria are appropriate to enhance nutrient management. The response to nutrient input may vary significantly lake-to-lake, and for a given lake year-to-year, depending on a number of factors such as rainfall distribution and hydraulic retention time. For this reason, lake nutrient quality targets necessary to maintain and protect existing uses, expressed as chlorophyll *a* criteria, may also vary lake-to-lake. Because the relationship between nutrient input and lake chlorophyll *a* levels is not always well-understood, it may be necessary to revise the criteria as additional water quality data and improved assessment tools become available.

(2) The following lake-specific criteria apply to the waters listed below, in addition to any other applicable criteria commensurate with the designated usage of such waters.

(a) **The Alabama River Basin**

1. Claiborne Lake: those waters impounded by Claiborne Lock and Dam on the Alabama River. The lake has a surface area of 5,930 acres at full pool.

(i) Chlorophyll *a* (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll *a* samples collected monthly April through October shall not exceed 15 µg/l, as measured at the deepest point, main river channel, dam forebay.

2. Dannelly Lake: those waters impounded by Millers Ferry Lock and Dam on the Alabama River. The lake has a surface area of 17,200 acres at full pool.

(i) Chlorophyll *a* (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll *a* samples collected monthly April through October shall not exceed 17 µg/l, as measured at the deepest point, main river channel, dam forebay.

(b) **The Cahaba River Basin**

1. Lake Purdy: those waters impounded by Lake Purdy Dam at the headwaters of the Cahaba River. The lake has a surface area of 1,050 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 16 µg/l, as measured at the deepest point, main river channel, dam forebay; or 18 µg/l, as measured at the deepest point, main river channel, immediately upstream of the Irondale Bridge.

(c) **The Chattahoochee River Basin**

1. Walter F. George Lake: those waters impounded by Walter F. George Lock and Dam on the Chattahoochee River. The lake has a surface area of 45,181 acres at full power pool, 18,672 acres of which are within Alabama. The Alabama-Georgia state line is represented by the west bank of the original river channel, and the points of measurement for the criteria given below are located in Georgia waters.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 15 µg/l, as measured at the deepest point, main river channel, dam forebay; or 18 µg/l, as measured at the deepest point, main river channel, approximately 0.25 miles upstream of U.S. Highway 82.

2. Lake Harding: those waters impounded by Bartletts Ferry Dam on the Chattahoochee River. The lake has a surface area of 5850 acres at full pool, 2,176 acres of which are within Alabama. The point of measurement for the criterion given below is located in Georgia waters.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 15 µg/l, as measured at the deepest point, main river channel, dam forebay.

3. West Point Lake: those waters impounded by West Point Dam on the Chattahoochee River. The lake has a surface area of 25,864 acres at full power pool, 2,765 acres of which are within Alabama. The point of measurement for the criterion given below is located in Georgia waters.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 27 µg/l, as measured at the LaGrange, Georgia Water Intake.

(d) **The Coosa River Basin**

1. Weiss Lake: those waters impounded by Weiss Dam on the Coosa River. The lake has a surface area of 30,200 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 20 µg/l, as measured at the deepest point, main river channel, power dam forebay; or 20 µg/l, as measured at the deepest point, main river channel, immediately upstream of causeway (Alabama Highway 9) at Cedar Bluff. If the mean of photic-zone composite chlorophyll a samples collected monthly April through October is significantly less than 20 µg/l for a given year, the Department will re-evaluate the chlorophyll a criteria, associated nutrient management strategies, and available data and information, and recommend changes, if appropriate, to maintain and protect existing uses.

2. Neely Henry Lake: those waters impounded by Neely Henry Dam on the Coosa River. The lake has a surface area of 11,235 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 18 µg/l, as measured at the deepest point, main river channel, dam forebay; or 18 µg/l, as measured at the deepest point, main river channel, immediately upstream of Alabama Highway 77 bridge.

3. Logan Martin Lake: those waters impounded by Logan Martin Dam on the Coosa River. The lake has a surface area of 15,263 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 17 µg/l, as measured at the deepest point, main river channel, dam forebay; or 17 µg/l, as measured at the deepest point, main river channel, approximately 1.5 miles downstream of Alabama Highway 34 bridge.

4. Lay Lake: those waters impounded by Lay Dam on the Coosa River. The lake has a surface area of 12,000 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 17 µg/l, as measured at the deepest point, main river channel, dam forebay; or 17 µg/l, as measured at the deepest point, main river channel, immediately downstream of Peckerwood Creek/Coosa River confluence.

5. Mitchell Lake: those waters impounded by Mitchell Dam on the Coosa River. The lake has a surface area of 5,850 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 14 µg/l, as measured at the deepest point, main river channel, dam forebay; or 16 µg/l, as measured at the deepest point, main river channel, downstream of Foshee Islands.

6. Jordan Lake: those waters impounded by Jordan Dam on the Coosa River. The lake has a surface area of 6,800 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 14 µg/l, as measured at the deepest point, main river channel, dam forebay.

(e) **The Escatawpa River Basin**

1. Big Creek Lake (J.B. Converse Lake): those waters impounded on Big Creek. The lake is a tributary-storage reservoir and has a surface area of 3,600 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 11 µg/l, as measured at the deepest point, main river channel, dam forebay.

(f) **The Lower Tombigbee River Basin**

1. Coffeeville Lake: those waters impounded by Coffeeville Dam on the Tombigbee River. The lake has a surface area of 8,500 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 10 µg/l, as measured at the deepest point, main river channel, upstream of the lock canal.

(g) **The Perdido/Escambia River Basin**

1. Lake Jackson: This natural lake, located in Florala, Alabama, has a surface area of 256 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 7 µg/l, as measured at mid-lake.

2. Point A Lake: those waters impounded by Point A Dam on the Conecuh River. The lake has a surface area of 900 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 9 µg/l, as measured at the deepest point, main river channel, dam forebay.

3. Gantt Lake: those waters impounded by Gantt Dam on the Conecuh River. The lake has a surface area of 2,767 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 11 µg/l, as measured at the deepest point, main river channel, dam forebay.

4. Lake Frank Jackson: those waters impounded on Lightwood Knot Creek. The lake has a surface area of 1,000 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 12 µg/l, as measured at the deepest point, main creek channel, dam forebay.

(h) **The Tallapoosa River Basin**

1. Thurlow Lake: those waters impounded by Thurlow Dam on the Tallapoosa River. The reservoir has a surface area of 574 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 5 µg/l, as measured at the deepest point, main river channel, dam forebay.

2. Yates Lake: those waters impounded by Yates Dam on the Tallapoosa River. The lake has a surface area of 2,000 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 5 µg/l, as measured at the deepest point, main river channel, dam forebay.

3. Lake Martin: those waters impounded by Martin Dam on the Tallapoosa River. The lake has a surface area of 40,000 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through

October shall not exceed 5 µg/l, as measured at the deepest point, main river channel, dam forebay; or 5 µg/l, as measured at the deepest point main river channel, immediately upstream of Blue Creek embayment; or 5 µg/l as measured at the deepest point, main creek channel, immediately upstream of Alabama Highway 63 (Kowaliga) bridge.

4. R.L. Harris Lake: those waters impounded by R.L. Harris Dam on the Tallapoosa River. The lake has a surface area of 10,660 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 10 µg/l, as measured at the deepest point, main river channel, dam forebay; or 12 µg/l, as measured at the deepest point, main river channel, immediately upstream of the Tallapoosa River - Little Tallapoosa River confluence.

(i) **The Tennessee River Basin**

1. Pickwick Lake: those waters impounded by Pickwick Dam on the Tennessee River. The reservoir has a surface area of 43,100 acres at full pool, 33,700 acres of which are within Alabama. The point of measurement for the criterion given below is located in Tennessee waters.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through September shall not exceed 18 µg/l, as measured at the deepest point, main river channel, dam forebay.

2. Wilson Lake: those waters impounded by Wilson Dam on the Tennessee River. The lake has a surface area of 15,930 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through September shall not exceed 18 µg/l, as measured at the deepest point, main river channel, dam forebay.

3. Wheeler Lake: those waters impounded by Wheeler Dam on the Tennessee River. The lake has a surface area of 67,100 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through September shall not exceed 18 µg/l, as measured at the deepest point, main river channel, dam forebay.

4. Guntersville Lake: those waters impounded by Guntersville Dam on the Tennessee River. The lake has a surface area of 69,700 acres at full pool, 67,900 of which are within Alabama.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of photic-zone composite chlorophyll a samples collected monthly April through September shall not exceed 18 µg/l, as measured at the deepest point, main river channel, dam forebay.

5. Cedar Creek Lake: those waters impounded by Cedar Creek Dam on Cedar Creek. The reservoir has a surface area of 4,200 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 8 µg/l, as measured at the deepest point, main creek channel, dam forebay.

6. Little Bear Creek Lake: those waters impounded by Little Bear Dam on Little Bear Creek. The reservoir has a surface area of 1,600 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 8 µg/l, as measured at the deepest point, main creek channel, dam forebay.

7. Bear Creek Lake: those waters impounded by Bear Creek Dam on Bear Creek. The reservoir has a surface area of 670 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 16 µg/l, as measured at the deepest point, main creek channel, dam forebay.

6. Upper Bear Creek Lake: those waters impounded by Upper Bear Creek Dam on Upper Bear Creek. The reservoir has a surface area of 1,850 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 16 µg/l, as measured at the deepest point, main creek channel, dam forebay.

(j) **The Upper Tombigbee River Basin**

1. Demopolis Lake: those waters impounded by Demopolis Dam downstream of the confluence of the Tombigbee and the Black Warrior Rivers. The lake has a surface area of 10,000 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 10 µg/l, as measured at the deepest point, main river channel, dam forebay.

2. Gainesville Lake: those waters impounded by Gainesville Dam on the Tombigbee River. The lake has a surface area of 6,400 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 14 µg/l, as measured at the deepest point, main river channel, dam forebay.

3. Aliceville Lake: those waters impounded by Tom Bevill Dam on the Tombigbee River. The lake has a surface area of 8,300 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 18 µg/l, as measured at the deepest point, main river channel, dam forebay.

(k) **The Warrior River Basin**

1. Warrior Lake: those waters impounded by Warrior Lock and Dam on the Black Warrior River. The lake has a surface area of 7,800 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 12 µg/l, as measured at the deepest point, main river channel, dam forebay.

2. Oliver Lake: those waters impounded by William Bacon Oliver Lock and Dam on the Black Warrior River. The lake has a surface area of 800 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through

October shall not exceed 12 µg/l, as measured at the deepest point, main river channel, dam forebay.

3. Holt Lake: those waters impounded by Holt Lock and Dam on the Black Warrior River. The lake has a surface area of 3,200 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 16 µg/l, as measured at the deepest point, main river channel, dam forebay.

4. Lake Tuscaloosa: those waters impounded by Lake Tuscaloosa Dam on the North River. The lake has a surface area of 5,885 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 8 µg/l, as measured at the deepest point, main river channel, dam forebay.

5. Bankhead Lake: those waters impounded by John Hollis Bankhead Lock and Dam on the Black Warrior River. The lake has a surface area of 9,200 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 16 µg/l, as measured at the deepest point, main river channel, dam forebay.

6. Smith Lake: those waters impounded by Lewis M. Smith Dam on the Sipsey Fork River. The lake has a surface area of 21,200 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through October shall not exceed 5 µg/l, as measured at the deepest point, main river channel, dam forebay; 5 µg/l, as measured at the deepest point, main river channel, at Duncan Creek/Sipsey River confluence (downstream of the Alabama Highway 257 bridge); and 5 µg/l, as measured at the deepest point, main river channel, immediately downstream of Brushy Creek confluence.

7. Inland Lake: those waters impounded by Inland Lake Dam on the Blackburn Fork of the Little Warrior River. The lake has a surface area of 1,095 acres at full pool.

(i) Chlorophyll a (corrected, as described in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, 1998): the mean of the photic-zone composite chlorophyll a samples collected monthly April through

October shall not exceed 6 µg/l, as measured at the deepest point, main river channel, dam forebay.

Author: James E. McIndoe.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: January 12, 2001. **Amended:** May 16, 2002; May 27, 2004; September 21, 2005; January 18, 2011; April 1, 2014.

335-6-10-.12 Implementation of the Antidegradation Policy.

(1) The antidegradation policy at rule 335-6-10-.04 addresses three categories of waters/uses:

(a) High quality waters that constitute an outstanding national resource (Tier 3);

(b) Waters where the quality exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water (Tier 2); and

(c) Existing instream water uses and the level of water quality necessary to protect the existing uses (Tier 1).

(2) Tier 3 waters are those waters designated pursuant to the Outstanding National Resource Water (ONRW) special designation at rule 335-6-10-.10, and are identified in rule 335-6-11-.02.

(3) Tier 1 waters are:

(a) Those waters (except waters assigned the use classification of Outstanding Alabama Water, which are Tier 2 waters) identified on the most recent EPA-approved Section 303(d) list;

(b) Those waters (except waters assigned the use classification of Outstanding Alabama Water, which are Tier 2 waters) for which attainment of applicable water quality standards has been, or is expected to be, achieved through implementation of effluent limitations more stringent than technology-based controls (BPT, BAT, and secondary treatment); and

(c) Those waters assigned the use classification of Limited Warmwater Fishery or Agricultural and Industrial Water Supply (as identified in rule 335-6-11-.02).

(4) Tier 2 waters are all other waters (those waters not identified as either Tier 3 waters or Tier 1 waters), including all waters assigned the use classification of Outstanding Alabama Water (as identified in rule 335-6-11-.02).

(5) All new or expanded discharges to Tier 2 waters (except discharges eligible for coverage under general permits) covered by the NPDES permitting program are potentially subject to the provisions of rule 335-6-10-.04(3). Applicants for such discharges are required to demonstrate that the proposed discharge is necessary for important economic or social development as a part of the permit application process.

(6) After receipt of a permit application for a potentially covered discharge, the Department will determine whether the proposed discharge is to a Tier 2 water, as defined in paragraph (4) above. Of necessity, this determination will be made on a case-by-case basis.

(7) The basic framework of the permitting process is unchanged for a covered discharge to a Tier 2 water. However, the process is enhanced to document the consideration of Tier 2 provisions. The additional documentation includes:

(a) The Department's determination that the application is for a new or expanded discharge;

(b) The Department's determination that the receiving stream is considered to be a Tier 2 water; and

(c) The Department's determination, based on the applicant's demonstration, that the proposed discharge is necessary for important economic or social development in the area in which the waters are located.

(8) All three items will be documented in the permit file and/or fact sheet, and will be used by the Department in its decision process. The public notice process will be used to announce a preliminary Department decision to deny or to allow a covered discharge to a Tier 2 water, while the final determination will be made concurrently with the final Department decision regarding the permit application for a covered discharge.

(9) Documentation by the applicant shall include:

(a) An evaluation of discharge alternatives completed by a Registered Professional Engineer licensed to practice in the State of Alabama.

1. The applicant shall document the discharge alternatives evaluation by completing and submitting the following forms[1], or by submitting the same information in another format acceptable to the Department:

(i) ADEM Form 311, Alternatives Analysis; and, as applicable,

(ii) ADEM Form 312, Calculation of Total Annualized Costs for Public-Sector Projects, or ADEM Form 313, Calculation of Total Annualized

[1] Forms are listed in ADEM Admin. Code r. 335-1-1-.07 and are available for downloading on the ADEM web page under Forms.

Costs for Private-Sector Projects. Alternatives with total annualized project costs that are less than 110% of the total annualized project costs for the Tier 2 discharge proposal are considered viable alternatives.

(b) A demonstration that the proposed discharge will support important economic or social development in the area in which the waters are located, documented by the applicant's response, in writing, to the following questions. The applicant shall provide supporting information for each response.

1. What environmental or public health problem will the discharger be correcting?

2. How much will the discharger be increasing employment (at its existing facility or as the result of locating a new facility)?

3. How much reduction in employment will the discharger be avoiding?

4. How much additional state or local taxes will the discharger be paying?

5. What public service to the community will the discharger be providing?

6. What economic or social benefit will the discharger be providing to the community?

Author: James E. McIndoe.
Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: August 1, 2002. **Amended:** January 18, 2011.

TABLE 1
TOXIC POLLUTANT CRITERIA

Pollutant	Aquatic Life Criteria (in µg/l unless otherwise noted)				Human Health Criteria (in µg/l unless otherwise noted)	
	Freshwater Acute	Freshwater Chronic	Marine Acute	Marine Chronic	Consumption of Water and Fish	Consumption of Fish Only
Acenaphthene					Eq. 16	Eq. 17
Acrolein					Eq. 16	Eq. 17
Acrylonitrile [1]					Eq. 18	Eq. 19
Aldrin [1]	3.0		1.3		Eq. 18	Eq. 19
Anthracene					Eq. 16	Eq. 17
Antimony					Eq. 16	Eq. 17
Arsenic [1] (trivalent) (Risk level = 1×10^{-5})	340	150	69	36	Eq. 18	Eq. 19
Asbestos					7,000,000 fibers/l (MCL)	
Benzene [1]					Eq. 18	Eq. 19
Benzidine [1]					Eq. 18	Eq. 19
Benzo(a)anthracene [1]					Eq. 18	Eq. 19
Benzo(a)pyrene [1]					Eq. 18	Eq. 19
Benzo(b)fluoranthene [1]					Eq. 18	Eq. 19
Benzo(k)fluoranthene [1]					Eq. 18	Eq. 19
Bis(2-chloroethyl)ether [1]					Eq. 18	Eq. 19
Bis(2-chloroisopropyl)ether					Eq. 16	Eq. 17
Bis(2-ethylhexyl)phthalate [1]					Eq. 18	Eq. 19

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TOXIC POLLUTANT CRITERIA

Pollutant	Aquatic Life Criteria (in µg/l unless otherwise noted)				Human Health Criteria (in µg/l unless otherwise noted)	
	Freshwater Acute	Freshwater Chronic	Marine Acute	Marine Chronic	Consumption of Water and Fish	Consumption of Fish Only
Bromoform [1]					Eq. 18	Eq. 19
Butylbenzyl phthalate					Eq. 16	Eq. 17
Cadmium	Eq. 1	Eq. 2	40	8.8		
Carbon tetrachloride [1]					Eq. 18	Eq. 19
Chlordane [1]	2.4	0.0043	0.09	0.004	Eq. 18	Eq. 19
Chlorobenzene					Eq. 16	Eq. 17
Chlorodibromomethane [1]					Eq. 18	Eq. 19
Chloroform [1]					Eq. 18	Eq. 19
2-Chloronaphthalene					Eq. 16	Eq. 17
2-Chlorophenol					Eq. 16	Eq. 17
Chromium (trivalent)	Eq. 3	Eq. 4				
Chromium (hexavalent)	16	11	1100	50		
Chrysene [1]					Eq. 18	Eq. 19
Copper	Eq. 5	Eq. 6	4.8	3.1	1300 (MCL)	
Cyanide (free)	22	5.2	1.0	1.0	Eq. 16	Eq. 17
4,4'-DDD [1]					Eq. 18	Eq. 19
4,4'-DDE [1]					Eq. 18	Eq. 19
4,4'-DDT [1]	1.1	0.001	0.13	0.001	Eq. 18	Eq. 19
Dibenzo(a,h)anthracene [1]					Eq. 18	Eq. 19

TABLE 1
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Pollutant	Aquatic Life Criteria (in µg/l unless otherwise noted)				Human Health Criteria (in µg/l unless otherwise noted)	
	Freshwater Acute	Freshwater Chronic	Marine Acute	Marine Chronic	Consumption of Water and Fish	Consumption of Fish Only
1,2-Dichlorobenzene					Eq. 16	Eq. 17
1,3-Dichlorobenzene					Eq. 16	Eq. 17
1,4-Dichlorobenzene					Eq. 16	Eq. 17
3,3'-Dichlorobenzidine [1]					Eq. 18	Eq. 19
Dichlorobromomethane [1]					Eq. 18	Eq. 19
1,2-Dichloroethane [1]					Eq. 18	Eq. 19
1,1-Dichloroethylene					Eq. 16	Eq. 17
2,4-Dichlorophenol					Eq. 16	Eq. 17
1,2 Dichloropropane [1]					Eq. 18	Eq. 19
1,3 Dichloropropylene [1]					Eq. 18	Eq. 19
Dieldrin [1]	0.24	0.056	0.71	0.0019	Eq. 18	Eq. 19
2,4-Dimethylphenol					Eq. 16	Eq. 17
Diethyl phthalate					Eq. 16	Eq. 17
Dimethyl phthalate					Eq. 16	Eq. 17
Di-n-butyl phthalate					Eq. 16	Eq. 17
4,6-Dinitro-2-methylphenol					Eq. 16	Eq. 17
2,4 Dinitrotoluene [1]					Eq. 18	Eq. 19
2,4-Dinitrophenol					Eq. 16	Eq. 17

TABLE 1
TOXIC POLLUTANT CRITERIA

Pollutant	Aquatic Life Criteria (in µg/l unless otherwise noted)				Human Health Criteria (in µg/l unless otherwise noted)	
	Freshwater Acute	Freshwater Chronic	Marine Acute	Marine Chronic	Consumption of Water and Fish	Consumption of Fish Only
Dioxin (2,3,7,8-TCDD) [1]					Eq. 18	Eq. 19
1,2-Diphenylhydrazine [1]					Eq. 18	Eq. 19
Endosulfan (alpha)	0.22	0.056	0.034	0.0087	Eq. 16	Eq. 17
Endosulfan (beta)	0.22	0.056	0.034	0.0087	Eq. 16	Eq. 17
Endosulfan sulfate					Eq. 16	Eq. 17
Endrin	0.086	0.036	0.037	0.0023	Eq. 16	Eq. 17
Endrin aldehyde					Eq. 16	Eq. 17
Ethylbenzene					Eq. 16	Eq. 17
Fluoranthene					Eq. 16	Eq. 17
Fluorene					Eq. 16	Eq. 17
Heptachlor [1]	0.52	0.0038	0.053	0.0036	Eq. 18	Eq. 19
Heptachlor epoxide [1]	0.52	0.0038	0.053	0.0036	Eq. 18	Eq. 19
Hexachlorobenzene [1]					Eq. 18	Eq. 19
Hexachlorobutadiene [1]					Eq. 18	Eq. 19
Hexachlorocyclohexane (alpha) [1]					Eq. 18	Eq. 19
Hexachlorocyclohexane (beta) [1]					Eq. 18	Eq. 19
Hexachlorocyclohexane (gamma)	0.95		0.16		Eq. 16	Eq. 17
Hexachlorocyclopentadiene					Eq. 16	Eq. 17
Hexachloroethane [1]					Eq. 18	Eq. 19

TABLE 1
TOXIC POLLUTANT CRITERIA

Pollutant	Aquatic Life Criteria (in µg/l unless otherwise noted)				Human Health Criteria (in µg/l unless otherwise noted)	
	Freshwater Acute	Freshwater Chronic	Marine Acute	Marine Chronic	Consumption of Water and Fish	Consumption of Fish Only
Indeno (1,2,3-cd) pyrene [1]					Eq. 18	Eq. 19
Isophorone [1]					Eq. 18	Eq. 19
Lead	Eq. 7	Eq. 8	210	8.1		
Mercury (total recoverable)	2.4	0.012	2.1	0.025	Eq. 16	Eq. 17
Methyl bromide					Eq. 16	Eq. 17
Methylene chloride [1]					Eq. 18	Eq. 19
Nickel	Eq. 9	Eq. 10	74	8.2	Eq. 16	Eq. 17
Nitrobenzene					Eq. 16	Eq. 17
N-Nitrosodimethylamine [1]					Eq. 18	Eq. 19
N-Nitrosodi-n-propylamine [1]					Eq. 18	Eq. 19
N-Nitrosodiphenylamine [1]					Eq. 18	Eq. 19
PCB-1016 [1,2]		0.014		0.03	Eq. 18	Eq. 19
PCB-1221 [1,2]		0.014		0.03	Eq. 18	Eq. 19
PCB-1232 [1,2]		0.014		0.03	Eq. 18	Eq. 19
PCB-1242 [1,2]		0.014		0.03	Eq. 18	Eq. 19
PCB-1248 [1,2]		0.014		0.03	Eq. 18	Eq. 19
PCB-1254 [1,2]		0.014		0.03	Eq. 18	Eq. 19
PCB-1260 [1,2]		0.014		0.03	Eq. 18	Eq. 19
Pentachlorophenol [1]	Eq. 11	Eq. 12	13	7.9	Eq. 18	Eq. 19

TABLE 1
TOXIC POLLUTANT CRITERIA

Pollutant	Aquatic Life Criteria (in µg/l unless otherwise noted)				Human Health Criteria (in µg/l unless otherwise noted)	
	Freshwater Acute	Freshwater Chronic	Marine Acute	Marine Chronic	Consumption of Water and Fish	Consumption of Fish Only
Phenol					Eq. 16	Eq. 17
Pyrene					Eq. 16	Eq. 17
Selenium [3]	20	5.0	290	71	Eq. 16	Eq. 17
Silver	Eq. 13		1.9			
1,1,2,2-Tetrachloroethane [1]					Eq. 18	Eq. 19
Tetrachloroethylene [1]					Eq. 18	Eq. 19
Thallium					Eq. 16	Eq. 17
Toluene					Eq. 16	Eq. 17
Toxaphene [1]	0.73	0.0002	0.21	0.0002	Eq. 18	Eq. 19
1,2-Trans-dichloroethylene					Eq. 16	Eq. 17
Tributyltin (TBT)	0.46	0.072	0.42	0.0074		
1,2,4-Trichlorobenzene					Eq. 16	Eq. 17
1,1,2-Trichloroethane [1]					Eq. 18	Eq. 19
Trichloroethylene [1]					Eq. 18	Eq. 19
2,4,6-Trichlorophenol [1]					Eq. 18	Eq. 19
Vinyl chloride [1]					Eq. 18	Eq. 19
Zinc	Eq. 14	Eq. 15	90	81	Eq. 16	Eq. 17

[1] Pollutants considered by EPA to be carcinogenic.

[2] The criteria for Polychlorinated Biphenyls (PCBs) apply to total PCBs, which is defined as the sum of the seven particular Aroclors (1016, 1221, 1232, 1242, 1248, 1254, and 1260) listed in this table.

[3] The freshwater aquatic life criteria for selenium are expressed in terms of total recoverable metal in the water column.

APPENDIX A

POLLUTANT	CAS Registry Number	REFERENCE DOSE mg/(kg-day)	CANCER POTENCY FACTOR (kg-day)/mg	BIO-CONCENTRATION FACTOR l/kg	RELATIVE SOURCE CONTRIBUTION
Acenaphthene	83329	0.06		242	1.0
Acrolein	107028	0.0005		215	1.0
Acrylonitrile	107131		0.54	30	
Aldrin	309002		17	4670	
Anthracene	120127	0.3		30	1.0
Antimony	7440360	0.0004		1	0.4
Arsenic	7440382		1.75	44	
Benzene	71432		0.029	5.2	
Benzidine	92875		230	87.5	
Benzo(a)anthracene	56553		7.3	30	
Benzo(a)pyrene	50328		7.3	30	
Benzo(b)fluoranthene	205992		7.3	30	
Benzo(k)fluoranthene	207089		7.3	30	
Bis(2-chloroethyl)ether	111444		1.1	6.9	
Bis(2-chloroisopropyl)ether	108601	0.04		2.47	1.0
Bis(2-ethylhexyl)phthalate	117817		0.014	130	
Bromoform	75252		0.0079	3.75	
Butylbenzyl phthalate	85687	0.2		414	1.0
Carbon tetrachloride	56235		0.13	18.75	
Chlordane	57749		0.35	14100	
Chlorobenzene	108907	0.02		10.3	0.2
Chlorodibromomethane	124481		0.084	3.75	
Chloroform	67663		0.0061	3.75	

APPENDIX A

POLLUTANT	CAS Registry Number	REFERENCE DOSE mg/(kg-day)	CANCER POTENCY FACTOR (kg-day)/mg	BIO-CONCENTRATION FACTOR l/kg	RELATIVE SOURCE CONTRIBUTION
2-Chloronaphthalene	91587	0.08		202	1.0
2-Chlorophenol	95578	0.005		134	1.0
Chrysene	218019		7.3	30	
Cyanide	57125	0.02		1	0.2
4,4'-DDD	72548		0.24	53600	
4,4'-DDE	72559		0.34	53600	
4,4'-DDT	50293		0.34	53600	
Dibenzo(a,h)anthracene	53703		7.3	30	
1,2-Dichlorobenzene	95501	0.09		55.6	0.2
1,3-Dichlorobenzene	541731	0.0134		55.6	1.0
1,4-Dichlorobenzene	106467	0.0134		55.6	0.2
3,3'-Dichlorobenzidine	91941		0.45	312	
Dichlorobromomethane	75274		0.062	3.75	
1,2-Dichloroethane	107062		0.091	1.2	
1,1-Dichloroethylene	75354	0.05		5.6	0.2
2,4-Dichlorophenol	120832	0.003		40.7	1.0
1,2-Dichloropropane	78875		0.067	4.1	
1,3-Dichloropropylene	542756		0.1	1.9	
Dieldrin	60571		16	4670	
Diethyl phthalate	84662	0.8		73	1.0
2,4 Dimethylphenol	105679	0.02		93.8	1.0
Dimethyl phthalate	131113	10		36	1.0
Di-n-butyl phthalate	84742	0.1		89	1.0

APPENDIX A

POLLUTANT	CAS Registry Number	REFERENCE DOSE mg/(kg-day)	CANCER POTENCY FACTOR (kg-day)/mg	BIO-CONCENTRATION FACTOR l/kg	RELATIVE SOURCE CONTRIBUTION
4,6-Dinitro-2-methylphenol	534521	0.00039		5.5	1.0
2,4-Dinitrophenol	51285	0.002		1.5	1.0
2,4 Dinitrotoluene	121142		0.31	3.8	
Dioxin (2,3,7,8-TCDD)	1746016		17500	5000	
1,2-Diphenylhydrazine	122667		0.8	24.9	
Endosulfan (alpha)	959988	0.006		270	1.0
Endosulfan (beta)	33213659	0.006		270	1.0
Endosulfan sulfate	1031078	0.006		270	1.0
Endrin	72208	0.0003		3970	0.2
Endrin aldehyde	7421934	0.0003		3970	1.0
Ethylbenzene	100414	0.1		37.5	0.2
Fluoranthene	206440	0.04		1150	1.0
Fluorene	86737	0.04		30	1.0
Heptachlor	76448		4.5	11200	
Heptachlor epoxide	1024573		9.1	11200	
Hexachlorobenzene	118741		1.6	8690	
Hexachlorobutadiene	87683		0.078	2.78	
Hexachlorocyclohexane (alpha)	319846		6.3	130	
Hexachlorocyclohexane (beta)	319857		1.8	130	
Hexachlorocyclohexane (gamma)	58899	0.0003		130	0.2
Hexachlorocyclopentadiene	77474	0.006		4.34	0.2
Hexachloroethane	67721		0.014	86.9	
Indeno (1,2,3-cd) pyrene	193395		7.3	30	

APPENDIX A

POLLUTANT	CAS Registry Number	REFERENCE DOSE mg/(kg-day)	CANCER POTENCY FACTOR (kg-day)/mg	BIO-CONCENTRATION FACTOR l/kg	RELATIVE SOURCE CONTRIBUTION
Isophorone	78591		0.00095	4.38	
Mercury	7439976	0.0001		5500	1.0
Methyl bromide	74839	0.0014		3.75	1.0
Methylene chloride	75092		0.0075	0.9	
Nickel	7440020	0.02		47	1.0
Nitrobenzene	98953	0.0005		2.89	1.0
N-Nitrosodimethylamine	62759		51	0.026	
N-Nitrosodi-n-propylamine	621647		7	1.13	
N-Nitrosodiphenylamine	86306		0.0049	136	
PCB-1016 [1]	12674112		2.0	31200	
PCB-1221 [1]	11104282		2.0	31200	
PCB-1232 [1]	11141165		2.0	31200	
PCB-1242 [1]	53469219		2.0	31200	
PCB-1248 [1]	12672296		2.0	31200	
PCB-1254 [1]	11097691		2.0	31200	
PCB-1260 [1]	11096825		2.0	31200	
Pentachlorophenol	87865		0.12	11	
Phenol	108952	0.3		1.4	1.0
Pyrene	129000	0.03		30	1.0
Selenium	7782492	0.005		4.8	1.0
1,1,2,2-Tetrachloroethane	79345		0.2	5	
Tetrachloroethylene	127184		0.039776	30.6	
Thallium	7440280	0.000068		116	0.2

APPENDIX A

POLLUTANT	CAS Registry Number	REFERENCE DOSE mg/(kg-day)	CANCER POTENCY FACTOR (kg-day)/mg	BIO-CONCENTRATION FACTOR l/kg	RELATIVE SOURCE CONTRIBUTION
Toluene	108883	0.2		10.7	0.2
Toxaphene	8001352		1.1	13100	
1,2-Trans-dichloroethylene	156605	0.02		1.58	0.2
1,2,4-Trichlorobenzene	120821	0.01		114	0.2
1,1,2-Trichloroethane	79005		0.057	4.5	
Trichloroethylene	79016		0.0126	10.6	
2,4,6-Trichlorophenol	88062		0.011	150	
Vinyl chloride	75014		1.4	1.17	
Zinc	7440666	0.3		47	1.0

[1] The criteria for Polychlorinated Biphenyls (PCBs) apply to total PCBs, which is defined as the sum of the seven particular Aroclors (1016, 1221, 1232, 1242, 1248, 1254, and 1260) listed in this table.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER DIVISION - WATER QUALITY PROGRAM

CHAPTER 335-6-11
WATER USE CLASSIFICATIONS FOR INTERSTATE AND INTRASTATE WATERS

TABLE OF CONTENTS

335-6-11-.01 The Use Classification System
335-6-11-.02 Use Classifications

335-6-11-.01 The Use Classification System.

(1) Use classifications utilized by the State of Alabama are as follows:

Outstanding Alabama Water	OAW
Public Water Supply	PWS
Swimming and Other Whole Body Water-Contact Sports	S
Shellfish Harvesting	SH
Fish and Wildlife	F&W
Limited Warmwater Fishery	LWF
Agricultural and Industrial Water Supply	A&I

(2) Use classifications apply water quality criteria adopted for particular uses based on existing utilization, uses reasonably expected in the future, and those uses not now possible because of correctable pollution but which could be made if the effects of pollution were controlled or eliminated. Of necessity, the assignment of use classifications must take into consideration the physical capability of waters to meet certain uses.

(3) Those use classifications presently included in the standards are reviewed informally by the Department's staff as the need arises, and the entire standards package, to include the use classifications, receives a formal review at least once every three years. Efforts currently underway through local 201 planning projects will provide additional technical data on certain streams in the State, information on treatment alternatives, and applicability of various management techniques, which, when available, will hopefully lead to new decisions regarding use classifications. Of particular interest are those segments which are currently classified for any usage which has an associated degree of quality criteria considered to be less than that applicable to a classification of "Fish and Wildlife." As rapidly as it can be demonstrated that new classifications are feasible and attainable on these segments from an economic and technological viewpoint, based on the information being generated pursuant to water quality studies and the planning efforts previously outlined, such improvement will be proposed. For those segments where such a demonstration cannot be made, use attainability analyses describing in detail

the factors preventing attainment of the "Fish and Wildlife" use will be prepared pursuant to federal requirements and updated as new information becomes available.

(4) Although it is not explicitly stated in the classifications, it should be understood that the use classification of "Shellfish Harvesting" is only applicable in the coastal area and, therefore, is included only in the Mobile River Basin and the Perdido-Escambia River Basin. It should also be noted that with the exception of those segments in the "Public Water Supply" classification, every segment, in addition to being considered acceptable for its designated use, is also considered acceptable for any other use with a less stringent associated criteria.

(5) Not all waters are included by name in the use classifications since it would be a tremendous administrative burden to list all stream segments in the State. In addition, in virtually every instance where a segment is not included by name, the Department has no information or stream data upon which to base a decision relative to the assignment of a particular classification. An effort has been made, however, to include all major stream segments and all segments which, to the Department's knowledge, are currently recipients of point source discharges. Those segments which are not included by name will be considered to be acceptable for a "Fish and Wildlife" classification unless it can be demonstrated that such a generalization is inappropriate in specific instances.

Author: James E. McIndoe.
Statutory Authority: Code of Alabama 1975, §§22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: May 5, 1967. **Amended:** June 19, 1967; April 1, 1970; October 16, 1972; September 17, 1973; May 30, 1977; December 19, 1977; February 4, 1981; April 5, 1982; December 11, 1985; March 26, 1986; September 7, 2000; May 27, 2008; April 1, 2014.

335-6-11-.02 Use Classifications.

(1) **THE ALABAMA RIVER BASIN**

INTERSTATE WATERS

Stream	From	To	Classification
ALABAMA RIVER	MOBILE RIVER	Claiborne Lock and Dam	F&W
ALABAMA RIVER	Claiborne Lock and Dam	Frisco Railroad Crossing	S/F&W

Stream	From	To	Classification
ALABAMA RIVER	Frisco Railroad Crossing	River Mile 131	F&W
ALABAMA RIVER	River Mile 131	Millers Ferry Lock and Dam	PWS
ALABAMA RIVER	Millers Ferry Lock and Dam	Blackwell Bend (Six Mile Creek)	S/F&W
ALABAMA RIVER	Blackwell Bend (Six Mile Creek)	Jones Bluff Lock and Dam	F&W
ALABAMA RIVER	Jones Bluff Lock and Dam	Pintlala Creek	S/F&W
ALABAMA RIVER	Pintlala Creek	Its source	F&W

INTRASTATE WATERS

Stream	From	To	Classification
Little River	ALABAMA RIVER	Its source	S/F&W
Randons Creek	ALABAMA RIVER	Its source	F&W
Bear Creek	Randons Creek	Its source	F&W
Limestone Creek	ALABAMA RIVER	Its source	F&W
Double Bridges Creek	Limestone Creek	Its source	F&W
Hudson Branch	Limestone Creek	Its source	F&W
Big Flat Creek	ALABAMA RIVER	Its source	S/F&W
Pursley Creek	ALABAMA RIVER	Its source	F&W
Unnamed tributary south of Camden	Pursley Creek	Its source	F&W
Beaver Creek	ALABAMA RIVER	Its source	F&W
Cub Creek	Beaver Creek	Its source	F&W
Turkey Creek	Beaver Creek	Its source	F&W
Rockwest Creek	ALABAMA RIVER	Its source	F&W

Stream	From	To	Classification
Unnamed tributary west of Camden	Rockwest Creek	Its source	F&W
Pine Barren Creek	ALABAMA RIVER	Its source	S/F&W
Chilatchee Creek	ALABAMA RIVER	Its source	S/F&W
Bogue Chitto Creek	ALABAMA RIVER	Its source	F&W
Sand Creek	Bogue Chitto Creek	Its source	F&W
Big Cedar Creek	ALABAMA RIVER	Its source	S/F&W
Valley Creek	ALABAMA RIVER	Selma-Summerfield Rd.	F&W
Valley Creek	Selma-Summerfield Rd.	Its source	S/F&W
Mulberry Creek	ALABAMA RIVER	Plantersville	S/F&W
Mulberry Creek	Plantersville	Its source	F&W
Gale Creek	Mulberry Creek	Its source	F&W
Charlotte Creek	Gale Creek	Its source	F&W
Big Swamp Creek	ALABAMA RIVER	Its source	S/F&W
Swift Creek	ALABAMA RIVER	Its source	S/F&W
Pintlala Creek	ALABAMA RIVER	Its source	S/F&W
Autauga Creek	ALABAMA RIVER	Matthews Branch	F&W
Autauga Creek	Matthews Branch	Its source	S/F&W
Catoma Creek	ALABAMA RIVER	Its source	F&W
Mortar Creek	ALABAMA RIVER	Its source	F&W
Valley Creek Lake	Within Valley Creek State Park		S/F&W
Little River Lake	Within Little River State Forest		S/F&W

(2) **THE CAHABA RIVER BASIN**

INTRASTATE WATERS

Stream	From	To	Classification
CAHABA RIVER	ALABAMA RIVER	Junction of lower Little Cahaba River	OAW/S
CAHABA RIVER	Junction of lower Little Cahaba River	Shelby County Road 52	OAW/F&W
CAHABA RIVER	Shelby County Road 52	Dam near U.S. Highway 280	F&W
CAHABA RIVER	Dam near U.S. Highway 280	Grant's Mill Road	OAW/PWS
CAHABA RIVER	Grant's Mill Road	U.S. Highway 11	F&W
CAHABA RIVER	U.S. Highway 11	Its source	OAW/F&W
Childers Creek	CAHABA RIVER	Its source	F&W
Oakmulgee Creek	CAHABA RIVER	Its source	S
Little Oakmulgee Creek	Oakmulgee Creek	Its source	S
Rice Creek	CAHABA RIVER	Its source	F&W
Waters Creek	CAHABA RIVER	Its source	S
Old Town Creek	CAHABA RIVER	Its source	S
Blue Girth Creek	CAHABA RIVER	Its source	S
Affonee Creek	CAHABA RIVER	Its source	S
Haysop Creek	CAHABA RIVER	Its source	F&W
Schultz Creek	CAHABA RIVER	Its source	S
Little Cahaba River (Bibb County)	CAHABA RIVER	Its source (junction of Mahan and Shoal Creeks)	OAW/F&W
Sixmile Creek	Little Cahaba River	Its source	S
Mahan Creek	Little Cahaba River	Its source	F&W
Shoal Creek	Little Cahaba River	Its source	F&W

Stream	From	To	Classification
Caffee Creek	CAHABA RIVER	Its source	F&W
Shades Creek	CAHABA RIVER	Its source	F&W
Buck Creek	CAHABA RIVER	Cahaba Valley Creek	F&W
Buck Creek	Cahaba Valley Creek	Shelby County Road 44	LWF[4]
Buck Creek	Shelby County Road 44	Its source	F&W
Cahaba Valley Creek	Buck Creek	Its source	F&W
Peavine Creek	Buck Creek	Its source	F&W
Oak Mountain State Park Lakes			PWS
Patton Creek	CAHABA RIVER	Its source	F&W
Little Shades Creek	CAHABA RIVER	Its source	F&W
Little Cahaba River (Jefferson-Shelby Counties)	CAHABA RIVER	Head of Lake Purdy	PWS
Little Cahaba River (Jefferson County)	Head of Lake Purdy	Its source	F&W

(3) **THE CHATTAHOOCHEE RIVER BASIN**

INTERSTATE WATERS

Stream	From	To	Classification

[4]Applicable dissolved oxygen level is 4.0 mg/l during May through November. Fish and Wildlife E. coli bacteria criteria at paragraph 10-.09(5)(e)7 are applicable year-round. For the purpose of establishing effluent limitations pursuant to chapter 335-6-6 of the Department's regulations, the minimum 7-day low flow that occurs once in 10 years ($7Q_{10}$) shall be the basis for applying the chronic aquatic life criteria.

Stream	From	To	Classification
CHATTAHOOCHEE RIVER	Alabama-Florida state line	Water supply intake of Great Southern Division, Great Northern Paper Co.	F&W
CHATTAHOOCHEE RIVER	Water supply intake of Great Southern Division, Great Northern Paper Co.	Cowikee Creek	S/F&W
CHATTAHOOCHEE RIVER	Cowikee Creek	14th Street Bridge between Columbus and Phenix City	F&W
CHATTAHOOCHEE RIVER	14th Street Bridge between Columbus and Phenix City	Osanippa Creek	PWS/S/F&W
CHATTAHOOCHEE RIVER	Osanippa Creek	West Point Manufacturing Company water supply intake at Lanett	F&W
CHATTAHOOCHEE RIVER	West Point Manufacturing Company water supply intake at Lanett	West Point Dam	PWS
CHATTAHOOCHEE RIVER (West Point Lake)	West Point Dam	West Point Lake limits in Alabama	S/F&W
Oseligee Creek	Alabama-Georgia state line	Its source	F&W
Wehadkee Creek	Alabama-Georgia state line	Its source	F&W
Finley Creek	Alabama-Georgia State line	Its source	F&W
Hardley Creek	Alabama-Georgia State line	Its source	F&W

Stream	From	To	Classification
Veasey Creek	Alabama-Georgia State line	Its source	F&W

INTRASTATE WATERS

Stream	From	To	Classification
Omusee Creek	CHATTAHOOCHEE RIVER	Its source	F&W
Mill Creek	Omusee Creek	Its source	F&W
Abbie Creek	CHATTAHOOCHEE RIVER	Its source	F&W
Skippers Creek	Abbie Creek	Its source	F&W
Owens Branch	Abbie Creek	Its source	F&W
Cheneyhatchee Creek	CHATTAHOOCHEE RIVER	Its source	S/F&W
Barbour Creek	CHATTAHOOCHEE RIVER	Its source	F&W
Chewalla Creek	CHATTAHOOCHEE RIVER	Its source	S/F&W
Cowikee Creek	CHATTAHOOCHEE RIVER	Its source	S/F&W
North Fork of Cowikee Creek	Cowikee Creek	Its source	F&W
Middle Fork of Cowikee Creek	North Fork of Cowikee Creek	Its source	S/F&W
Hurtsboro Creek	North Fork of Cowikee Creek	Its source	F&W
South Fork of Cowikee Creek	Cowikee Creek	Its source	S/F&W
Hatchechubbee Creek	CHATTAHOOCHEE RIVER	Russell County Highway 4, west of Pittsview	S/F&W

Stream	From	To	Classification
Hatchechubbee Creek	Russell County Highway 4, west of Pittsview	Its source	F&W
Ihagee Creek	CHATTAHOOCHEE RIVER	Its source	S/F&W
Uchee Creek	CHATTAHOOCHEE RIVER	Russell County Road 39	S/F&W
Uchee Creek	Russell County Road 39	Alabama Highway 169	PWS/S/F&W
Uchee Creek	Alabama Highway 169	Its source	S/F&W
Halawakee Creek	CHATTAHOOCHEE RIVER	Three miles upstream of Lee County Road 279	PWS/F&W
Halawakee Creek	Three miles upstream of Lee County Road 279	Its source	F&W
Osanippa Creek	CHATTAHOOCHEE RIVER	Its source	F&W
Kellum Hill Creek	Osligee Creek	Its source	F&W
Allen Creek	Kellum Hill Creek	Its source	F&W
Moore's Creek	CHATTAHOOCHEE RIVER	Its source	F&W
Guss Creek	Wehadkee Creek	Its source	F&W
Gladney Mill Branch	Guss Creek	Its source	F&W

(4) **THE CHIPOLA RIVER BASIN**

INTERSTATE WATERS

Stream	From	To	Classification

Stream	From	To	Classification
Big Creek	Alabama-Florida state line	Its source	F&W
Buck Creek	Alabama-Florida state line	Its source	F&W
Cowarts Creek	Alabama-Florida state line	Its source	F&W

INTRASTATE WATERS

Stream	From	To	Classification
Limestone Creek	Big Creek	Its source	F&W
Cypress Creek	Limestone Creek	Its source	F&W
Rocky Creek	Cowarts Creek	Its source	F&W

(5) **THE CHOCTAWHATCHEE RIVER BASIN**

INTERSTATE WATERS

Stream	From	To	Classification
Pea River	CHOCTAWHATCHEE RIVER	Laddon Creek	F&W
Pea River	Laddon Creek	Alabama-Florida state line	S/F&W
Pea River	Alabama-Florida state line	Flat Creek	S/F&W
Pea River	Flat Creek	Snake Branch	F&W
Pea River	Snake Branch	Bucks Mill Creek	S/F&W
Pea River	Bucks Mill Creek	U.S. Highway 84	F&W
Pea River	U.S. Highway 84	Red Oak Creek	S/F&W
Pea River	Red Oak Creek	Halls Creek	F&W
Pea River	Halls Creek	U.S. Highway 231	S/F&W

Stream	From	To	Classification
Pea River	U.S. Highway 231	Pike/Barbour County Road 77	F&W
Pea River	Pike/Barbour County Road 77	Kaiser Branch	S/F&W
Pea River	Kaiser Branch	Buckhorn Creek	F&W
Pea River	Buckhorn Creek	Connors Creek	S/F&W
Pea River	Connors Creek	Its source	F&W
CHOCTAWHATCHEE RIVER	Alabama-Florida state line	Alabama Highway 12	S/F&W
CHOCTAWHATCHEE RIVER	Alabama Highway 12	Brooking Mill Creek	F&W
CHOCTAWHATCHEE RIVER	Brooking Mill Creek	Its Source	S/F&W
Wright Creek	Alabama-Florida state line	Its source	F&W
Holmes Creek	Alabama-Florida state line	Its source	F&W
Ten Mile Creek	Alabama-Florida state line	Its source	F&W

INTRASTATE WATERS

Stream	From	To	Classification
Sandy Creek	Pea River	Samson	F&W
Flat Creek	Pea River	Junction with Eightmile Creek	F&W
Flat Creek	Junction with Eightmile Creek	Its source	S/F&W
Eightmile Creek	Flat Creek	Its source	F&W
Corner Creek	Eightmile Creek	Its source	F&W
Cripple Creek	Pea River	Its source	F&W
Samson Branch	Pea River	Its source	F&W

Stream	From	To	Classification
Whitewater Creek	Pea River	Its source	F&W
Big Creek	Whitewater Creek	Its source	F&W
Walnut Creek	Whitewater Creek	Its source	F&W
Mims Creek	Whitewater Creek	Its source	F&W
Pea Creek	Pea River	Its source	F&W
Double Bridges Creek	CHOCTAWHATCHEE RIVER	Its source	F&W
Blanket Creek	Double Bridges Creek	Its source	F&W
Claybank Creek	CHOCTAWHATCHEE RIVER	Lake Tholocco	F&W
Lake Tholocco	Dam	Its source	S/F&W
Claybank Creek	Lake Tholocco	Its source	F&W
Harrand Creek	Claybank Creek	Its source	F&W
Tributary of Harrand Creek	Harrand Creek	Its source	F&W
Hurricane Creek	CHOCTAWHATCHEE RIVER	Its source	F&W
Mill Creek	Hurricane Creek	Hartford	F&W
Little Choctawhatchee River	CHOCTAWHATCHEE RIVER	Its source	F&W
Newton Creek	Little Choctawhatchee River	Its source	F&W
Beaver Creek	Newton Creek	Its source	F&W
Hurricane Creek (Dale County)	CHOCTAWHATCHEE RIVER	Its source	F&W

Stream	From	To	Classification
West Fork of Choctawhatchee River	CHOCTAWHATCHEE RIVER	The falls approximately one-half mile upstream of Alabama Highway 27	S/F&W
West Fork of Choctawhatchee River	The falls approximately one-half mile upstream of Alabama Highway 27	Judy Creek	F&W
West Fork of Choctawhatchee River	Judy Creek	Its source	S/F&W
Judy Creek	West Fork of Choctawhatchee River	Its source	F&W
Little Judy Creek	Judy Creek	Its source	F&W
Lindsey Creek	West Fork of Choctawhatchee River	Its source	F&W
East Fork of Choctawhatchee River	CHOCTAWHATCHEE RIVER	Its source	S/F&W
Blackwood Creek	East Fork of Choctawhatchee River	Its source	F&W

(6) **THE COOSA RIVER BASIN**

INTERSTATE WATERS

Stream	From	To	Classification
COOSA RIVER	Its junction with the TALLAPOOSA RIVER	Dead River	F&W
COOSA RIVER	Dead River	Jordan Dam	S/F&W
COOSA RIVER (Lake Jordan)	Jordan Dam	Mitchell Dam	S/F&W

Stream	From	To	Classification
COOSA RIVER (Lake Jordan)	Bouldin Dam	Alabama Highway 111	PWS/S/F&W
COOSA RIVER (Lake Mitchell)	Mitchell Dam	Lay Dam	PWS/S/F&W
COOSA RIVER (Lay Lake)	Lay Dam	Southern RR Bridge (1-1/3 miles above Yellowleaf Creek)	PWS/S/F&W
COOSA RIVER (Lay Lake)	Southern RR Bridge (1-1/3 miles above Yellowleaf Creek)	River Mile 89 (1-1/2 miles above Talladega Creek)	S/F&W[4]
COOSA RIVER (Lay Lake)	River Mile 89 (1-1/2 miles above Talladega Creek)	Logan Martin Dam	PWS/S/F&W
COOSA RIVER (Logan Martin Lake)	Logan Martin Dam	Broken Arrow Creek	S/F&W
COOSA RIVER (Logan Martin Lake)	Broken Arrow Creek	Trout Creek	PWS/S/F&W
COOSA RIVER (Logan Martin Lake) (Lake Henry)	Trout Creek	McCardney's Ferry (3 miles upstream of Big Canoe Creek)	S/F&W
COOSA RIVER (Lake Henry)	McCardney's Ferry (3 miles upstream of Big Canoe Creek)	City of Gadsden's water supply intake	F&W
COOSA RIVER (Lake Henry)	City of Gadsden's water supply intake	Weiss Dam powerhouse	PWS/S/F&W
COOSA RIVER (Lake Henry)	Weiss Dam powerhouse	Sugar Creek	S/F&W
COOSA RIVER	Sugar Creek	Weiss Dam	F&W
COOSA RIVER (Weiss Lake)	Weiss Dam and Weiss Dam powerhouse	Spring Creek	PWS/S/F&W

[4]Applicable dissolved oxygen level below existing impoundments is 4.0 mg/l.

Stream	From	To	Classification
COOSA RIVER (Weiss Lake)	Spring Creek	Alabama-Georgia state line	S/F&W
Bouldin Tailrace Canal (Callaway Creek)	COOSA RIVER	Bouldin Dam	F&W
Terrapin Creek	COOSA RIVER	Cherokee County Road 8	S/F&W
Terrapin Creek	Cherokee County Road 8	U.S. Highway 278	F&W
Terrapin Creek	U.S. Highway 278	Calhoun County Road 70, east of Vigo	PWS/S/F&W
Terrapin Creek	Calhoun County Road 70, east of Vigo	Alabama-Georgia state line	F&W
Little River and tributaries	COOSA RIVER (Weiss Lake)	Junction of East Fork of Little River and West Fork of Little River	PWS/S/ F&W[3]
East Fork of Little River and tributaries	Little River	Alabama-Georgia state line	PWS/S/ F&W[3]
West Fork of Little River and tributaries	Little River	Alabama-Georgia state line	PWS/S/ F&W[3]
Chattooga River	COOSA RIVER (Weiss Lake)	Gaylesville	S/F&W
Chattooga River	Gaylesville	Alabama-Georgia state line	F&W
Spring Creek	COOSA RIVER (Weiss Lake)	Alabama-Georgia state line	F&W

INTRASTATE WATERS

[3]The special designation of Outstanding National Resource Water applies to this segment.

Stream	From	To	Classification
Weoka Creek	COOSA RIVER (Lake Jordan)	Its source	S/F&W
Chestnut Creek	COOSA RIVER (Lake Jordan)	Its source	F&W
Hatchet Creek	COOSA RIVER (Lake Mitchell)	Norfolk Southern Railway	OAW/S/F&W
Hatchet Creek	Norfolk Southern Railway	Junction of East Fork Hatchet Creek and West Fork Hatchet Creek	OAW/PWS/ S/F&W
East Fork Hatchet Creek	Hatchet Creek	Its source	OAW/F&W
West Fork Hatchet Creek	Hatchet Creek	Its source	OAW/F&W
Socapatoy Creek	Hatchet Creek	Its source	F&W
Weogufka Creek	Hatchet Creek (Lake Mitchell)	Its source	S/F&W
Walnut Creek	COOSA RIVER (Lake Mitchell)	Its source	F&W
Waxahatchee Creek	COOSA RIVER (Lay Lake)	Its source	F&W
Tributary of Waxahatchee Creek	Waxahatchee Creek	Its source	F&W
Buxahatchee Creek	Waxahatchee Creek (Lay Lake)	Its source	F&W
Yellowleaf Creek	COOSA RIVER (Lay Lake)	Its source	S/F&W
Tallasseehatchee Creek	COOSA RIVER (Lay Lake)	City of Sylacauga's water supply reservoir dam	F&W
Tallasseehatchee Creek	City of Sylacauga's water supply reservoir dam	Its source	PWS/F&W

Stream	From	To	Classification
Shirtee Creek	Tallasseehatchee Creek	Its source	F&W
Talladega Creek	COOSA RIVER (Lay Lake)	Talladega County Road 303	F&W
Talladega Creek	Talladega County Road 303	Alabama Highway 77	PWS/F&W
Talladega Creek	Alabama Highway 77	Its source	F&W
Mump Creek	Talladega Creek	City of Talladega's water supply reservoir dam	F&W
Mump Creek	City of Talladega's water supply reservoir dam	Its source	PWS/F&W
Kelly Creek	COOSA RIVER (Lay Lake)	Its source	S/F&W
Wolf Creek	Kelly Creek	Its source	F&W
Choccolocco Creek	COOSA RIVER (Logan Martin Lake)	Tributary from Boiling Spring (Boiling Spring Road)	F&W
Choccolocco Creek	Tributary from Boiling Spring (Boiling Spring Road)	Egoniaga Creek	PWS/F&W
Choccolocco Creek	Egoniaga Creek	Its source	F&W
Eastaboga Creek	Choccolocco Creek	Its source	F&W
Cheaha Creek	Choccolocco Creek	Lake Chinnabee	S/F&W
Lake Chinnabee	Within Talladega National Forest		S/F&W
Kelly Creek	Cheaha Creek	Its source	F&W
Brecon Branch	Kelly Creek	Its source	F&W
Coldwater Creek	Choccolocco Creek	Its source	F&W
Coldwater Spring			PWS/F&W
Snow Creek	Choccolocco Creek	Its source	F&W

Stream	From	To	Classification
Dye Creek	COOSA RIVER (Logan Martin Lake)	Its source	F&W
Cane Creek	COOSA RIVER (Logan Martin Lake)	Its source	F&W
Cave Creek	Cane Creek	Its source	F&W
Ohatchee Creek	COOSA RIVER (Logan Martin Lake)	Its source	S/F&W
Tallahatchee Creek	Ohatchee Creek	Its source	F&W
Tributary of Tallahatchee Creek	Tallahatchee Creek	Its source	F&W
Big Canoe Creek	COOSA RIVER (Lake Henry)	Its source	F&W
Little Canoe Creek	Big Canoe Creek	Its source	F&W
Spring Creek	Little Canoe Creek	Its source	F&W
Big Wills Creek	COOSA RIVER (Lake Henry-Lake Gadsden)	Little Sand Valley Creek	S/F&W
Big Wills Creek	Little Sand Valley Creek	100 yds. Below Allen Branch	F&W
Big Wills Creek	100 yds. below Allen Branch	Its source	PWS/F&W
Lake Gadsden (Lake Henry)	U.S. Highway 411	Impoundment limits	F&W
Black Creek	Lake Henry (Lake Gadsden)	Its source	F&W
Allen Branch	Big Wills Creek	Ft. Payne public water supply dam	F&W
Allen Branch	Ft. Payne public water supply dam	Its source	PWS/F&W
Coleman Lake	Within Talladega National Forest		S/F&W

Stream	From	To	Classification
Sweetwater Lake	Within Talladega National Forest		PWS/S/F&W
High Rock Lake	Within Talladega National Forest		S/F&W
Hillabee Lake	Within Talladega National Forest		PWS/S/F&W
Salt Creek Lake	Within Talladega National Forest		S/F&W
Shoal Creek	Choccolocco Creek	Whitesides Mill Lake	S/F&W
Whitesides Mill Lake	Western border of Talladega National Forest		PWS/S/F&W
Shoal Creek	Whitesides Mill Lake	Sweetwater Lake	OAW/S/F&W
Shoal Creek	Sweetwater Lake	Its source	OAW/S/F&W
Ladiga Creek	Terrapin Creek	Terrapin Creek	PWS

(7) **THE ESCATAWPA RIVER BASIN**

INTERSTATE WATERS

Stream	From	To	Classification
Big Creek	Alabama-Mississippi state line	Big Creek Reservoir	F&W
Big Creek	Big Creek Reservoir	Its source	PWS/F&W
ESCATAWPA RIVER	Alabama-Mississippi state line	Its source	S/F&W

INTRASTATE WATERS

Stream	From	To	Classification
Puppy Creek	ESCATAWPA RIVER	Its source	F&W

(8) **THE LOWER TOMBIGBEE RIVER BASIN**

INTERSTATE WATERS

Stream	From	To	Classification

Stream	From	To	Classification
TOMBIGBEE RIVER	MOBILE RIVER	One-half mile downstream from Southern Railway Crossing	F&W
TOMBIGBEE RIVER	One-half mile downstream from Southern Railway Crossing	Five miles upstream from U.S. Highway 43	PWS/S/F&W
TOMBIGBEE RIVER	Five miles upstream from U.S. Highway 43	Jackson Lock and Dam	F&W
TOMBIGBEE RIVER	Jackson Lock and Dam	Beach Bluff (River Mile 141)	S/F&W
TOMBIGBEE RIVER	Beach Bluff (River Mile 141)	One-half mile downstream from Alabama Highway 114	F&W[1]
TOMBIGBEE RIVER	One-half mile downstream from Alabama Highway 114	Three miles upstream from Alabama Highway 114	PWS/F&W[1]
TOMBIGBEE RIVER	Three miles upstream from Alabama Highway 114	Demopolis Lock and Dam	F&W[1]
TOMBIGBEE RIVER	Demopolis Lock and Dam	WARRIOR RIVER	S/F&W
Okatuppa Creek	TOMBIGBEE RIVER	Alabama-Mississippi state line	F&W
Bogueloosa Creek	Okatuppa Creek	Its source	F&W
Tuckabum Creek	TOMBIGBEE RIVER	Alabama-Mississippi state line	F&W
Yantley Creek	Tuckabum Creek	Alabama-Mississippi state line	F&W

[1]Applicable dissolved oxygen level below existing impoundments is 4.0 mg/l.

Stream	From	To	Classification
Sucarnoochee River	TOMBIGBEE RIVER	U.S. Highway 11	F&W
Sucarnoochee River	U.S. Highway 11	Miuka Creek	PWS/S/F&W
Sucarnoochee River	Miuka Creek	Alabama-Mississippi state line	F&W
Alamuchee Creek	Sucarnoochee River	Alabama-Mississippi state line	F&W
Toomsuba Creek	Alamuchee Creek	AT&N Railroad	F&W
Toomsuba Creek	AT&N Railroad	Alabama-Mississippi state line	PWS/F&W

INTRASTATE WATERS

Stream	From	To	Classification
Bilbo Creek	TOMBIGBEE RIVER	Its source	S/F&W
Bates Creek	Bilbo Creek	Its source	S/F&W
Lewis Creek	TOMBIGBEE RIVER	Its source	S/F&W
Bassetts Creek (Washington County)	TOMBIGBEE RIVER	Its source	S/F&W
Little Bassetts Creek (Washington County)	Bassetts Creek (Washington County)	Its source	F&W
Miles Creek	Little Bassetts Creek (Washington County)	Its source	F&W
Bassett Creek (Clarke County)	TOMBIGBEE RIVER	Its source	F&W
James Creek	Bassett Creek (Clarke County)	Its source	F&W
Jackson Creek	TOMBIGBEE RIVER	Its source	F&W
Satilpa Creek	TOMBIGBEE RIVER	Its source	S/F&W
Santa Bogue Creek	TOMBIGBEE RIVER	Its source	S/F&W

Stream	From	To	Classification
Turkey Creek	TOMBIGBEE RIVER	Its source	S/F&W
Bashi Creek	TOMBIGBEE RIVER	Its source	S/F&W
Wahalak Creek	TOMBIGBEE RIVER	Its source	F&W
Tishlarka Creek	Wahalak Creek	Its source	F&W
Horse Creek	TOMBIGBEE RIVER	Its source	S/F&W
Beaver Creek	TOMBIGBEE RIVER	Its source	S/F&W
Kinterbish Creek	TOMBIGBEE RIVER	Its source	S/F&W
Chickasaw Bogue	TOMBIGBEE RIVER	Its source	F&W
Sycamore Creek	Chickasaw Bogue	Its source	F&W
Unnamed tributary southwest of York (Lake Louise)	Toomsuba Creek	Its source	PWS

(9) **THE MOBILE RIVER-MOBILE BAY BASIN**

INTERSTATE AND COASTAL WATERS

Stream	From	To	Classification
Mobile River and all other rivers, creeks, lakes of the Mobile River Delta and their tributaries except as otherwise designated			F&W
MOBILE RIVER	Barry Steam Plant	Tensaw River	PWS/F&W
MOBILE RIVER	Its mouth	Spanish River	LWF[4]
Tensaw River	Junction of Tensaw and Apalachee Rivers	Junction of Briar Lake	OAW/S/F&W
Tensaw River	Junction of Briar Lake	Junction of Tensaw Lake	OAW/F&W

[4]For the purpose of establishing effluent limitations pursuant to chapter 335-6-6 of the Department's regulations, the minimum 7-day low flow that occurs once in 10 years ($7Q_{10}$) shall be the basis for applying the chronic aquatic life criteria.

Stream	From	To	Classification
Briar Lake	Junction of Tensaw River	Junction of Tensaw Lake	OAW/F&W
Tensaw Lake	Junction of Tensaw River	Bryant Landing	OAW/F&W
MOBILE BAY	West of a line drawn due south from the western shore of Chacaloochee Bay (Lat. 30°40'47.3"N/ Long. 087°59'44.2"W)	A point due east of the mouth of Dog River (Lat. 30°33'53.2"N/ Long. 088°05'15.3"W)	F&W
MOBILE BAY	South of a line drawn due east from the mouth of Dog River (Lat. 30°33'53.2"N/ Long. 088°05'15.3"W) and east of a line drawn due south from the western shore of Chacaloochee Bay (Lat. 30°40'47.3"N/ Long. 087°59'44.2"W) and all other portions of MOBILE BAY		S/F&W
MOBILE BAY	All that portion lying south of a line extending in an easterly direction from the south bank of East Fowl River at its mouth (Lat. 30°27'03.1"N/ Long. 088°06'22.6"W) through lighted beacon (FL 2 seconds) (Lat. 30°27'07.5"N/ Long. 088°05'39.3"W) to lighted beacon (FLG 4 seconds "23") (Lat. 30°27'18.3"N/ Long. 088°00'58.3"W) at the Mobile Ship Channel thence in a northeasterly direction to Daphne (Bench Mark 157, Lat. 30°36'07.5"N/ Long. 087°54'16.4"W)		SH/F&W
Bon Secour Bay	In its entirety (east and south of a line connecting Mullet Point, Lat. 30°24'35.0"N/ Long. 087°54'23.2"W, and Engineers Point, Lat. 30°13'50.1"N/ Long. 088°01'26.2"W, at Fort Morgan)		SH/S/F&W

Stream	From	To	Classification
Mississippi Sound and contiguous waters excepting: that portion of Portersville Bay 1,000 feet on each side of a straight line connecting the shore at Bayou Coden to a lighted beacon (FLR 4 seconds "6") (Lat. 30°22'31.2"N/ Long. 088°14'25.8"W) and lighted beacon (FL 4 seconds "1") (Lat. 30°22'23.7"N/ Long. 088°14'34.8"W); that portion of Portersville Bay 1,000 feet on each side of a straight line connecting the shore at Bayou La Batre and lighted beacons (FR)(Lat. 30°23'11.0"N/ Long. 088°16'09.6"W), and (FLR 4 seconds "6") (Lat. 30°21'05.2"N/1 Long. 088°17'02.2"W); and that portion of Bayou Aloe within 1,000 feet of the outfall (Lat. 30°15'52.0"N/ Long. 088°07'02.1"W) of the Dauphin Island sewage treatment plant.			SH/S/F&W
Waters excepted in foregoing description of Portersville Bay and contiguous waters			F&W
Oyster Bay and that portion of Bon Secour River west of a line drawn due north from the east bank of the inlet connecting Oyster Bay and Bon Secour River			SH/F&W
Coastal waters of the Gulf of Mexico contiguous to the State of Alabama			SH/S/F&W
Intracoastal Waterway	Bon Secour Bay	Alabama Highway 59	F&W
Bon Secour River	Bon Secour Bay	One mile upstream from first bridge above its mouth	S/F&W
Boggy Branch	Bon Secour River	Its source	S/F&W
Weeks Bay	Bon Secour Bay	Fish River	S/F&W[3]
Magnolia River	Weeks Bay	Its source	OAW/S/F&W
Fish River	Weeks Bay	Clay City	S/F&W
Turkey Branch	Fish River	Its source	S/F&W
Waterhole Branch	Fish River	Its source	S/F&W
Cowpen Creek	Fish River	Its source	S/F&W

[3]The special designation of Outstanding National Resource Water applies to this segment.

Stream	From	To	Classification
Point Clear Creek	MOBILE BAY	Its source	F&W
Fly Creek	MOBILE BAY	Its source	S/F&W
Rock Creek	MOBILE BAY	Its source	F&W
D'Olive Creek	D'Olive Bay	Its source	F&W
West Fowl River	Fowl River Bay	Its source	S/F&W
Bayou Coden	Portersville Bay	Its source	F&W
Bayou La Batre	Portersville Bay	Its source	F&W
Little River	Portersville Bay	Its source	F&W
East Fowl River	Fowl River	Its source	S/F&W
Fowl River	MOBILE BAY	Its source	S/F&W
Deer River and its forks	MOBILE BAY	Their sources	F&W
Dog River	MOBILE BAY	Halls Mill Creek	S/F&W
Halls Mill Creek	Dog River	Its source	F&W
Alligator Bayou	Dog River	Its source	F&W
Rabbit Creek	Dog River	Its source	F&W
Rattlesnake Bayou	Dog River	Its source	F&W
Robinson's Bayou	Dog River	Its source	F&W
Threemile Creek	MOBILE RIVER	Mobile Street	A&I
Industrial Canal	Threemile Creek	Its source	A&I
Chickasaw Creek	MOBILE RIVER	Limit of tidal effects (U.S. Highway 43)	LWF
Hog Bayou	Chickasaw Creek	Its source	F&W
Little Lagoon (Baldwin County)	In its entirety		SH/S/F&W

Stream	From	To	Classification
Bayou Sara	MOBILE RIVER	U.S. Highway 43	S/F&W
Bayou Sara	U.S. Highway 43	Its source	F&W
Gunnison Creek	Bayou Sara	Its source	S/F&W
Steele Creek	Gunnison Creek	Its source	S/F&W

NOTE: Waters of the Mobile River-Mobile Bay Basin classified for SWIMMING AND OTHER WHOLE BODY WATER-CONTACT SPORTS, SHELLFISH HARVESTING and/or FISH AND WILDLIFE in which natural conditions provide an appropriate habitat for shrimp and crabs are to be suitable for the propagation and harvesting of shrimp and crabs.

INTRASTATE WATERS

Stream	From	To	Classification
Bon Secour River	One mile upstream from first bridge above its mouth	Its source	S/F&W
Fish River	Clay City	Its source	S/F&W
Polecat Creek	Fish River	Its source	S/F&W
Corn Branch	Fish River	Its source	F&W
Threemile Creek	Mobile Street	Its source	A&I
Chickasaw Creek	Limit of tidal effects	Mobile College	F&W
Chickasaw Creek	Mobile College	Its source	S/F&W
Eight Mile Creek	Chickasaw Creek	City of Prichard's water supply intake	F&W
Eight Mile Creek	City of Prichard's water supply intake	U.S. Highway 45	PWS/F&W
Eight Mile Creek	U.S. Highway 45	Its source	F&W
Norton Creek	Bayou Sara	Its source	F&W
Martin Branch	Tensaw River	Its source	F&W

Stream	From	To	Classification
Cold Creek	MOBILE RIVER	Dam 1 1/2 miles west of U.S. Highway 43	F&W[2]
Cold Creek	Dam 1 1/2 miles west of U.S. Highway 43	Its source	PWS/F&W

(10) **THE PERDIDO/ESCAMBIA RIVER BASIN (TO INCLUDE THE BLACKWATER, CONECUH, PERDIDO, AND YELLOW RIVER SUB-BASINS)**

INTERSTATE WATERS OF THE BLACKWATER RIVER BASIN

Stream	From	To	Classification
BLACKWATER RIVER	Alabama-Florida state line	Its source	F&W
Big Juniper Creek	Alabama-Florida state line	Its source	F&W
Sweetwater Creek	Alabama-Florida state line	Its source	F&W
Rock Creek	Alabama-Florida state line	Its source	F&W
Boggy Hollow Creek	Alabama-Florida state line	Its source	F&W

INTERSTATE WATERS OF THE CONECUH RIVER BASIN

Stream	From	To	Classification
CONECUH RIVER	Alabama-Florida state line	Point A Dam	F&W
CONECUH RIVER	Point A Dam	Head of Gantt Lake	S/F&W
CONECUH RIVER	Head of Gantt Lake	Its source	F&W
Little Escambia Creek	Alabama-Florida state line	Its source	F&W

[2]Due to naturally occurring conditions, quality in this segment may not always be commensurate with the classification assigned.

Stream	From	To	Classification
Big Escambia Creek	Alabama-Florida state line	Its source	F&W
Pine Barren Creek	Alabama-Florida state line	Its source	F&W
Dixon Creek	Alabama-Florida state line	Its source	F&W
Canoe Creek	Alabama-Florida state line	Its source	F&W
Reedy Creek	Alabama-Florida state line	Its source	F&W
Beaver Dam Creek	Alabama-Florida state line	Its source	F&W

INTRASTATE WATERS OF THE CONECUH RIVER BASIN

Stream	From	To	Classification
Murder Creek	CONECUH RIVER	Its source	F&W
Sandy Creek	Murder Creek	Its source	F&W
Burnt Corn Creek	Murder Creek	Its source	S/F&W
Sepulga River	CONECUH RIVER	Its source	F&W
Pigeon Creek	Sepulga River	Its source	F&W
Unnamed Tributary	Pigeon Creek	Its source	F&W
Persimmon Creek	Sepulga River	Its source	F&W
Rocky Creek	Persimmon Creek	Its source	F&W
Prestwood Creek	CONECUH RIVER	Its source	F&W
Unnamed Tributary west of Andalusia	CONECUH RIVER	Its source	F&W
Patsaliga Creek	CONECUH RIVER	Its source	F&W
Little Patsaliga Creek	Patsaliga Creek	Its source	S/F&W

Stream	From	To	Classification
Double Branch	CONECUH RIVER	Its source	F&W
Sizemore Creek	Big Escambia Creek	Its source	S/F&W
Wet Weather Creek	Sizemore Creek	Its source	F&W

INTERSTATE AND COASTAL WATERS OF THE PERDIDO RIVER BASIN

Stream	From	To	Classification
PERDIDO BAY and all connecting coves and bayous	Gulf of Mexico	Its source	SH/S/F&W
Intracoastal Waterway	Alabama Highway 59	Wolf Bay	F&W
Wolf Bay and all connecting coves and bayous	Intracoastal Waterway	Moccasin Bayou	OAW/SH/S/ F&W
Wolf Bay and all connecting coves and bayous	Moccasin Bayou	Its source	SH/S/F&W
Bay La Launch and all connecting coves and bayous	Wolf Bay	Arnica Bay	SH/S/F&W
Arnica Bay and all connecting coves and bayous	Bay La Launch	PERDIDO BAY	SH/S/F&W
Miflin Creek	Wolf Bay	Limit of tidal effects	S/F&W
Hammock Creek	Wolf Bay	Limit of tidal effects	S/F&W
Palmetto Creek	PERDIDO BAY	Its source	S/F&W
Spring Branch	PERDIDO BAY	Its source	S/F&W
Soldier Creek	PERDIDO BAY	Its source	S/F&W
PERDIDO RIVER	PERDIDO BAY	Its source	F&W
Perdido Creek	PERDIDO RIVER	Its source	F&W

Stream	From	To	Classification
Brushy Creek	Alabama-Florida state line	Its source	F&W
Shelby Lakes	Within Gulf State Park		S/F&W
Coastal waters of the Gulf of Mexico Contiguous to the State of Alabama			SH/S/F&W

NOTE: Waters of the Perdido River Basin classified for SWIMMING AND OTHER WHOLE BODY WATER-CONTACT SPORTS, SHELLFISH HARVESTING and/or FISH AND WILDLIFE in which natural conditions provide an appropriate habitat for shrimp and crabs are to be suitable for the propagation and harvesting of shrimp and crabs.

INTRASTATE WATERS OF THE PERDIDO RIVER BASIN

Stream	From	To	Classification
Wolf Creek	Wolf Bay	Its source	F&W
Sandy Creek	Wolf Bay	Its source	S/F&W
Miflin Creek	Limit of tidal effects	Its source	F&W
BLACKWATER RIVER	PERDIDO RIVER	Its source	F&W
Negro Creek	BLACKWATER RIVER	Its source	F&W
Rock Creek	BLACKWATER RIVER	Its source	F&W
Styx River	PERDIDO RIVER	Hollinger Creek	F&W
Styx River	Hollinger Creek	Its source	S/F&W
Hollinger Creek	Styx River	Its source	F&W
Dyas Creek	PERDIDO RIVER	Its source	S/F&W

INTERSTATE WATERS OF THE YELLOW RIVER BASIN

Stream	From	To	Classification
YELLOW RIVER	Alabama-Florida state line	Its source	F&W

Stream	From	To	Classification
Pond Creek	Alabama-Florida state line	Its source	F&W
Big Creek	Alabama-Florida state line	Its source	F&W
Horsehead Creek	Alabama-Florida state line	Its source	F&W
Fleming Creek	Alabama-Florida state line	Its source	F&W
Lake Jackson	Within Florala and north of Alabama-Florida state line		S/F&W

INTRASTATE WATERS OF THE YELLOW RIVER BASIN

Stream	From	To	Classification
Five Runs Creek	YELLOW RIVER	Its source	F&W
Indian Creek	YELLOW RIVER	Its source	F&W
Lightwood Knot Creek	YELLOW RIVER	Its source	F&W
Cameron Creek	Lightwood Knot Creek	Its source	F&W
Bay Branch	Five Runs Creek	Its source	F&W
Blue Lake	Within Conecuh National Forest		S/F&W
Open Pond	Within Conecuh National Forest		S/F&W
Dowdy Pond	Within Conecuh National Forest		S/F&W

(11) **THE TALLAPOOSA RIVER BASIN**

INTERSTATE WATERS

Stream	From	To	Classification
TALLAPOOSA RIVER	ALABAMA RIVER	U.S. Highway 231	F&W

Stream	From	To	Classification
TALLAPOOSA RIVER	U.S. Highway 231	Thurlow Dam	PWS/F&W
TALLAPOOSA RIVER (Thurlow Lake)	Thurlow Dam	Yates Dam	PWS/S/F&W
TALLAPOOSA RIVER (Yates Lake)	Yates Dam	Martin Dam	PWS/S/F&W
TALLAPOOSA RIVER (Lake Martin)	Martin Dam	U.S. Highway 280	S/F&W[5]
TALLAPOOSA RIVER (Lake Martin)	U.S. Highway 280	Hillabee Creek	PWS/S/ F&W[5]
TALLAPOOSA RIVER	Hillabee Creek	R.L. Harris Dam	F&W
TALLAPOOSA RIVER (R.L. Harris Lake)	R.L. Harris Dam	Four miles upstream of Randolph County Road 88 (Lee Bridge)	S/F&W
TALLAPOOSA RIVER	Four miles upstream of Randolph County Road 88 (Lee Bridge)	One-half mile upstream of Cleburne County Road 36	F&W
TALLAPOOSA RIVER	One-half mile upstream of Cleburne County Road 36	Cleburne County Road 19	PWS/F&W
TALLAPOOSA RIVER	Cleburne County Road 19	Cane Creek	F&W
TALLAPOOSA RIVER	Cane Creek	Alabama-Georgia state line	OAW/F&W
Little Tallapoosa River (R.L. Harris Lake)	TALLAPOOSA RIVER (R.L. Harris Lake)	U.S. Highway 431	S/F&W

[5]The special designation of Treasured Alabama Lake applies to this segment.

Stream	From	To	Classification
Little Tallapoosa River (R.L. Harris Lake)	U.S. Highway 431	Five miles upstream of U.S. Highway 431	PWS/S/F&W
Little Tallapoosa River	Five miles upstream of U.S. Highway 431	Alabama-Georgia state line	F&W

INTRASTATE WATERS

Stream	From	To	Classification
Oakfuskee Creek (Line Creek)	TALLAPOOSA RIVER	Its source	F&W
Old Town Creek	Oakfuskee Creek (Line Creek)	Its source	F&W
Cubahatchee Creek	TALLAPOOSA RIVER	Its source	S/F&W
Calebee Creek	TALLAPOOSA RIVER	Its source	F&W
Uphapee Creek	TALLAPOOSA RIVER	Its source	F&W
Bulger Creek	Uphapee Creek	Its source	PWS/F&W
Parkerson Mill Creek	Chewacla Creek	Its source	F&W
Chewacla Creek	Uphapee Creek	Chewacla State Park Lake (Moore's Mill Creek)	F&W
Chewacla Creek	Chewacla State Park Lake (Moore's Mill Creek)	Its source	PWS/F&W
Moore's Mill Creek	Chewacla Creek (Dam at Chewacla State Park Lake)	Its source	S/F&W
Sougahatchee Creek	TALLAPOOSA RIVER (Yates Lake)	Sougahatchee Lake Dam	F&W
Sougahatchee Creek	Sougahatchee Lake Dam	Its source	PWS/F&W
Pepperell Branch	Sougahatchee Creek	Its source	F&W
Head Creek	Sougahatchee Creek	Its source	F&W

Stream	From	To	Classification
Little Kowaliga Creek (Lake Martin)	Big Kowaliga Creek (Lake Martin)	Reservoir Limits	PWS/S/ F&W[5]
Sandy Creek	TALLAPOOSA RIVER (Lake Martin)	Its source	F&W
Chattasofka Creek	Sandy Creek	Its source	F&W
North Fork of Sandy Creek	Sandy Creek	Its source	F&W
Little Sandy Creek	Sandy Creek	Central of Georgia RR	F&W
Little Sandy Creek	Central of Georgia RR	Its source	PWS/F&W
Manoy Creek (Lake Martin)	TALLAPOOSA RIVER (Lake Martin)	Reservoir Limits	PWS/S/ F&W[5]
Elkahatchee Creek	TALLAPOOSA RIVER (Lake Martin)	Alabama Highway 63	F&W
Elkahatchee Creek	Alabama Highway 63	Alabama Highway 22	PWS/F&W
Elkahatchee Creek	Alabama Highway 22	Its source	F&W
Harold Creek	Elkahatchee Creek	Its source	F&W
Sugar Creek	Elkahatchee Creek	Its source	F&W
Coley Creek	TALLAPOOSA RIVER (Lake Martin)	Its source	F&W
Hillabee Creek	TALLAPOOSA RIVER	Jct. of Oaktasasi and Town Creeks	F&W
Hillabee Creek	Jct. of Oaktasasi and Town Creeks	County road bridge 3 miles east of Hackneyville	PWS/F&W

[5]The special designation of Treasured Alabama Lake applies to this segment.

Stream	From	To	Classification
Hillabee Creek	County road bridge 3 miles east of Hackneyville	Its source	F&W
Oaktasasi Creek	Hillabee Creek	Its source	F&W
Christian Creek	Oaktasasi Creek	Its source	F&W
Dobbs Creek	Oaktasasi Creek	Its source	F&W
Town Creek	Hillabee Creek	Its source	F&W
Hackney Creek	Town Creek	Its source	PWS/F&W
Chatahospee Creek	TALLAPOOSA RIVER	Its source	F&W
Mill Creek	Chatahospee Creek	Its source	F&W
Finley Creek	Mill Creek	Its source	PWS/F&W
High Pine Creek	TALLAPOOSA RIVER	U.S. Highway 431 crossing	F&W
High Pine Creek	U.S. Highway 431 crossing	Its source	PWS
Jones Creek	High Pine Creek	Its source	PWS
Unnamed tributary to Jones Creek northwest of Roanoke	Jones Creek	Its source	PWS
Graves Creek	High Pine Creek	Its source	F&W
Town Creek	High Pine Creek	Its source	F&W
Hutton Creek	TALLAPOOSA RIVER	Its source	F&W
Beaverdam Creek	TALLAPOOSA RIVER	Its source	F&W
Crooked Creek	TALLAPOOSA RIVER	Alabama Highway 9	F&W
Crooked Creek	Alabama Highway 9	Its source	PWS/F&W
Horsetrough Creek	Crooked Creek	Its source	F&W

Stream	From	To	Classification
Wedowee Creek	Little Tallapoosa River	Its source	F&W
Cahulga Creek	TALLAPOOSA RIVER	U.S. Highway 78	F&W
Cahulga Creek	U.S. Highway 78	Its source	PWS/F&W

(12) **THE TENNESSEE RIVER BASIN**

INTERSTATE WATERS

Stream	From	To	Classification
TENNESSEE RIVER Pickwick Lake	Alabama-Tennessee state line	Lower end of Seven Mile Island	PWS/S/F&W
TENNESSEE RIVER Pickwick Lake	Lower end of Seven Mile Island	Sheffield water intake	F&W
TENNESSEE RIVER Pickwick Lake	Sheffield water intake	Wilson Dam	PWS/F&W
TENNESSEE RIVER Wilson Lake	Wilson Dam	Wheeler Dam	PWS/S/F&W
TENNESSEE RIVER Wheeler Lake	Wheeler Dam	Five miles upstream of Elk River (RM 289.3)	PWS/S/F&W
TENNESSEE RIVER Wheeler Lake	Five miles upstream of Elk River (RM 289.3)	U.S. Highway 31 (see Note 1 this basin)	S/F&W
TENNESSEE RIVER Wheeler Lake	U.S. Highway 31	Flint Creek	PWS/S/F&W
TENNESSEE RIVER Wheeler Lake	Flint Creek	Cotaco Creek	S/F&W
TENNESSEE RIVER Wheeler Lake	Cotaco Creek	Indian Creek	PWS/S/F&W
TENNESSEE RIVER Wheeler Lake	Indian Creek	Flint River	PWS/F&W
TENNESSEE RIVER Wheeler Lake	Flint River	Guntersville Dam	S/F&W

Stream	From	To	Classification
TENNESSEE RIVER Guntersville Lake	Guntersville Dam	Upper end of Buck's Island (see Note 2 this basin)	PWS/S/F&W
TENNESSEE RIVER Guntersville Lake	Upper end of Buck's Island	Roseberry Creek	S/F&W
TENNESSEE RIVER Guntersville Lake	Roseberry Creek	Alabama-Tennessee state line (see Note 3 this basin)	PWS/S/F&W
Bear Creek	Alabama-Mississippi state line	Bear Creek Lake Dam	F&W
Bear Creek (Bear Creek Lake)	Bear Creek Lake Dam	Alabama Highway 187	PWS/S/F&W
Bear Creek	Alabama Highway 187	Upper Bear Creek Lake Dam	S/F&W
Bear Creek (Upper Bear Creek Lake)	Upper Bear Creek Lake Dam	Alabama Highway 243	PWS/S/F&W
Bear Creek	Alabama Highway 243	Its source	F&W
Cedar Creek	Bear Creek	Alabama-Mississippi state line	F&W
Cedar Creek	Alabama-Mississippi state line	Cedar Creek Lake Dam	F&W
Cedar Creek (Cedar Creek Lake)	Cedar Creek Lake Dam	Alabama Highway 24	PWS/S/F&W
Cedar Creek	Alabama Highway 24	Its source	F&W
Bear Creek	TENNESSEE RIVER (Pickwick Lake)	U.S. Highway 72	S/F&W
Bear Creek	U.S. Highway 72	Alabama-Mississippi state line	F&W
Second Creek	TENNESSEE RIVER (Pickwick Lake)	Alabama-Tennessee state line	F&W

Stream	From	To	Classification
Cypress Creek	TENNESSEE RIVER (Pickwick Lake)	City of Florence Water Treatment Plant	F&W
Cypress Creek	City of Florence Water Treatment Plant	Little Cypress Creek	PWS/F&W
Cypress Creek	Little Cypress Creek	Alabama-Tennessee state line	F&W
Little Cypress Creek	Cypress Creek	Alabama-Tennessee state line	F&W
Shoal Creek	TENNESSEE RIVER (Wilson Lake)	Indian Camp Creek	S/F&W
Shoal Creek	Indian Camp Creek	Alabama-Tennessee state line	F&W
Bluewater Creek	TENNESSEE RIVER (Wilson Lake)	U.S. Highway 72	S/F&W
Bluewater Creek	U.S. Highway 72	Alabama-Tennessee state line	F&W
Second Creek	TENNESSEE RIVER (Wheeler Lake)	First bridge upstream from U.S. Highway 72	S/F&W
Second Creek	First bridge upstream from U.S. Highway 72	Alabama-Tennessee state line	F&W
Elk River	TENNESSEE RIVER (Wheeler Lake)	Alabama Highway 99	S/F&W
Elk River	Alabama Highway 99	Alabama-Tennessee state line	PWS/F&W
Piney Creek	TENNESSEE RIVER (Wheeler Lake)	Alabama-Tennessee state line	F&W
Limestone Creek	TENNESSEE RIVER (Wheeler Lake)	Alabama-Tennessee state line	F&W
Flint River	TENNESSEE RIVER (Wheeler Lake)	Big Cove Creek	F&W

Stream	From	To	Classification
Flint River	Big Cove Creek	Hurricane Creek	PWS/F&W
Flint River	Hurricane Creek	Alabama-Tennessee state line	F&W
Paint Rock River	TENNESSEE RIVER (Wheeler Lake)	Its source	F&W
Larkin Fork	Paint Rock River	Its source	F&W
Estill Fork	Paint Rock River	Alabama-Tennessee state line	OAW/F&W
Hurricane Creek	Paint Rock River	Alabama-Tennessee state line	OAW/F&W
Crow Creek	TENNESSEE RIVER (Guntersville Lake)	Alabama-Tennessee state line	F&W
Lookout Creek	Alabama-Georgia state line	Junction of East Fork Lookout Creek and West Fork Lookout Creek	S/F&W

NOTE 1. That portion of Wheeler Lake in the immediate vicinity of the discharge from the City of Decatur's sewage treatment plant is not considered suitable for SWIMMING AND OTHER WHOLE BODY WATER-CONTACT SPORTS.

NOTE 2. Those portions of Guntersville Lake in the immediate vicinity of discharges from the City of Guntersville's sewage treatment plants are not considered suitable for SWIMMING and OTHER WHOLE BODY WATER-CONTACT SPORTS nor for sources of PUBLIC WATER SUPPLY.

NOTE 3. That portion of Guntersville Lake in the immediate vicinity of the discharge of sewage from the City of Bridgeport is not considered suitable for use as a source of PUBLIC WATER SUPPLY nor for SWIMMING AND OTHER WHOLE BODY WATER-CONTACT SPORTS.

INTRASTATE WATERS

Stream	From	To	Classification
Little Bear Creek (Franklin County)	Cedar Creek	Little Bear Creek Lake Dam	S/F&W

Stream	From	To	Classification
Little Bear Creek (Little Bear Creek Lake, Franklin County)	Little Bear Creek Lake Dam	Alabama Highway 187	PWS/S/F&W
Little Bear Creek (Franklin County)	Alabama Highway 187	Its source	S/F&W
Dunkin Creek	Cedar Creek	Its source	PWS
Little Bear Creek	Bear Creek	Its source	PWS/S/F&W
Mud Creek	Cedar Creek	Its source	F&W
Flat Creek	Bear Creek	Its source	F&W
Cane Creek	TENNESSEE RIVER	Its source	S/F&W
Little Bear Creek (Colbert County)	TENNESSEE RIVER	Its source	S/F&W
Stinking Bear Creek	Little Bear Creek (Colbert County)	Its source	F&W
Spring Creek (Colbert County)	TENNESSEE RIVER	Its source	F&W
Tuscumbia Spring (Big Spring)			PWS
Cox Creek	Cypress Creek	Its source	F&W
Pond Creek	TENNESSEE RIVER	Its source	A&I
Town Creek	TENNESSEE RIVER	Its source	F&W
Big Nance Creek	TENNESSEE RIVER	Its source	F&W
Muddy Fork	Big Nance Creek	Crow Branch	A&I
Crow Branch	Muddy Fork	Its source	A&I
Clear Fork	Big Nance Creek	Its source	F&W
Sinking Creek	Clear Fork	Its source	PWS/F&W
First Creek	TENNESSEE RIVER	Its source	S/F&W

Stream	From	To	Classification
Spring Creek (Lawrence County)	TENNESSEE RIVER	Its source	F&W
Swan Creek	TENNESSEE RIVER	Huntsville Brownsferry Road	F&W
Swan Creek	Huntsville Brownsferry Road	Town Creek	A&I
Swan Creek	Town Creek	Its source	F&W
Town Creek (Athens)	Swan Creek	Its source	F&W
Flint Creek	TENNESSEE RIVER	L & N Railroad	F&W
Flint Creek	L & N Railroad	Alabama Highway 36	PWS/F&W
Flint Creek	Alabama Highway 36	Shoal Creek	LWF[4]
Flint Creek	Shoal Creek	Its source	F&W
Shoal Creek	Flint Creek	Its source	F&W
Cotaco Creek	TENNESSEE RIVER	Its source	S/F&W
Mill Pond Creek	Cotaco Creek	Junction with Gilliam Creek	F&W
Gilliam Creek	Mill Pond Creek	Its source	F&W
Bradford Creek	Barren Fork Creek	Its source	F&W
Indian Creek	TENNESSEE RIVER	Its source	F&W
Huntsville Spring Branch	Indian Creek	Its source	F&W
Aldridge Creek	TENNESSEE RIVER	Its source	F&W
Hurricane Creek	Flint River	Its source	F&W
Sand Branch	Hurricane Creek	Its source	F&W

[4]For the purpose of establishing effluent limitations pursuant to chapter 335-6-6 of the Department's regulations, the minimum 7-day low flow that occurs once in 10 years ($7Q_{10}$) shall be the basis for applying the chronic aquatic life criteria.

Stream	From	To	Classification
Short Creek	TENNESSEE RIVER	Scarham Creek	PWS/F&W
Short Creek	Scarham Creek	Its source	F&W
Drum Creek	Short Creek	Its source	F&W
East Fork of Drum Creek	Drum Creek	Its source	F&W
Turkey Creek	Short Creek	Its source	F&W
Town Creek (DeKalb County)	TENNESSEE RIVER	Its source	F&W
South Sauty Creek	TENNESSEE RIVER	Its source	S/F&W
North Sauty Creek	TENNESSEE RIVER	Its source	PWS
Roseberry Creek	TENNESSEE RIVER	Its source	F&W
Coon-Flat Rock Creek	TENNESSEE RIVER	Its source	S/F&W
Widow's Creek	TENNESSEE RIVER	Its source	S/F&W
Long Island Creek	TENNESSEE RIVER	Miller Creek	PWS/S/F&W
Long Island Creek	Miller Creek	Its source	S/F&W
Turkey Creek	Clear Fork	Its source	PWS/F&W
Bengis Creek	Town Creek	Its source	F&W

(13) **THE UPPER TOMBIGBEE RIVER BASIN**

INTERSTATE WATERS

Stream	From	To	Classification
TOMBIGBEE RIVER	Junction with WARRIOR RIVER	Cobb Creek	S/F&W
TOMBIGBEE RIVER	Cobb Creek	Gainesville Lock and Dam	F&W

Stream	From	To	Classification
TOMBIGBEE RIVER (Gainesville and Aliceville Lakes)	Gainesville Lock and Dam	Alabama-Mississippi state line	S/F&W
Noxubee River	TOMBIGBEE RIVER	Alabama-Mississippi state line	F&W
Bodka Creek	Noxubee River	Alabama-Mississippi state line	F&W
Yellow Creek	At Alabama-Mississippi state line		PWS
Yellow Creek	Alabama-Mississippi state line	Its source	F&W
Buttahatchee River	Alabama-Mississippi state line	U.S. Hwy. 278 one mile east of junction of U.S. Highways 43 and 78 in Hamilton	F&W
Buttahatchee River	U.S. Hwy. 278 one mile east of junction of U.S Highways 43 and 78 in Hamilton	U.S. Hwy. 278 seven miles east of junction of U.S. Highways 43 and 78 in Hamilton	PWS/F&W
Buttahatchee River	U.S. Hwy. 278 seven miles east of junction of U.S. Highways 43 and 78 in Hamilton	Lake Buttahatchee Dam	F&W
Buttahatchee River	Lake Buttahatchee Dam	Head of backwaters of Lake Buttahatchee	S
Buttahatchee River	Head of backwaters of Lake Buttahatchee	Its source	F&W
Bull Mountain Creek	Alabama-Mississippi state line	Its source	F&W
Sipsey Creek	Alabama-Mississippi state line	Its source	F&W
Luxapallila Creek	At Alabama-Mississippi state line		PWS
Luxapallila Creek	Alabama-Mississippi state line	Fayette County Road 37	F&W

Stream	From	To	Classification
Luxapallila Creek	Fayette County Road 37	County road crossing approximately 6 miles upstream from Alabama Highway 18	PWS/F&W
Luxapallila Creek	County road crossing approximately 6 miles upstream from Alabama Highway 18	U.S. Highway 78	F&W
Luxapallila Creek	U.S. Highway 78	Its source	PWS/F&W

INTRASTATE WATERS

Stream	From	To	Classification
Sipsey River	TOMBIGBEE RIVER	U.S. Highway 43	F&W
Sipsey River	U.S. Highway 43	Alabama Highway 102	PWS/F&W
Sipsey River	Alabama Highway 102	Its source	F&W
New River	Sipsey River	Its source	F&W
Little New River	Sipsey River	Its source	F&W
Lubbub Creek	TOMBIGBEE RIVER	Its source	F&W
Bear Creek	Lubbub Creek	Its source	F&W
Little Bear Creek	Bear Creek	Its source	F&W
Coal Fire Creek	TOMBIGBEE RIVER	Its source	S/F&W
Bogue Creek	Buttahatchee River	Its source	F&W
Beaver Creek	Buttahatchee River	U.S. Highway 78	F&W
Beaver Creek	U.S. Highway 78	Its source	PWS/F&W
Purgatory Creek	Beaver Creek	U.S. Highway 278	F&W
Purgatory Creek	U.S. Highway 278	Its source	PWS/F&W
Camp Creek	Buttahatchee River	Its source	F&W

Stream	From	To	Classification
East Branch Luxapallila Creek	Luxapallila Creek At Winfield	Its source	PWS/F&W
Moore Creek	Buttahatchee River	Its source	F&W

(14) **THE WARRIOR RIVER BASIN**

INTRASTATE WATERS

Stream	From	To	Classification
WARRIOR RIVER	TOMBIGBEE RIVER	Five miles upstream from Big Prairie Creek	S/F&W
WARRIOR RIVER	Five miles upstream from Big Prairie Creek	Eight miles upstream from Big Prairie Creek	PWS/S/F&W
WARRIOR RIVER	Eight miles upstream from Big Prairie Creek	Warrior Lock and Dam	S/F&W
WARRIOR RIVER	Warrior Lock and Dam	Oliver Lock and Dam	F&W
WARRIOR RIVER	Oliver Lock and Dam	Bankhead Lock and Dam	S/F&W[1]
WARRIOR RIVER	Bankhead Lock and Dam	Its source (Junction of Locust and Mulberry Forks)	PWS/S/F&W
Locust Fork	WARRIOR RIVER	Jefferson County Highway 61 (Maxine)	PWS/S/F&W
Locust Fork	Jefferson County Highway 61 (Maxine)	U. S. Highway 31	S/F&W
Locust Fork	U. S. Highway 31	Kelly Creek	PWS/S/F&W
Locust Fork	Kelly Creek	Slab Creek	F&W

[1]Applicable dissolved oxygen level below existing impoundments is 4.0 mg/l.

Stream	From	To	Classification
Locust Fork	Slab Creek	Its source	S/F&W
Mulberry Fork	Junction of Locust and Mulberry Forks	Burnt Cane Creek (9 miles below Cordova)	PWS/S/F&W
Mulberry Fork	Burnt Cane Creek (9 miles below Cordova)	Frog Ague Creek (Cordova)	PWS/F&W
Mulberry Fork	Frog Ague Creek (Cordova)	Junction of Mulberry and Sipsey Forks	PWS/F&W
Mulberry Fork	Sipsey Fork	Its source	F&W
Sipsey Fork	Mulberry Fork	Lewis Smith Dam	PWS/F&W
Lewis Smith Lake on Sipsey Fork	Lewis Smith Dam	Three miles upstream from Lewis Smith Dam	PWS/S/F&W
Lewis Smith Lake on Sipsey Fork	Three miles upstream from Lewis Smith Dam	Reservoir limits	S/F&W
Sipsey Fork	Lewis Smith Lake	Sandy Creek	F&W
Sipsey Fork and tributaries	Sandy Creek	Its source	S/F&W[3]
Big Prairie Creek	Head of backwater above Demopolis Lock and Dam on WARRIOR RIVER	Its source	F&W
Cottonwood Creek	Big Prairie Creek	Its source	F&W
White Creek	WARRIOR RIVER	Its source	F&W
Big Brush Creek	WARRIOR RIVER	Its source	F&W
Colwell Creek	Big Brush Creek	Its source	F&W
Minter Creek	WARRIOR RIVER	Its source	F&W

[3]The special designation of Outstanding National Resource Water applies to this segment.

Stream	From	To	Classification
Fivemile Creek	WARRIOR RIVER	Payne Lake in Talladega National Forest	F&W
Payne Lake in Talladega National Forest			S
Elliotts Creek	WARRIOR RIVER	Its source	F&W
Cypress Creek	WARRIOR RIVER	Its source	F&W
North River	WARRIOR RIVER	City of Tuscaloosa's water supply reservoir dam	F&W
North River	City of Tuscaloosa's water supply reservoir dam	Binion Creek	PWS/S
North River	Binion Creek	Ellis Creek	F&W
North River	Ellis Creek	Its source	S/F&W
Binion Creek	North River	Its source	F&W
Cedar Creek	North River	Its source	F&W
Clear Creek	North River	Bugs Lake Dam	F&W
Clear Creek (Bugs Lake)	Bugs Lake Dam	Its source	PWS
Hurricane Creek	WARRIOR RIVER	Its source	F&W
Yellow Creek	WARRIOR RIVER	City of Tuscaloosa's water supply reservoir dam	F&W
Yellow Creek	City of Tuscaloosa's water supply reservoir dam	Its source	PWS
Davis Creek	WARRIOR RIVER	Its source	F&W
Blue Creek	WARRIOR RIVER	Its source	F&W
Big Yellow Creek	WARRIOR RIVER	Its source	S/F&W

Stream	From	To	Classification
Valley Creek	WARRIOR RIVER	Mud Creek	F&W
Valley Creek	Mud Creek	Rock Creek	S/F&W
Valley Creek	Rock Creek	Blue Creek	F&W
Valley Creek	Blue Creek	Its source	LWF
Opossum Creek	Valley Creek	Its source	A&I
Village Creek	Locust Fork	Bayview Lake Dam	S/F&W
Village Creek	Bayview Lake Dam	Its source	LWF
Fivemile Creek	Locust Fork	Old Jasper Highway	S/F&W
Fivemile Creek	Old Jasper Highway	Alabama Highway 79	F&W
Fivemile Creek	Alabama Highway 79	Its source	S/F&W
Turkey Creek	Locust Fork	Its source	F&W
Cunningham Creek	Turkey Creek	Its source	F&W
Self Creek	Gurley Creek	Alabama Highway 79	F&W
Self Creek	Alabama Highway 79	Its source	PWS
Gurley Creek	Locust Fork	Its source	F&W
Little Warrior River	Locust Fork	Its source (Junction with Blackburn Fork and Calvert Prong)	F&W
Calvert Prong	Little Warrior River	Calvert Prong dam above U.S. Highway 231	F&W
Calvert Prong	Calvert Prong dam above U.S. Highway 231	Its source	PWS
Blackburn Fork	Little Warrior River	Inland Lake Dam	F&W
Blackburn Fork	Inland Lake Dam	Its source	PWS/S

Stream	From	To	Classification
Chitwood Creek	Calvert Prong	Its source (junction with Mill and Cheney Branch)	F&W
Mill Creek	Chitwood Creek	Its source	F&W
Graves Creek	Locust Fork	Its source	F&W
Whippoorwill Creek	Wynnville Creek	Its source	F&W
Clear Creek	Locust Fork	Its source	F&W
Slab Creek	Locust Fork	Its source	F&W
Lost Creek	Mulberry Fork	Two miles upstream from Wolf Creek	S/F&W
Lost Creek	Two miles upstream from Wolf Creek	Cane Creek	PWS/F&W
Lost Creek	Cane Creek	Indian Creek	S/F&W
Lost Creek	Indian Creek	Cranford Creek	F&W
Lost Creek	Cranford Creek	Its source	S/F&W
Cane Creek (Oakman)	Lost Creek	Dixie Springs Road	F&W
Cane Creek (Oakman)	Dixie Springs Road	Alabama Highway 69	LWF
Cane Creek (Oakman)	Alabama Highway 69	Its source	F&W
Indian Creek	Lost Creek	Its source	F&W
Wolf Creek	Lost Creek	Its source	S/F&W
Burnt Cane Creek	Mulberry Fork	Its source	F&W
Cane Creek (Jasper)	Mulberry Fork	Town Creek	LWF
Cane Creek (Jasper)	Town Creek	Its source	F&W

Stream	From	To	Classification
Town Creek	Cane Creek	100 yards upstream of Southern Railway crossing (1.1 miles upstream of Cane Creek)	LWF
Town Creek	100 yards upstream of Southern Railway crossing (1.1 miles upstream of Cane Creek)	Its source	F&W
Blackwater Creek	Mulberry Fork	Its source	F&W
Mud Creek	Mulberry Fork	Its source	F&W
Broglen River	Mulberry Fork	Junction of Eightmile and Brindley Creeks	F&W
Brindley Creek	Broglen River	Its source	PWS
Eightmile Creek	Broglen River	Lake Catoma Dam	F&W
Eightmile Creek	Lake Catoma Dam	Its source	PWS
Bridge Creek	Eightmile Creek	George Lake Dam	F&W
Bridge Creek	George Lake dam	Its source	PWS
Adams Branch	Bridge Creek	Its source	PWS
Pope Creek	Bridge Creek	Its source	PWS
Blue Springs Creek	Mulberry Fork	Its source	F&W
Warrior Creek	Mulberry Fork	Its source	F&W
Tibb Creek	Mulberry Fork	Its source	F&W
Riley Maze Creek	Tibb Creek	Its source	F&W
Ryan Creek	Lewis Smith Lake	Its source	F&W
Crooked Creek	Lewis Smith Lake	Its source	F&W
Brushy Creek	Sipsey Fork (Lewis Smith Lake)	U.S. Highway 278	PWS/F&W

Stream	From	To	Classification
Brushy Creek	U.S. Highway 278	Its source	F&W
Clear Creek (Lewis Smith Lake)	Sipsey Fork (Lewis Smith Lake)	Reservoir Limits (Lewis Smith Lake)	PWS/S/F&W
Clear Creek	Reservoir Limits (Lewis Smith Lake)	City of Haleyville water supply reservoir dam	F&W
Clear Creek	City of Haleyville water supply reservoir dam	Its source	PWS
Rock Creek	Lewis Smith Lake	Its source	F&W
Sandy Creek	Sipsey Fork	Its source	F&W
Curtis Mill Creek	Sandy Creek	Town of Double Springs water supply reservoir dam	F&W
Curtis Mill Creek	Town of Double Springs water supply reservoir dam	Its source	PWS

Author: James E. McIndoe; Lynn Sisk.
Statutory Authority: Code of Alabama 1975, §§22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.
History: Adopted: May 5, 1967. **Amended:** June 19, 1967; April 1, 1970; October 16, 1972; September 17, 1973; May 30, 1977; August 29, 1977; December 19, 1977; February 4, 1981; April 5, 1982; December 11, 1985; March 26, 1986; August 26, 1988; March 2, 1990; April 3, 1991; August 1, 1991; April 2, 1992; May 28, 1992; February 1, 1993; September 23, 1993; August 29, 1994; May 30, 1997; July 14, 1999; September 7, 2000; January 12, 2001; June 28, 2002; April 3, 2003; January 28, 2004; May 27, 2004; September 21, 2005; May 29, 2007; January 19, 2010; January 18, 2011; May 23, 2011; November 27, 2012; April 1, 2014.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER DIVISION - WATER QUALITY PROGRAM

CHAPTER 335-6-12

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) Construction, Noncoal/Nonmetallic Mining and Dry Processing less than Five Acres, Other Land Disturbance Activities, and Areas Associated with these Activities

TABLE OF CONTENTS

335-6-12-.01	Purpose
335-6-12-.02	Definitions
335-6-12-.03	Applicability
335-6-12-.04	Chapter Modification and Public Participation
335-6-12-.05	General Provisions
335-6-12-.06	Compliance with NPDES Rules
335-6-12-.07	Requirement to Update Registration and Apply for and Obtain Coverage Under an NPDES General or Individual Permit, Termination and/or Denial of Registration
335-6-12-.08	Activities not Authorized by this Chapter
335-6-12-.09	Reserved
335-6-12-.10	Notice of Registration (NOR)
335-6-12-.11	Registration Requirements for NPDES Construction Sites
335-6-12-.12	Reserved
335-6-12-.13	Registration Fees
335-6-12-.14	Reserved
335-6-12-.15	Routine Reporting, Notification, and Record Keeping Requirements
335-6-12-.16	Reserved
335-6-12-.17	Reserved
335-6-12-.18	Entry and Inspection of Sites/Facilities
335-6-12-.19	Continuing Educational and Training Requirements
335-6-12-.20	Reserved
335-6-12-.21	CBMPPs, Other Plans, Specifications, BMPs, and Technical Requirements
335-6-12-.22	Reserved
335-6-12-.23	Reserved
335-6-12-.24	Alternative or Innovative Technology
335-6-12-.25	Site Completion, Reclamation, Effective Stormwater Quality Remediation, and Termination of Registration
335-6-12-.26	Discharge and Receiving Water Evaluation Requirements
335-6-12-.27	Reserved
335-6-12-.28	Inspection Requirements
335-6-12-.29	Reserved
335-6-12-.30	Pollution Prevention for NPDES Construction
335-6-12-.31	Reserved
335-6-12-.32	Reserved

335-6-12-.33 Ineffective Compliant BMPs, Discharge Prohibitions, and Noncompliance Notification
335-6-12-.34 Reserved
335-6-12-.35 Other Requirements
335-6-12-.36 Reserved
335-6-12-.37 Severability

335-6-12-.01 Purpose.

(1) The purpose of this chapter is to establish a comprehensive Statewide program for stormwater management pursuant to the requirements of the National Pollutant Discharge Elimination System (NPDES).

(2) Registration for NPDES permit coverage under this chapter establishes requirements, including but not limited to, Best Management Practices (BMPs), Construction Best Management Practices Plans (CBMPPs), registration requirements, technical standards and guidelines, operational requirements, stormwater storage, transport, treatment, and discharge management requirements for construction activity, noncoal mining sites less than five (5) acres in size, and areas associated with these activities described in this chapter.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.02 Definitions. The following words and terms, when used for the purposes of this chapter, shall have the following meanings unless the context clearly indicates otherwise or unless a different meaning is stated in a definition applicable to only a portion of this chapter. Unless inconsistent with this chapter as determined by the Director, other words and phrases used in this chapter shall have the same meaning as used in chapters 335-6-3, 335-6-6, 335-6-7, 335-6-9, 335-6-10, 335-6-11, and the Alabama Water Pollution Control Act (AWPCA), as amended.

(a) "Alabama Handbook" means the Introduction through Appendix A7, inclusive, of the Alabama Handbook For Erosion Control, Sediment Control, And Stormwater Management On Constructions Sites And Urban Areas, Alabama Soil and Water Conservation Committee (ASWCC) (2002).

(b) "Associated Areas" means other onsite or adjacent support activities, including but not limited, to construction site temporary office space, parking areas, employee work areas, material stockpiles, waste or material storage, disposal, equipment storage, chemical/fuel storage and staging areas.

(c) "Best Management Practices" (BMPs)

1. BMPs mean planning, project phasing, schedules of activities, implementation, operating, and maintenance procedures, management strategies, effective treatment practices, and to the extent necessary, post-construction follow-up continuing maintenance, that meet or exceed recognized effective industry standard practices, that meet or exceed the technical standards and guidelines of the Alabama Handbook, and that meet or exceed the requirements of this chapter, that are implemented to prevent/minimize pollutant discharges to the maximum extent practicable. BMPs also include effective practices to control pollutant discharges from land disturbance activities associated with pre-construction testing, site assessment, surveying, and other pre-construction development support activities. BMPs also include effective practices to control pollutant discharges from spillage or leakage, stormwater transport, storage, treatment, or disposal.

2. BMPs also mean full implementation and continued maintenance of effective structural and non-structural practices and planning/management strategies to ensure effective erosion and sediment control, and prevent/minimize the introduction of pollutants to stormwater and to treat stormwater to remove pollutants to the maximum extent practicable prior to discharge. BMPs also mean the treatment of construction associated de minimus non-stormwater or process wastewater discharges authorized pursuant to the requirements of this chapter, including but not limited to, pit dewatering, drilling fluids (augering), and the proper handling and disposal of construction wastes, and prevention of the discharge of petroleum products, solvents, and other chemicals. BMPs also mean implementation of effective construction site nutrient management practices, temporary, annual, or perennial vegetation management, minimally disturbed natural riparian buffer area, fully vegetated filter strips, and streambank management practices. A BMP can be a single practice or more than one practice that combined will provide continuing effective treatment.

3. Any management practice, structure, or procedure, that is not recognized by the Department as a BMP based on performance, not installed/implemented correctly, not maintained, not adequately or properly located/sited, not suitable for the specific site conditions, not designed or configured to control potential or existing site conditions where the BMP is located, including but not limited to, steep slopes or grades, soils, potential precipitation and size of drainage area, which is not consistent with effective erosion and sediment control, that does not meet or exceed recognized effective industry standard practices, or not in accordance with the Alabama Handbook or other ADEM recognized BMP documents, is not considered or recognized as a BMP under this chapter.

(d) "Chronic and Catastrophic Precipitation" means precipitation events which may result in failure of the properly designed, located, implemented, and maintained BMPs or other structure/practices required by this chapter. Catastrophic precipitation conditions means any single event of significant total volume, or of increased intensity and shortened duration, that

exceeds normally expected or predicted precipitation over the time period that the disturbance is planned or is ongoing, as determined by the Department. Catastrophic conditions could also include tornadoes, hurricanes, or other climatic conditions which could cause failure due to winds or mechanical damage. Chronic precipitation is also that series of wet-weather conditions over a limited time-period which does not provide any opportunity for emergency maintenance, reinstallation, and corrective actions and which equals or exceeds the volume of normally expected or predicted precipitation for the time period that the disturbance is planned or is ongoing.

(e) "Construction" means any land disturbance or discharges of pollutants associated with, or the result of building, excavation, land clearing, grubbing, placement of fill, grading, blasting, reclamation, areas in which construction materials are stored in association with a land disturbance or handled above ground, and other associated areas including, but not limited to, construction site vehicle parking, equipment or supply storage areas, material stockpiles, temporary office areas, and access roads. Construction also means significant pre-construction land disturbance activities performed in support or in advance of NPDES construction activity including, but not limited to, land clearing, dewatering and geological testing. Construction does not include de minimus pre-construction or other minor land disturbing activities, such as, but not limited to, the installation of auger holes, bore holes, or small excavations, unless such activities cause discharges which present a reasonable potential for significant contribution of pollutants to State waters or reasonable potential to cause or contribute to a violation of applicable water quality standards. For the purposes of this chapter, construction does not include mining, wet preparation, beneficiation, recovery, storage, handling, and transloading of coal or metallic ores/minerals, and any mining or mineral processing, beneficiation, storage, handling, and associated activity/disturbance equal to or greater than five (5) acres in size.

(f) "Construction Best Management Practices Plan" (CBMPP) means any research, planning considerations, systems, procedures, processes, activities, and practices implemented for the prevention and/or minimization of pollutants in stormwater to the maximum extent practicable, and collection, storage, treatment, handling, transport, distribution, land application, or disposal of construction stormwater and onsite management of construction waste generated by the construction activity, and to comply with the requirements of this chapter. This includes any required component plans and other pertinent information requested by the Department. The CBMPP shall be prepared/certified, and when necessary updated/certified, by a qualified credentialed professional (QCP) in accordance with the requirements of this chapter.

(g) "Construction Site" means any site regardless of size where construction or construction associated activity has commenced, or is continuing, and associated areas, including sites where active work is suspended or has ceased, until the activity is completed and effective reclamation and/or stormwater quality remediation has been achieved.

(h) "Construction Waste" means construction and land disturbance generated materials, including but not limited to, waste chemicals, sediment, trash, debris, litter, garbage, construction demolition debris, land clearing and logging slash or other materials or pollutants located or buried at the site prior to disturbance activity or that is generated at a construction site.

(i) "Director" means the Director of the Alabama Department of Environmental Management (ADEM) or the Director's designee.

(j) "Maximum Extent Practicable" means full implementation and regular maintenance of available industry standard technology and effective management practices, such as those contained in the Alabama Handbook, designed to prevent and/or minimize discharges of pollutants and ensure protection of groundwater and surface water quality.

(k) "Noncoal Mining Site" means an area, on or beneath land, less than five (5) total unreclaimed acres in size, used or disturbed in activity, including but not limited to, advance prospecting, noncoal mining site development, extraction, removal, mining, borrowing, remining, storing, transloading, dry processing, transportation, and/or recovery of any noncoal and nonmetallic mineral, ore, or mineral/ore product, including but not limited to, overburden, dirt, chert, soil, clay, rock, stone, aggregate, sand, gravel, tailings, and refuse from natural or artificial deposits. Pre-mining construction and land preparation, including but not limited to, clearing, grubbing, testing and advance prospecting in advance of mining activity is considered part of the noncoal mining activity which is required to register under this chapter prior to commencement. For the purposes of this chapter, noncoal mining does not mean any mining or recovery site, or associated product processing, recovery, storing, handling or transloading operations equal to or greater than five (5) acres in size, any mineral or ore wet processing or beneficiation regardless of size, and any metal ore/mineral, coal or associated product, mining, recovery, remining, processing, storing, handling or transloading operations, regardless of size.

(l) "Notice of Registration" (NOR) means an application, including all applicable fees imposed by chapter 335-1-6, filed by the operator requesting National Pollutant Discharge Elimination System (NPDES) registration under this chapter on a form or via electronic means as approved by the Department.

(m) "NPDES Construction Site" means construction activities that are required to obtain NPDES permit coverage under this chapter. An NPDES Construction Site is construction that disturbs 1 acre or greater or will disturb less than 1 acre but is part of a larger common plan of development or sale whose total land disturbing activities total 1 acre or greater. An NPDES construction site also includes construction sites, irrespective of size, whose stormwater discharges have a reasonable potential to be a significant contributor of pollutants to a water of the State, or whose stormwater discharges have a reasonable potential to cause or contribute to a violation of an applicable Alabama water quality standard as determined by the Department.

(n) "Operator" means any person, registrant, or other entity, that owns, operates, directs, conducts, controls, authorizes, approves, determines, or otherwise has responsibility for, or exerts financial control over the commencement, continuation, or daily operation of activity regulated by this chapter. An operator includes any person who treats and discharges stormwater or in the absence of treatment, the person who generates and/or discharges stormwater, or pollutants. An operator may include but may not be limited to, property owners, agents, general partners, LLP partners, LLC members, leaseholders, developers, builders, contractors, or other responsible or controlling entities. An operator does not include passive financial investors that do not have control over activities regulated by this chapter.

(o) "Plan or Sale" as included in the phrase "larger common plan of development or sale" is broadly defined to mean any announcement or documentation, sales program, permit application, presentation, zoning request, physical demarcation, surveying marks, etc., associated with or indicating construction activities may occur in an area.

(p) "Qualified Credentialed Inspector (QCI)" means an operator, operator employee, or operator designated qualified person who has successfully completed initial training and annual refresher Qualified Credentialed Inspection Program (QCIP) training, and holds a valid certification from a Department approved cooperating training entity.

(q) "Qualified Credentialed Inspection Program (QCIP)" means a Department approved program conducted by a cooperating training entity. Approved programs provide training in the requirements of the Alabama NPDES rules, the Department's construction stormwater management program, evaluation of construction sites to ensure that QCP designed and certified BMPs detailed in a CBMPP are effectively implemented and maintained, and evaluation of conveyance structures, receiving waters and adjacent impacted offsite areas to ensure the protection of water quality and compliance with the requirements of this chapter.

(r) "Qualified Credentialed Professional" (QCP) means any staff member of the Department designated by the Director, a Professional Engineer, an Alabama Natural Resources Conservation Service professional designated by the State Conservationist, or a Certified Professional In Erosion And Sediment Control (CPESC). A QCP includes a registered landscape architect, a registered land surveyor, a Professional Geologist, a registered forester, a Registered Environmental Manager as determined by the National Registry of Environmental Professionals (NREP), and a Certified Professional Soil Scientist (CPSSc) as determined by ARCPACS, and other Department accepted professional designations, certifications, and/or accredited university programs that can document requirements regarding proven training, relevant experience, and continuing education, that enable recognized individuals to prepare CBMPPs, to make sound professional judgments regarding Alabama NPDES rules, the requirements of this chapter, planning, design, implementation, maintenance, and inspection of construction sites, receiving waters, BMPs, remediation/cleanup of accumulated offsite pollutants from the regulated site,

and reclamation or effective stormwater quality remediation of construction associated land disturbances, that meet or exceed recognized technical standards and guidelines, effective industry standard practices, and the requirements of this chapter. The QCP shall be in good standing with the authority granting the registration or designation.

(s) "Reclaimed" means that all disturbed areas are permanently covered by completed buildings, other structures, pavement/concrete, other acceptable impervious materials, or other effective permanent non-vegetative structures and practices. Reclaimed also means that all disturbed areas have been graded, slopes effectively stabilized, and perennial vegetation has been fully established with the ability to survive in the future if properly maintained, to prevent/minimize to the maximum extent practicable exposure of disturbed soils to erosion as necessary to protect water quality.

(t) "Registered Forester" means a person who is registered and holds a valid license by the Alabama Board of Registration for Foresters [Code of Alabama (1975), §§ 34-12-1 through 34-12-37, as amended].

(u) "Stormwater" means runoff, accumulated precipitation, process water, and other wastewater generated directly or indirectly as a result of construction activity, the operation of a construction material management site, or the operation of a noncoal mining site, including but not limited to, precipitation, upgradient or offsite water that cannot be diverted away from the site, and wash down water associated with normal construction activities. Stormwater does not mean discharges authorized by the Department via other permits or regulations.

(v) "Stormwater Quality Remediation" means effective permanent structural or non-structural management practices implemented at a construction or noncoal mining site that will prevent or ensure continuing effective minimization of pollutants in stormwater discharges to groundwater and surface waters to the maximum extent practicable, and to prevent a contravention of applicable water quality standards. Stormwater quality remediation also means that the active total unreclaimed construction disturbance and any potential future construction activity at the site/development have been reduced to less than one (1) acre and there is no potential for adverse impacts to water quality provided the operator maintains compliance with BMP and performance requirements of this chapter.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.03 Applicability.

(1) The provisions of this chapter are applicable to all new and existing construction activity, noncoal mining activity, construction materials

management activity and associated activities, described in this chapter, located wholly or partially within the State of Alabama.

(2) While the requirements of this chapter do not modify or supercede the requirements of chapter 335-6-9, any requirement contained in chapter 335-6-9 shall apply to a noncoal mining site to the extent necessary to protect water quality.

(3) Unless specifically required by this chapter or required in writing by the Director, construction sites and associated areas that are less than one (1) acre in size that are not otherwise considered a defined or designated NPDES construction site, are not required to register under this chapter.

(4) Unless required in writing by the Director, maintenance and repair activities at existing roads, utility infrastructure, bridges, other facilities or structures, including but not limited to, repaving, painting, bridge repair, vegetation maintenance, tree replacement, normal maintenance of existing unimproved roads, that are not associated with new or additional defined or designated NPDES construction disturbance activity are not required to register under this chapter.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.04 Chapter Modification And Public Participation.

(1) The Department shall cause to be published a Public Notice with a comment period of not less than thirty (30) days to solicit public participation and comment and to schedule a Public Hearing, if necessary, according to procedures described in rule 335-6-6-.21 regarding the content of, implementation of, and compliance with provisions herein, prior to the completion of the first five-year term beginning with the effective date of this chapter, and at least once every five years after the Public Notice referenced above or each subsequent Public Notice is held. After review of comments received during the public participation process, and no later than one-hundred and twenty (120) days after the close of the public comment period, the Department shall prepare a written Response to Comments addressing comments received during the public participation process and shall make a determination in writing regarding the status of this chapter and of the need, if any, to initiate procedures pursuant to Code of Alabama (1975) §§ 41-22-1 through 41-22-27, as amended, to modify this chapter to ensure that the requirements of this chapter are in accordance with the requirements of the Alabama Water Pollution Control Act (AWPCA), Clean Water Act (CWA), and regulations promulgated pursuant thereto. Where the Department has initiated procedures to modify this chapter as set forth in this rule, the Department shall provide the proposed modifications to the EPA Regional Administrator for comment consistent with NPDES regulations.

(2) The Department shall cause to be published a Public Notice with a comment period of not less than thirty (30) days according to procedures described in rule 335-6-6-.21 to inform the public regarding the Response To Comments and the Department's determination regarding the need, if any, to initiate rulemaking procedures to modify this chapter as described in paragraph (1) of this rule. The Public Notice shall include information to inform the public how to obtain in writing the procedures for the public to petition the Department to initiate procedures in accordance with chapter 335-2-2 to modify this chapter if the Director determines, after consideration of comments or other information received during the public participation process, that modification of this chapter by the Department is not necessary.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.05 General Provisions.

(1) The operator, registrant, developer, onsite contractors, home builder(s), utility installers, or property owners association, separately or collectively, shall maintain valid registration for an NPDES construction site/activity, including subdivision developments or other linear or phased projects, until disturbance activity is complete and all disturbed areas have been reclaimed or effective stormwater quality remediation has been achieved in accordance with the requirements of this chapter or another operator(s) has registered.

(2) The operator of construction activity defined or designated as NPDES construction under this chapter shall maintain adequate records to document compliance with this chapter and shall fully implement and regularly maintain effective BMPs to the maximum extent practicable, and in accordance with the operator's CBMPP. Appropriate, effective pollution abatement/prevention facilities, structural and nonstructural BMPs, and management strategies shall be fully implemented prior to and concurrent with commencement of regulated activities and regularly maintained during construction as needed at the site to meet or exceed the requirements of this chapter until construction is complete, effective reclamation and/or stormwater quality remediation is achieved, and if registration is required, the registration is terminated. Failure to fully implement and regularly maintain effective BMPs for the protection of water quality to the maximum extent practicable is a violation of this chapter.

(3) Operators shall ensure that their construction activities are regularly evaluated to ensure compliance with the provisions of this chapter. All NPDES construction site operators shall ensure that their construction activities are regularly inspected by a QCI, QCP, or a qualified person under the direct supervision of a QCP, as applicable, to ensure compliance with the provisions of this chapter. Each NPDES construction site operator shall

implement and maintain a comprehensive CBMPP in accordance with the requirements of this chapter and submit reports and certifications as required by this chapter.

(4) The NOR and CBMPP, prepared in accordance with the Alabama Handbook and the requirements of this chapter by the QCP prior to commencing construction at a new NPDES construction site, and prior to continued construction at an existing NPDES construction site, or as otherwise required by the Director, are incorporated into the requirements of any NPDES registration under this chapter.

(5) The operator shall post and maintain sign(s) at the front gate/entrance, and if utility installation, where project crosses paved county, State, or federal highways/roads, and/or at other easily accessible location(s) to adequately identify the site prior to commencement of and during NPDES construction until registration is properly terminated. Such sign shall display the name of the registrant, "ADEM Registration" followed by the ADEM NPDES registration number, and facility or site name.

(6) The operator retains full responsibility for the design, construction, operation and maintenance of BMPs to protect water quality to the maximum extent practicable. In recognition that construction activities and noncoal mining activities are site specific in nature and conditions can change as the site develops, the Department may require the submission of additional information or require additional management measures to be implemented, as necessary.

(7) The Director may require the operator to modify existing registrations, require any CBMPP to be updated, require additional BMPs, and/or restrict discharges, if needed, based on implementation of an applicable, approved total maximum daily load.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.06 Compliance with NPDES Rules.

(1) Registration under this chapter constitutes NPDES permit coverage as provided in chapter 335-6-6. Operators shall comply with all provisions of this chapter, applicable provisions of the NPDES permit program as described in chapter 335-6-6, and other applicable provisions of ADEM Administrative Code division 335-6.

(2) Any noncompliance with this chapter constitutes a violation of this chapter, Alabama NPDES rules, and the AWPCA, and is grounds for enforcement action, including termination or denial of registration, and/or for

requiring the operator or registrant to apply for and obtain an individual NPDES permit.

(3) It shall not be a defense for an operator subject to an enforcement action that it would have been necessary to halt or reduce construction/disturbance activity or the permitted activity in order to maintain compliance with the conditions of this chapter. Upon reduction in effectiveness, loss, or failure of a treatment facility or BMP, the operator shall, to the extent necessary to maintain compliance with this chapter, control/suspend/cease construction/discharge until the construction BMP/control is restored or an effective alternative BMP or method of effective treatment is provided.

(4) The operator shall take all reasonable steps to prevent and/or minimize, to the maximum extent practicable, any discharge in violation of this chapter or which has a reasonable likelihood of adversely affecting the quality of groundwater or surface water receiving the discharge(s).

(5) This chapter may be both greater in scope and more stringent than required by federal law. Enforcement authority for conditions in this chapter which constitute greater scope of coverage than required by Federal law are not part of the federally approved NPDES program and therefore are not subject to EPA oversight. The Director retains final authority regarding questions or disputes related to administrative procedures, technical determinations, and interpretation or meaning of the requirements of this chapter, and as otherwise provided by law.

(6) Any person who knowingly omits or ignores required or pertinent information, or makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this chapter, including monitoring reports or reports of compliance or noncompliance, shall be subject to penalties as provided by the AWPCA.

(7) Except as provided by the bypass and upset conditions contained in this chapter, nothing in this chapter shall be construed to relieve the operator of civil or criminal liability under the AWPCA for noncompliance with any term or condition of this chapter.

(8) The filing of a request by the operator for any action such as a request for termination, submittal deadline extension, or application for an individual permit, or any other action, does not stay any requirement of this chapter.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.07 <u>Requirement to Update Registration and Apply for and Obtain Coverage Under an NPDES General or Individual Permit, Termination and/or Denial of Registration</u>.

(1) The Department may require any operator of a construction site required to be registered under this chapter to apply for and obtain coverage under an NPDES individual permit or general permit pursuant to the requirements of chapter 335-6-6. The Department shall notify the operator in writing that an individual permit or general permit application, including the correct fee, is required. If an operator fails to submit a complete and correct individual NPDES or general permit application with applicable fee as required by chapter 335-1-6 or by a reasonable deadline specified by the Director, then any previous registration granted to the operator is automatically terminated at the end of the day specified for application submittal and the operator may be subject to enforcement action.

(2) When either NPDES individual permit is issued or general permit coverage is extended to an operator authorizing discharges otherwise subject to this chapter, the applicability of this chapter to the operator is automatically terminated on the effective date of the individual/general permit coverage. When an NPDES individual permit or general permit coverage is terminated, or an application is denied to an operator otherwise subject to this chapter, the operator and the NPDES Construction Site continues to be subject to the requirements of this chapter on and after the date of such termination or denial, and shall immediately cease the regulated activity and complete all measures necessary to permanently halt discharges of pollutants until registration or other permit coverage is obtained from the Department.

(3) Registration Administration, Duration, and Limitations.

(a) Registration under this chapter may be granted on an annual (12 month) basis, in annual increments, or any length of time determined appropriate by the Director, provided registration does not exceed five (5) years from the date of the last registration or re-registration. Unless registration is extended by the Director, continued construction activity is prohibited after the expiration date of registration unless the operator submits a complete and correct NOR requesting re-registration. NORs submitted for re-registration shall be subject to the requirements of rule 335-6-12-.11(3) and rule 335-6-12-.11(4). All requirements of this chapter continue in effect regardless of the operator's registration status.

(b) Any registration under this chapter may be limited in size, scope or geographical area at the reasonable discretion of the Director to facilitate efficient and effective administration of the registration program or compliance with the requirements of this chapter.

(c) Multiple small construction sites may be allowed to be grouped under a single registration, at the reasonable discretion of the Director to facilitate efficient/effective administration of the registration program or compliance with the requirements of this chapter.

(d) Registration under this chapter is conditionally granted, and the requirement to submit an NOR, information contained or required in the NOR, or submittal of the registration fee under this chapter is suspended for governmental agencies and utilities to allow for immediate and effective emergency repairs and response to natural disasters, human health or environmental emergencies, or to avert/avoid imminent, probable, or irreparable harm to the environment or severe property damage. The operator or controlling/participating federal, State, or local government agencies/entities conducting emergency construction activity shall document the emergency condition, ensure compliance with the BMP requirements of this chapter to the extent possible, and shall notify the Department as promptly as possible regarding the occurrence of the emergency construction disturbance and measures that have been implemented and are being implemented to protect water quality. Unless the requirement to register pursuant to the requirements of this chapter are suspended or voided by the Director on a categorical or individual emergency basis, the operator shall submit the appropriate project information, NOR, and the required registration fee for construction or reconstruction activity after emergency repairs have been accomplished, according to a schedule acceptable to the Department.

(4) Termination or Denial of Registration.

(a) If cause exists for denial or termination of registration or under this rule, the Director may determine that termination or denial of registration is appropriate. The following may be causes for terminating a registration during its term, for denying a request for registration, or denying a request for re-registration:

1. Substantial noncompliance by the operator with any registration requirement or the requirements of this chapter;

2. Failure by the operator to disclose fully all relevant facts or the operator's misrepresentation of any relevant facts, at any time;

3. A change in any condition that results in either a temporary or a permanent reduction or elimination of any discharge controlled by the registration, including but not limited to, completion of construction, or termination of a discharge by connection to a publicly/privately owned treatment works;

4. The compliance history of the operator; or

5. Any other relevant factors the Director reasonably determines to be appropriate.

(b) If the Director determines that a registration that results in compliance with applicable water quality standards could not be issued or, if issued, could not be complied with, such registration shall be terminated or denied.

(c) Any operator whose registration is denied or terminated pursuant to the provisions of this rule shall comply with the AWPCA and applicable requirements of division 335-6.

(5) The Director may, for cause, require any operator regulated under this chapter to apply for and obtain registration modification or to apply for and obtain NPDES individual or general permit coverage for those causes set forth in rule 335-6-6-.17.

(6) If the operator determines that any past activity regulated by this chapter should have obtained registration or registration modification under this chapter, issuance of an individual NPDES permit, or coverage under a general permit, under rule 335-6-6-.03, the operator shall report such information to the Director.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.08 Activities not Authorized by this Chapter.

(1) Discharge(s) from wet preparation, processing, or beneficiation, of coal, mineral, or ore, are not authorized by this chapter. Discharge(s) from metal ore/mineral and coal, or associated product, mining, remining, recovery, storing, handling, or transloading, are not authorized by this chapter.

(2) Discharge(s) from any mining operation that at any time has a total area of land disturbance that equals or exceeds five (5) acres in size that has not been fully reclaimed, including but not limited to, access roads, spoil areas, and mineral storage, handling, loading, and transloading areas, excavation areas, operation support areas, and vehicle maintenance areas, are not authorized by this chapter, but are regulated pursuant to the applicable provisions of 335-6-9 and 335-6-6.

(3) Discharge(s) from any mining operations where the planned or proposed area of total land disturbance, including but not limited to, access roads, spoil areas, mineral storage areas, loading areas, excavation areas, and vehicle maintenance areas, equals, exceeds, will equal or exceed, or is predicted to equal or exceed five (5) acres, that has not been fully reclaimed, are not authorized by this chapter.

(4) Discharge(s) from instream and within-bank mining are not authorized by this chapter.

(5) Discharge(s) from the operation or closure of a landfill as described in ADEM Administrative Code division 335-13 are not authorized by this chapter. Construction disturbance associated with pre-construction testing, initial development, continuing operation, and/or expansion of a

landfill is not required to register under this chapter provided the landfill operator has obtained applicable permit coverage pursuant to the requirements of division 335-13 prior to commencement of initial construction of the landfill. Compliance with valid permit coverage issued to the landfill operator pursuant to the requirements of division 335-13 constitutes compliance with the provisions of this chapter.

(6) Discharge(s) from manufacturing/industrial process or produced waste or wastewaters are not authorized by this chapter.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.09 Reserved.

335-6-12-.10 Notice of Registration (NOR).

(1) A complete and correct Notice of Registration (NOR) shall be submitted to the Department for all NPDES construction sites in a format acceptable to the Department. The NOR shall include the following information and/or attachments:

(a) A copy of the CBMPP for the site, if required to be submitted by the requirements of this chapter or the Department.

(b) A copy of the CBMPP shall be submitted for NPDES construction sites discharging to a Tier 1 waterbody segment, as described in rule 335-6-10-.12, due to a construction activity pollutant of concern, or a waterbody designated as ONRW, pursuant to the requirements of chapter 335-6-10, and for the relocation, diversion, or realignment of any water of the State;

(c) Portions or copies of 7.5' Series U.S. Geological Survey maps, or other maps acceptable to the Department, showing the site location;

(d) Any other relevant information that may be required by this chapter or the Department.

(2) The NOR shall be delivered or mailed in such a manner that date of receipt by the Department is confirmed by the operator using means such as certified mail, overnight mail or otherwise submitted/transmitted via electronic means to the Department.

(3) Registration Modification.

(a) Operators shall notify the Department in writing whenever there is a change in the information contained within the NOR, including a change in

control/responsibility for the registered construction site.

(b) If the operator becomes aware that it submitted incomplete information, failed to submit any relevant facts in the NOR, or submitted incorrect information in the NOR, it shall promptly submit such facts, corrections, or information with a written explanation for the mistake and/or omission.

(c) Operators shall make such notifications by submitting a revised NOR.

(4) Change in Discharge.

(a) The operator shall give advance notice to the Department of any proposed facility expansion, increase in disturbed acreage, new disturbance or the addition of a new receiving water not identified in the NOR requesting registration, construction change, or other activity or action, including but not limited to, the discharge of additional or different pollutants in stormwater discharges which could result in noncompliance with the requirements of this chapter.

(b) Major Modification. The operator shall request modification of the registration from the Department by submission of a revised NOR, including the correct registration fee prior to any proposed major modification including but not limited to, the following:

1. At any time that there is an increase in the size of the project or number of unreclaimed or disturbed acres that is sufficient to place the construction site in a higher fee category as provided in chapter 335-1-6;

2. Addition of a new receiving water or waterbody segment that was not identified in the NOR requesting registration;

3. Significant change in the CBMPP or BMPs; or

4. Any other significant change at the construction site that may have an impact on water quality.

(c) Transfer of Registration. An operator shall request transfer of the registration from the Department in writing with a copy of a formal transfer agreement. Submittal of the correct registration transfer fee is required prior to any proposed change in responsible operators or change in responsibility/control for the registered site. Instances where transfer or registration is required include, without limitation, the following:

1. A change of ownership or name of registrant; or

2. A change in operational control of the construction site.

(d) Minor Modification. The operator shall document in his file no later than fifteen (15) days after any minor change, that the CBMPP and BMPs

have been properly updated to reflect any minor change in construction activity as it relates to this chapter or operational procedures at the registered site or a change in the NOR submitted to the Department, including but not limited to, the following:

1. A minor change or update of information submitted in the NOR to provide more complete information including a change in contractors, submittal of a revised site map, etc;

2. A minor change in the CBMPP or BMPs, or other pollution control activities;

3. Any other minor change at the construction site that is needed to ensure compliance with the requirements of this chapter or ensure the protection of water quality; or

4. A change in responsible offices or other controlling entity(s).

(5) After registration or re-registration, the Department may require the operator to provide additional or updated construction plans, data, designs, drawings, photographs, maps, or any other information to document compliance with the requirements of this chapter.

(6) All NORs requesting initial registration, registration modification [other than minor modifications described in 335-6-12-.10(4)(d)], and re-registration under this chapter shall be signed by a QCP and, as required by rule 335-6-6-.09, the operator.

(7) All reports required by this chapter and any other information required by the Department shall be signed by a qualified person described by this rule and, where required or allowed by this chapter, a QCI or QCP. A person is an authorized representative only if:

(a) The authorization is made in writing and signed by a responsible official;

(b) The authorization specifies either an individual or a person having responsibility for the overall operation of the regulated construction site or activity, such as the position of site manager, superintendent, or position of equivalent responsibility for environmental matters for the operator. An authorized representative may be either an operator named individual or any individual occupying a named position; and

(c) The written authorization is submitted to the Department. This written authorization remains valid for signatures on all subsequent submittals unless revoked by the authorizing responsible official.

(8) If a signatory authorization under this chapter is no longer accurate because a different individual or position has responsibility for the overall operation of the construction site, a new signatory authorization

satisfying the above requirements shall be submitted to the Department prior to, or submitted with, any reports, information, or NORs signed by the authorized individual.

(9) Any person signing an NOR, document, report, or other information required by this chapter shall certify the document pursuant to rule 335-6-6-.09(4).

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.11 Registration Requirements for NPDES Construction Sites.

(1) Except as provided otherwise by this chapter, after March 1, 2003 or the effective date of this chapter, whichever date occurs later, new or continued operation of NPDES construction sites that have not submitted a complete and correct Notice of Registration (NOR) or application requesting coverage under a valid NPDES general permit, or individual permit, is prohibited. Except as provided otherwise by this chapter, after March 1, 2003 or the effective date of this chapter, whichever date occurs later, commencement of construction at proposed NPDES construction sites that have not submitted a complete and correct NOR acceptable to the Department, or have not been granted NPDES permit coverage under a valid NPDES general permit, or individual permit, is prohibited.

(2) After March 1, 2003, or the effective date of this chapter, whichever date occurs later, modification of an existing construction site/activity less than one (1) acre that would result in an increase in size or change in construction activity such that the construction site would become an NPDES construction site, is prohibited, unless the operator has first submitted a complete and correct Notice of Registration (NOR) to the Department.

(3) Except as provided by rule 335-6-12-.11(4), upon submission to the Department of a complete and correct NOR, including the correct registration fee, CBMPP if required, and applicable QCP certifications, unless notified by the Department that the NOR is incorrect or incomplete, that additional time is needed by the Department to review the NOR, or that the NOR has been denied, the operator is authorized to commence and/or continue construction disturbance provided the construction site remains in full compliance with all provisions of this chapter.

(4) For NPDES construction sites/activity discharging and/or proposing to discharge to a Tier 1 waterbody segment, unless notified by the Department within thirty (30) days after receipt by the Department of a complete and correct NOR, including the correct registration fee, CBMPP, and applicable QCP certifications, that the NOR is incorrect or incomplete, that

additional time is needed by the Department to properly process the NOR, or that the NOR has been denied, the operator is authorized to commence construction disturbance provided the construction site remains in full compliance with all provisions of this chapter.

(5) As determined necessary by the Department, a new or existing construction site regardless of size, which discharges to a Tier 1 waterbody segment that has been listed for a pollutant that is likely to be discharged from the construction site including, but not limited to sediment, may also be required to register under this chapter.

(6) Unless required by applicable federal law or State law, and provided the activity is not being conducted in support of, in conjunction with, or to prepare for NPDES construction activity as defined by this chapter, the following construction activities are not required to register under this chapter:

(a) Normal silvicultural harvesting and associated silvicultural construction practices conducted in accordance with rule 335-6-6-.03 and rule 335-6-6-.10 that are not planned or performed in immediate advance of, in support of, or as part of, a regulated construction activity or development.

1. For the purposes of this chapter, silvicultural construction includes certain temporary nonmetallic/noncoal material acquisition or borrow activity that is reasonably considered as an extension of forest road construction activity. Generally, small, temporary material borrow areas for silvicultural local road construction are considered part of the normal nonpoint source silvicultural activity, including but not limited to, timber harvesting, site preparation, tree planting, controlled burning, fertilization and are not required to register under this chapter provided the duration of the disturbance is minimized to the extent possible, but in all cases is less than sixty (60) days, effective BMPs are fully implemented and regularly maintained to the maximum extent practicable prior to, during, and immediately after use of each completed increment of the borrow area until the site is reclaimed or effective stormwater quality remediation is achieved, and the total active, unreclaimed land disturbance is less than five (5) acres in size at all times;

2. In addition, in order for temporary material borrow areas for silvicultural local road construction to be considered part of the normal nonpoint source silvicultural activity not required to register under this chapter, the disturbance shall be conducted to ensure that borrow material is exclusively obtained for construction and periodic maintenance of forest roads utilized in silvicultural activities. The temporary disturbed area shall be continually graded and reclaimed to within a safe operating distance from any high-wall or steep slope and the temporary borrow area is used exclusively by a single operator within the scope of the operator's own operations. Re-establishment of permanent vegetative cover shall be accomplished immediately after active disturbance is completed for each disturbed increment, and the active non-graded, non-reclaimed area adjacent to the active high-wall shall not exceed one-half acre. The borrow area shall be located outside of streamside management zones and outside the designated 50-year flood plain

and the site is located as close as practicable near scheduled road construction and maintenance activities to the extent that appropriate road fill material is available. Fuel storage tanks/containers shall not remain onsite unattended, dry/wet crushing/screening or other processing shall not be conducted, the borrow activity shall not result in a point source discharge to surface waters of the State, and the Department shall be notified immediately of any unpermitted discharges or non-compliant discharges in order to ensure the protection of water quality;

3. Road construction and maintenance shall be for support of normal nonpoint source silvicultural practices only. Material borrow activity for construction or maintenance of dual-use or multi-use roads used for silvicultural practices but which are also used incidentally for access to other types of activities or development is exempt. However, material borrow activity for construction or maintenance of dual-use or multi-use roads used primarily for access to other types of regulated non-silvicultural development, including but not limited to, marinas, barge/rail loading facilities, industrial/manufacturing facilities and subdivision developments, is not exempt and requires registration under this chapter;

(b) Animal feeding operation (AFO) or concentrated animal feeding operation (CAFO) construction activity that has been granted NPDES registration pursuant to chapter 335-6-7;

(c) Aquatic animal production facilities, concentrated aquatic animal production facilities, and aquaculture project construction associated activity that have been granted NPDES permit coverage in accordance with rule 335-6-6-.03 and rule 335-6-6-.10;

(d) Normal, on-farm non-AFO agricultural planting, harvesting and associated normal agricultural practices in accordance with rule 335-6-6-.03 and rule 335-6-6-.10. For the purposes of this chapter, normal agricultural practices also means practices commensurate with the size of the farming operation that are implemented in a manner that meet or exceed Natural Resources Conservation Service technical standards and guidelines, including but not limited to, farm ponds that are constructed for the primary purpose of irrigation and/or watering of livestock, terraces, grassed waterways, vegetative filter strips, cropland grade stabilization measures, drainage tiles, underground outlets, land leveling, dike/diversion structures, and other grade stabilization structures;

(e) Discharges of treated stormwater from construction or land disturbance activity regulated by this chapter that is specifically authorized by a valid individual NPDES permit, valid State Indirect Discharge (SID) permit, or other valid ADEM permit, provided the valid ADEM permit contains specific, detailed BMP requirements and other provisions to effectively treat/control construction stormwater runoff consistent with the requirements of this chapter, or requires compliance with the requirements of the this chapter, or requires compliance with the Department's construction stormwater management program;

(f) Surface mining operations and associated activities, coalbed methane exploration, development, production and associated activities, and construction bulk materials management, including but not limited to, storage, transloading, and/or dry processing, that has valid NPDES individual permit coverage, or valid State Indirect Discharge (SID) permit coverage that contains specific, detailed BMP requirements and other provisions to effectively treat/control construction stormwater runoff; or

(g) Construction bulk materials management, including but not limited to, storage, transloading, and/or dry processing, conducted entirely under roof without any exposure or contact with precipitation and without stormwater discharges of any kind consistent with the requirements of rule 335-6-6-.03. This includes the requirement to submit a No Exposure Certification Form.

(7) Unless the registration is properly terminated pursuant to the requirements of this chapter, failure by the operator to submit a complete and correct NOR requesting re-registration under this chapter prior to the expiration of registration, unless extended in writing by the Director, shall void the automatic continuation of registration to discharge under this chapter as provided by rule 335-6-6-.06.

(8) The Director may condition registration(s) as needed to ensure compliance with the requirements of the AWPCA, ADEM regulations, and the requirements of this chapter, to ensure the protection of water quality.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.12 Reserved.

335-6-12-.13 Registration Fees.

(1) The operator shall pay fees according to chapter 335-1-6.

(2) A continuing education Greenfield fee required by chapter 335-1-6 for NPDES construction sites shall not be required provided the operator certifies that required continuing education has been accomplished pursuant to rule 335-6-12-.19 with the initial registration and/or each subsequent or annual registration. Alternatively, the operator may certify it will solely retain or has solely retained a QCP or a person under the direct supervision of a QCP to carry out the inspection requirements of this chapter.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.14 Reserved.

335-6-12-.15 Routine Reporting, Notification, and Record Keeping Requirements.

(1) Construction site operators shall cooperate fully with inspections, monitoring, records review, and testing conducted by the Department as well as requests for submission of available documents, or technical data, and any testing/monitoring performed by the operator.

(2) Construction site operators shall keep all records required either:

(a) At the construction site and immediately available for inspection by the Department; or

(b) At an alternative site previously identified to the Department, provided they are readily available for inspection upon request.

(3) The operator shall document the names of individual(s) that perform inspections.

(4) All discharge information, data, records, and other information required to be maintained by the operator shall be made available to the Department upon request. Signed copies of monitoring reports or other information shall be submitted to the Department upon request. The operator shall retain records of all inspections and monitoring required to be maintained by this chapter, including all certification reports, noncompliance reports, calibration and maintenance records, all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this chapter, and records of all data used to complete the above reports or the NOR requesting registration under this chapter until after construction is complete and any disturbance reclaimed or effective stormwater quality remediation achieved. Operators of NPDES construction sites shall retain copies of all records required by this chapter for a period of at least three (3) years after proper termination of registration pursuant to the requirements of this chapter. This period may be extended by the Director at any time during the 3 year record retention period for reasonable cause. If litigation or other enforcement action is ongoing which involves any of the above records, the records shall be kept until the litigation or other enforcement action is resolved.

(5) Except for data determined to be confidential under Code of Alabama 1975, § 22-22-9(c), as amended, under rule 335-6-6-.07, all reports prepared and submitted in accordance with the terms of this chapter shall be

available for public inspection at the Department's Central Montgomery Office, or through alternative procedures implemented by the Department.

(6) The operator shall furnish to the Department any information which the Director may request to determine whether cause exists for modifying, revoking, and requiring coverage under an NPDES individual permit, or terminating the construction site's registration under this chapter, or to determine compliance with this chapter.

(7) Failure to record and maintain adequate records documenting the operation of a construction site shall not be a defense to the Department determining that the construction activity is an NPDES construction site requiring registration under rule 335-6-12-.11.

(8) Summary annual reports for the previous year shall be submitted in a format acceptable to the Department and with submittal of an NOR requesting re-registration:

(a) For construction projects granted a multi-year registration, the report shall summarize all inspection information every twelfth (12th) month after initial registration, regardless of the status of the site, until construction is finished, reclamation of disturbed areas is complete, or effective stormwater quality remediation is achieved, and the registration is properly terminated;

(b) With a request by the operator to re-register or terminate registration under this chapter after completion of all disturbance, reclamation, and stormwater remediation activities. Documentation summarizing all inspection and monitoring data and other relevant information and, for requests for termination of registration, a demonstration that appropriate, effective actions have been taken for the survival of permanent vegetative cover shall be included with this request; and

(c) Results of all required inspections shall be summarized in a format acceptable to the Department, and shall be available for inspection no later than fifteen (15) days following the date of the inspection, monitoring, or sampling. Reports shall be legible and bear an original signature or, in the case of electronic reports, an electronic signature.

(9) Construction site operators shall furnish to the Department upon reasonable request and in a timely manner, available information, including but not limited to, the name, phone number, address, county, site location, and directions to the site, which identifies offsite sources of material, natural resources used or stored at the construction site, and the acquisition, usage, storage, handling, and transport of construction site related regulated chemicals, compounds, and pollutants.

(10) The operator shall notify the Department as soon as it is known, or there is reason to believe, that any activity has occurred or will occur which would result in the discharge on a routine or frequent basis of any toxic pollutant which is not effectively limited/controlled by the requirements of this

chapter, or if that discharge will exceed the highest of any notification levels pursuant to rule 335-6-6-.13.

(11) Recording of Results.

(a) For each inspection, measurement, sample taken, laboratory or field measurement, parameter, or analysis performed, observed, or recorded pursuant to the requirements of this chapter, the operator shall record the following minimum information:

1. The site/facility name and location, registration number, source location, date, time and exact place of sampling, if conducted. If sampling is not conducted, a written explanation why sampling was not conducted or did not need to be conducted to ensure compliance with the requirements of this chapter;

2. The name of those persons who performed the inspection or obtained the samples or measurements; the dates and times the inspection or the analyses were performed; the name(s) of the person(s) who performed the analyses; the analytical techniques or methods used, including source of method and method number; the equipment used, methods used, and calibration procedures; the results of all samples and analyses; and

3. Any deficiencies noted during the inspection, any corrective action or mitigation needed to correct the deficiencies, and a proposed compliance schedule not to exceed seven (7) days for temporary, nonstructural BMP implementation, fifteen (15) days for implementation of structural controls, or an alternative schedule acceptable to the Department.

(b) The operator shall maintain records regarding chemical use, storage, and including a copy of all Material Safety Data Sheet(s) (MSDS).

(12) If the operator becomes aware that it submitted incomplete information, failed to submit any relevant facts or submitted incorrect information in any report to the Department, it shall promptly submit such facts, corrections, or information with a written explanation for the mistake and/or omission.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.16 Reserved.

335-6-12-.17 Reserved.

335-6-12-.18 Entry and Inspection of Sites/Facilities.

(1) Any operator of a construction site shall upon the presentation of credentials, permit authorized representatives of the Department to enter, at all reasonable times, the construction project area and property and buildings at the construction site, and allow the representative to inspect facilities and equipment, review records, to conduct monitoring and sampling, and to:

(a) Have vehicle and equipment access to inspect at reasonable times, any facilities, or equipment, including but not limited to, monitoring and control equipment, BMPs, other practices, or activities regulated or required under this chapter; and

(b) Sample, inspect, take photographs, or monitor, the site at reasonable times for the purposes of assuring compliance with this chapter or as otherwise authorized by the AWPCA or CWA, any area, BMPs, equipment, disposal site, regulated by this chapter.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.19 Continuing Educational and Training Requirements.

(1) Unless the operator has employed or contracted with a QCP that performs duties as required by this chapter, and the QCP, or a qualified person under the direct supervision of a QCP, is readily available and able to be present onsite as often as is necessary to ensure full compliance with the requirements of this chapter, the operator shall ensure that:

(a) Effective January 1, 2004, at least one onsite employee shall maintain valid QCI Certification. The employee(s) holding QCI Certification need not be on-site continuously and they may represent multiple sites.

(b) Effective January 1, 2004, the employee QCI of existing NPDES construction sites shall obtain annual certification of satisfactory completion of formal refresher education or training regarding general BMPs, Alabama NPDES construction stormwater management requirements, and Department recognized QCI training. The refresher training requirements, including but not limited to, appropriate curricula, course content, course length, minimum/maximum training/contact hours, any participant testing, and evaluation of the effectiveness/applicability of the training shall be subject to acceptance by the Director prior to use.

(2) An operator shall submit the continuing education greenfield fee with each NOR as provided in chapter 335-1-6, if any QCI employed by the operator as set forth in rule 335-6-12-.19(1), does not maintain required QCIP training.

(3) Failure to comply with rule 335-6-12-.19(1), and if required, obtain and submit certification of the prerequisite initial and annual refresher training and education, or alternatively submit the continuing education greenfield fee as provided in rule 335-6-12-.19(2), shall be deemed a violation of this chapter.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.20 Reserved.

335-6-12-.21 CBMPPs, Other Plans, Specifications, BMPs, and Technical Requirements.

(1) Commencement and/or continuation of NPDES construction activity is prohibited after March 1, 2003, or the effective date of this chapter, whichever date occurs later, unless effective BMPs are implemented and maintained in accordance with a CBMPP prepared/certified by a QCP as adequate to meet the requirements of this chapter and applicable requirements of ADEM Administrative Code division 335-6. The CBMPP and any BMPs shall meet or exceed following the technical standards and guidelines:

(a) The Alabama Handbook; and

(b) In accordance with the requirements of this chapter.

(2) Construction Best Management Practices Plan (CBMPP)

(a) The operator of an NPDES construction site shall implement a comprehensive CBMPP appropriate for site specific conditions that has been prepared and certified by a QCP. The CBMPP shall describe in detail the structural and/or non-structural practices and management strategies which will be implemented and continually maintained to prevent/minimize the discharge of all sources of pollutants, including but not limited to, sediment, construction waste, oil & grease, chemicals, and other pollutants. The CBMPP shall be updated as necessary to address any potential or observed deficiencies.

(b) The CBMPP shall include a description of appropriate, effective water quality BMPs to be implemented at the site as needed to ensure compliance with this chapter, including but not limited to:

1. Maximum diversion of upgradient or offsite water from the site and minimum duration of disturbed area exposure;

2. Minimization of surface area that is disturbed at any one time (project phasing); Minimize introduction, and facilitate removal, of sediment, nutrients, and other pollutants in the stormwater;

3. Proper cleanup/removal or effective stabilization of sediment deposited offsite, in the event of such an occurrence and effective remediation of sediment or other pollutant instream impacts to the maximum extent practicable;

4. Measure(s) to ensure that dilution water is not used as a BMP to achieve compliance with the requirements of this chapter unless the Director has granted prior written authorization;

5. Measures to be implemented on all areas not undergoing active disturbance or active construction and progressive construction for longer than thirteen (13) days to prevent/minimize erosion and ensure timely temporary vegetative cover, and permanent revegetation or cover of all disturbed areas when disturbance is complete;

6. A system for the proper collection, storage, treatment, and disposal of construction site sanitary wastes, sewage, gray-water, and putrescible wastes;

7. Construction waste and sediment contaminated as a result of construction activities shall be removed and disposed of in accordance with applicable regulatory requirements in a timely manner. The operator shall perform regular cleanup and proper disposal of any floating, submerged, or offsite deposited construction waste resulting from construction activities;

8. BMPs addressing water, stormwater, and fluid acquisition operations, dewatering, and pre-disturbance discharges that are, or may be, associated with construction regulated by this chapter. These CBMPP shall specify the method of withdrawal or dewatering and describe BMPs for activities, including, but not limited to, pump priming/maintenance discharges, dewatering of existing ponded or impounded water, dewatering of groundwater, and removal of natural obstructions or earthen structures to drain existing ponded or impounded water prior to or during construction. The CBMPP shall detail effective BMPs to protect groundwater and surface waters of the State as a result of discharges associated with the fluids acquisition and dewatering sites;

9. A detailed description of the site and the nature of the construction activity, including site design plans if required by the Department; A description of the intended sequence of major activities which disturb soils, including but not limited to, grubbing, excavation, and/or grading; Existing data describing the surface soils as well as subsoils;

10. Estimates of the total area of the property and the total site area that is expected to be disturbed by excavation, grading, or other activities, including off-site temporary borrow and fill areas; Estimates, including any calculations of the runoff coefficient(s) of the site before and after construction activities are completed;

11. Identification of the receiving water(s) from the United States

Geological Survey 7.5-minute series topographical map(s) or equivalent;

12. Description of temporary and permanent stabilization practices, including a schedule and/or sequence for implementation. Operators shall ensure that site plans provide for the stabilization of disturbed portions of the site; Description of structural and nonstructural practices to divert flow from exposed soils, store stormwater flows, or otherwise limit runoff and the discharge of pollutants;

13. Management of any overland flow not otherwise controlled by effective BMPs; Trapping of any sediment in channelized flow to the extent possible; Staging construction to limit bare areas subject to erosion; Protection of down slope drainage inlets where they occur; Minimization of offsite sediment/mud tracking by vehicles or equipment; Stabilization of drainage ways or channels; Installation of permanent stabilization practices as soon as possible after final grading; and

14. Use of energy or flow velocity dissipation devices at discharge locations and along the length of any outfall channel to provide a stable, non-erosive flow velocity from the structure and prevent waterbody scouring, streambank erosion, and sedimentation, during and after construction.

(c) Appropriate detailed map(s), drawings or descriptions as part of the CBMPP shall include:

1. Existing topography and drainage patterns and features, existing structures, proposed structures, roads, utilities, ROWs, and waterbody(s); Property ownership and lease boundaries of the site; Drainage patterns and approximate slopes anticipated after major grading activities; Boundaries of the site/activity and areas of soil disturbance; and

2. Locations of major structural and nonstructural BMPs proposed to be implemented; Locations where permanent stabilization practices will be employed including areas stabilized by buildings, other structures, other acceptable impervious surfaces; Areas which will be permanently vegetated following construction.

(d) Each CBMPP shall include, as appropriate , component plans as needed that address pre-construction project planning and design, project phasing, BMP implementation and maintenance, inspection and sampling efforts, record keeping, emergency response, construction site nutrient management, pollution prevention efforts, preventive and continuing maintenance efforts, spill prevention control and countermeasures, remediation, mitigation, and restoration efforts, post-construction stormwater flow and quality, training and continuing education, runoff coefficients and infiltration rates, streambank protection, and pre-construction site assessment information such as soils characteristics and maps, site hydrology, geology, land use, site topography, receiving water quality, slope stability, precipitation patterns, climate, survival of temporary vegetative cover, site specific effective erosion control, site specific effective sediment control, location of waterbody(s),

sinkholes, wetlands, and wells, and other relevant information or component plans identified by the operator, QCP, or the Department.

(e) CBMPP revisions or additions shall be documented, to include, as appropriate, updated site maps, photographs, history of the location, description of implemented BMPs, basis for the use of specific BMPs, analysis of any BMP deficiencies, and other information produced by the operator, QCP, and QCI, including but not limited to, inspection reports, logs, checklists and project diaries. The CBMPP, and all components of the CBMPP, as updated/amended in compliance with this chapter, shall become a part of the operator's registration.

(3) If full implementation and regular maintenance of BMPs are not, or will not be, protective of water quality, the operator shall immediately update the CBMPP and implement additional effective structural and nonstructural BMPs as necessary to protect water quality.

(4) BMPs shall be designed, implemented, and regularly maintained to provide effective treatment of discharges of pollutants in stormwater resulting from runoff generated by probable storm events expected/predicted during construction disturbance based on historic precipitation information, and during extended periods of adverse weather and seasonal conditions.

(5) The operator shall ensure that:

(a) BMPs shall be fully implemented and regularly maintained in accordance with the Alabama Handbook, recognized practices, effective industry standard pollution control practices, requirements of the CBMPP, the requirements of this chapter, and consistent with the requirements of the AWPCA and regulations promulgated pursuant thereto;

(b) Effective BMPs shall be implemented to the maximum extent practicable to prevent offsite sedimentation and deposition of construction site wastes;

(c) Any BMPs located in a floodplain shall be designed, implemented, and maintained to provide effective treatment to the maximum extent practicable in response to the occurrence of a flood event;

(d) BMPs shall not result in the contamination of drinking water and shall not cause or contribute to a violation of any State water quality standard;

(e) Diversion structures, including but not limited to, berms, ditches, and swales created in order to re-route upgradient stormwater runoff from the proposed project location shall be constructed, stabilized, and vegetated as necessary, consistent with recognized effective industry standard practices, prior to or concurrent with the commencement of construction activities;

(f) Proper management and disposal of solid, toxic, or hazardous wastes resulting from activities authorized by this chapter are performed as required by Departmental rules; and

(g) Effective measures are taken to prevent/minimize the deposition of airborne pollutants, including but not limited to, sand blasting particles, spray paint, herbicides, excessive road or other airborne dust, from entering any waterbody.

(6) The operator is responsible for remediation of any offsite deposition or discharge of sediment and other pollutants and shall, if required by the Department, implement measures to remediate any impacts to the maximum extent practicable.

(7) Unless specifically detailed in a CBMPP submitted with an NOR to the Department, instream or within-bank NPDES construction and noncoal mining disturbance, including but not limited to, trenching, ditching, digging, excavation, blasting, drilling, and placement of fill, within a Tier 1 waterbody segment due to a construction activity pollutant of concern, or in any water segment designated as ONRW, pursuant to the requirements of chapter 335-6-10, is not authorized by this chapter, unless specifically approved in writing by the Department. The Department may require the implementation of additional BMPs when necessary to protect water quality for construction disturbance discharging to a Tier 1 waterbody segment.

(8) BMPs shall not be installed in a water of the State except as provided in the Alabama Handbook, or unless authorized by the Department.

(9) Effective measures shall be taken to prevent, to the maximum extent possible, the deposition/disposal, and to effect the removal as necessary, of materials, waste, debris/litter, or liquids resulting from bridge/culvert NPDES construction. Examples of these materials include, but are not limited to, waste concrete/cement, wash water, surfactants, sand blasting particles and paint, from falling or being placed into any waterbody.

(10) The installation or use of instream or within-bank sediment storage traps or deposition areas, or other sediment storage/detention BMPs, in waters of the State is not authorized.

(11) Unless alternate or innovative practices acceptable to the Department are implemented and maintained to protect water quality in any State water during NPDES construction disturbance, the operator shall ensure that:

(a) Permanent or temporary elevated waterbody crossings constructed in conjunction with the regulated activity shall safely pass expected water flow for the duration of use. Crossings shall be inspected as often as is necessary and any significant debris or blockage removed and properly disposed of to ensure unobstructed flow. During construction, placement of rock-fill without pipe(s) for passage of water is not authorized unless approved in writing by the

Department;

(b) The bottom of any new or diverted channel is concave in shape or has a base-flow channel to ensure adequate concentrated and unobstructed flow of water during periods of low flow;

(c) Effective BMPs, including installation of floating turbidity screens, are implemented as necessary to minimize downstream turbidity;

(d) Disturbance is minimized to the extent practicable to ensure the protection of water quality and ensure the physical integrity of the waterbody;

(e) Temporary or permanent stockpiling and side-casting of excavated material within the banks of a waterbody, or disposal of material into waters of the State from dredging/disturbance does not occur, unless specifically approved in writing by the Department;

(f) The width of any access through a streambank is minimized to the extent practicable, and a continuous program of effective erosion and sediment control measures is implemented prior to and concurrent with construction disturbance. When NPDES construction disturbance is completed, access through the streambank shall be restored to original contours, stabilized, and, unless structural forms of stabilization such as stone rip-rap are more appropriate, vegetated with annual and perennial vegetation consistent with pre-disturbance conditions or such alternate condition that provides an equal protection of water quality;

(g) Unless authorized otherwise by the Department, equipment, machinery, vehicles, or pollution prevention/abatement equipment, or other construction materials, shall not be left unattended within any watercourse;

(h) Potentially affected parties are notified, as appropriate, of the intent to conduct NPDES construction disturbance in a watercourse within one-half mile upstream or one-quarter mile downstream of any existing municipal or public water intake;

(i) Permanent revegetation or stabilization and restoration at each streambank is performed. Unless allowed otherwise by the Department, permanent revegetation or stabilization and restoration, certified by a QCP or QCI, shall be completed no later than thirty (30) days after permanent completion or cessation of the regulated disturbance.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.22 Reserved.

335-6-12-.23 Reserved.

335-6-12-.24 Alternative or Innovative Technology.

(1) CBMPPs may include alternative or innovative technology, procedures, or BMPs not included in the Alabama Handbook, provided that:

(a) Use of an alternative technology or procedure is consistent with the requirements of this chapter and is accepted by the Department prior to its use;

(b) Point source and nonpoint source pollutant discharges to waters of the State will be minimized to the maximum extent practicable from the use of the alternative technology or procedure; and

(c) Use of the alternative technology or procedure is protective of groundwater and surface water quality.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.25 Site Completion, Reclamation, Effective Stormwater Quality Remediation, and Termination of Registration.

(1) Upon completion of construction, and reclamation or effective stormwater quality remediation at an NPDES construction site or noncoal mining site registered, or required to be registered, under this chapter, the operator shall submit to the Department a complete and correct request for registration termination, including applicable QCP certifications and if required by the Department, photographs and monitoring data for the site. A request shall be prepared and certified by a QCP consistent with the requirements of this chapter, the requirements of the regulations promulgated pursuant to the AWPCA, and any additional conditions required by the Department to ensure to the maximum extent practicable the continued protection of water quality. The request shall be submitted in a format acceptable to the Department.

(2) Unless the operator is notified by the Department within 30 days of receipt that the request has not been granted, in total or in part, the request for termination is considered granted provided the operator complies with, and the construction site remains in full compliance with, all provisions of this chapter. It is the responsibility of the operator to ensure that information submitted in the request for termination, including any attachments, is true, complete, and accurate, and to verify receipt of a complete and correct request for termination by the Department. It remains the responsibility of the operator to submit and verify receipt by the Department any corrected or additional information to complete the request for termination, if required by the

Department. Failure to submit a complete and correct request for termination and ensure that the construction site remains in full compliance with all provisions of this chapter may result in denial of the request for termination.

(3) The request for termination shall be in a format acceptable to the Department, and shall include:

(a) Certification from the operator, and a QCP or a qualified person under the direct supervision of a QCP, including if needed, photographs, documenting that the site has in fact been properly completed in accordance with the requirements of this chapter;

(b) Confirmation that the stormwater discharges associated with construction activity have been eliminated, effective reclamation or stormwater quality remediation has been achieved, permanent vegetation has been established, or the operator no longer has operational control of the site;

(c) If applicable, confirmation by the operator stating in detail the reason(s) that the operator may not have operational control, to include any information required by the Department, including but not limited to, property deeds, bill-of-sale, contracts, legal affidavits, correspondence and detailed information regarding the identified succeeding operator. It remains the responsibility of the operator to submit and verify receipt by the Department of required information. Loss of operational control does not relieve the operator from liability and responsibility for compliance with the provisions of this chapter until the complete and correct request for termination is received by the Department. Failure to submit a complete and correct request for termination and ensure that the construction site remains in full compliance with all provisions of this chapter may result in denial of the request for termination. Sale or transfer of operational responsibility for the site by the operator prior to the succeeding operator obtaining registration required by this chapter, does not relieve the registrant from the responsibility to comply with the requirements of this chapter;

(d) Certification, and documentation if required by the Department, that inspections required by this chapter were performed by a QCI, QCP, or a qualified person under the direct supervision of a QCP.

(e) Certification, and documentation if required by the Department, that QCIP continuing education training was completed if required by this chapter.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.26 Discharge and Receiving Water Evaluation Requirements.

(1) It is possible and allowable to achieve and maintain compliance with the requirements of this chapter without conducting any discharge sampling provided a QCI, QCP or a qualified person under the direct supervision of a QCP documents and certifies on each inspection report or other report/log that sampling is not necessary to properly evaluate and document the effectiveness or deficiencies of BMP implementation to ensure compliance with this chapter. It remains the responsibility of the operator to be continually aware of and to effectively evaluate the quality of the stormwater being discharged. Lack of knowledge regarding stormwater discharge quality or receiving water quality shall not constitute a valid defense with regard to deficiencies in BMP implementation and maintenance, negative impacts to water quality, or other noncompliance with the requirements of this chapter.

(2) It remains the responsibility of the operator to document and ensure that effective BMPs are properly designed, implemented, and consistently maintained utilizing recognized effective industry standard practices to prevent/minimize to the maximum extent practicable discharges of pollutants in stormwater runoff.

(3) Stormwater discharge flow can be determined by direct measurement, calculation, or other generally accepted scientific method by a QCI, QCP or a qualified person under the direct supervision of a QCP.

(4) Precipitation shall be measured and recorded in tenths of an inch by the operator or an individual under the direction of the operator, using continuous recorders, daily readings of an onsite precipitation gauge, or daily readings of an offsite precipitation gauge located adjacent to or in close proximity to the facility.

(5) Receiving Water Turbidity Monitoring and Limitations.

(a) A QCI, QCP, or a qualified person under the direct supervision of a QCP shall inspect as necessary, and if needed, conduct sampling, during NPDES construction activity, monitoring upstream and downstream turbidity after reasonable opportunity for mixing has been afforded of all affected watercourse(s) to ensure protection of water quality.

(b) It is possible and allowable to achieve and maintain compliance with the requirements of this chapter without conducting any instream turbidity or other instream sampling provided a QCI, QCP, or a qualified person under the direct supervision of a QCP documents and certifies on any inspection report or other report/log that instream sampling is not necessary to properly evaluate and document the effectiveness or deficiencies of BMP implementation and that discharges are not causing or contributing to a contravention of Alabama water quality standards. It remains the responsibility of the operator to be continually aware of and to effectively evaluate instream

water quality.

(c) Background or upstream turbidity for discharges to a municipal separate storm sewer system (MS4) or where the NPDES construction site is the headwater of the receiving water shall be determined from offsite drainage entering the site and/or from drainage areas or waters near the site which do not receive discharges from the facility, or are not impacted by the facility or a similarly situated or type facility, acceptable to the Department.

(6) Samples, if collected, and measurements taken for purposes of determining compliance with this chapter shall be representative of the volume and nature of the monitored discharge and shall be in accordance with the provisions of this chapter.

(7) Test procedures for the preservation and analysis of samples shall conform to rule 335-6-6-.14 and guidelines published pursuant to § 304(h) of the FWPCA, 33 U.S.C. § 1314(h). If more than one method for analysis of a substance is approved for use, the method having a lower detection limit shall be used.

(8) All equipment and instrumentation used to determine compliance with the requirements of this chapter must be installed, used, maintained, and calibrated in accordance with the manufacturer's instructions. If used, flow measurement devices shall be calibrated in accordance with the manufacturer's instructions if available, or at least once every six (6) months.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.27 Reserved.

335-6-12-.28 Inspection Requirements.

(1) The operator shall ensure that regular, comprehensive site and receiving water(s) inspections are conducted to ensure that effective BMPs are properly designed, implemented, and consistently maintained in accordance with the requirements of this chapter.

(2) Comprehensive inspections of NPDES construction sites and areas impacted by the construction site, including affected ditches and other stormwater conveyances, perennial and intermittent waterbody(s), streambanks, and floodplains, shall be performed by a QCI, QCP, or a qualified person under the direct supervision of a QCP as often as is needed to ensure, document, and certify continuing compliance with the requirements of this chapter. The QCI, QCP, or a qualified person under the direct supervision of a QCP performing the inspection shall evaluate and document on the inspection

report if the BMPs being implemented are adequate and if additional or improved control measures are needed. If the CBMPP plan is determined to be deficient, the CBMPP shall be revised and the revisions fully implemented within seven (7) calendar days following the inspection unless an alternate scheduled is approved in writing by the Department.

(3) Each day there is activity at the site, the operator, a QCI, a QCP, a qualified person under the direct supervision of a QCP, other qualified consultant, or other qualified persons, shall visually observe that portion of the construction project where active disturbance, work, or construction occurred and report any apparent BMP deficiencies observed to the operator, QCP, or QCI.

(4) Complete and comprehensive inspections/evaluations of defined or designated NPDES construction sites/activity shall be performed:

(a) A minimum of once a month, by a QCI, QCP, or a qualified person under the direct supervision of a QCP;

(b) A minimum of once every six (6) months, by a QCP or a qualified person under the direct supervision of a QCP;

(c) Except as provided in rule 335-6-12-.28(4)(d), by a QCI, QCP, or a qualified person under the direct supervision of a QCP, after any precipitation of 0.75 inches or greater in any 24-hour period since the last inspection, commencing as promptly as possible, but no later than 48-hours after resuming or continuing active construction or disturbance, and completed no later than 72-hours following the qualifying precipitation event;

(d) On linear projects, including but not limited to, oil/gas, water, and sewer pipelines, conveyors, roads, highways, power lines, buried cables, or other energy or resource transmission right-of-way (ROW) or utility infrastructure, equal to or exceeding ten miles of disturbed length where active construction or areas where annual or perennial vegetation has not been fully established, by a QCI, QCP, or a qualified person under the direct supervision of a QCP, after any precipitation of 0.75 inches or greater in any 24-hour period since the last inspection, beginning as promptly as possible, but no later than 48-hours after resuming or continuing active construction or disturbance and completed no later than five (5) days after the qualifying precipitation event;

(e) At least once a week and as often as is necessary by a QCI, QCP, or a qualified person under the direct supervision of a QCP of all active disturbance, dredging, excavation, work, or construction undertaken or located within the banks of a waterbody, including but not limited to, equipment, vehicle crossing, pipelines, or other transmission line installation, conveyor structure installation, and waterbody relocation, streambank stabilization, or other alterations, until the disturbance/activity impacting the waterbody is complete and reclamation or effective stormwater quality remediation is achieved; and

(f) As often as is necessary until any non-compliant BMPs, discharges, or any deficiencies observed during a prior inspection are corrected and documented as being in compliance with the requirements of this chapter.

(5) Unless otherwise required by the Department, inspections or evaluations required by rule 335-6-12-.28(4) (a), (b), (c), or (d), do not have to be conducted for noncoal mining sites regulated under this chapter provided:

(a) The operator submits to the Department certification from a QCP, a minimum of once every three (3) months, with inspections at least two (2) months apart, that the noncoal mining site is designed and is being operated with significant freeboard due to incised mining excavation or incised storage basins to prevent all discharges resulting from groundwater intrusion, precipitation events less than the applicable 50-year, 24-hour precipitation event, or other stormwater sources to surface waters of the State, and;

(b) The noncoal mining site has been operated and is being operated in full compliance with the applicable requirements of this chapter; and

(c) In the case of precipitation that equals or exceeds the 50-year, 24-hour storm event, the QCP conducts a comprehensive inspection of the noncoal mining site within 72-hours of said event and representative samples of any discharges are obtained, and a detailed report is submitted to the Department within seven (7) days of the inspection if non-compliant discharges, deficient BMPs, or other deficiencies or noncompliance with the requirements of this chapter are observed.

(6) Suspension of applicable monitoring and inspection requirements for phased projects or developments such as transmission ROWs or subdivisions may be granted provided:

(a) The Department is notified in writing at least thirty (30) days prior to the requested suspension;

(b) The operator and QCP certify in the request that all disturbance has been graded, stabilized, and/or fully vegetated or otherwise permanently covered, and that appropriate, effective steps have been and will be taken by the operator to ensure compliance with the requirements of this chapter, and commit that these measures will remain continually effective until registration is properly terminated;

(c) The operator notifies the Department prior to resumption of disturbance or commencement of the next phase of development and the operator complies with the requirements of this chapter prior to commencement of additional disturbance;

(7) NPDES construction site inspection reports shall contain information and be in a format acceptable to the Department. The reports shall document facility/site conditions, describe any BMP deficiencies and maintenance needs. The reports shall detail any corrective action(s) that need

to be implemented to ensure compliance with the requirements of this chapter. Lack of knowledge by the operator of construction site conditions and compliance with this chapter shall not be a valid defense in an enforcement action.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.29 Reserved.

335-6-12-.30 Pollution Prevention for NPDES Construction Sites.

(1) Requirements for a Pollution Prevention Plan (PPP) shall be considered to be met by NPDES construction site through activities and BMPs that have been properly planned, designed, implemented, and maintained under the terms of this chapter.

(2) Spill Prevention, Control, and Management.

(a) The operator shall prepare, implement, and maintain a Spill Prevention, Control and Countermeasures (SPCC) Plan, as a separate document or as a component of the CBMPP, for all tanks/containers storing onsite fuel, chemicals, or other pollutants consistent with the requirements of rule 335-6-6-.12 and 40 CFR Part 112 (2002).

(b) Effective measures necessary to prevent spills and to clean up spills of any toxic pollutant, as documented in the facility's SPCC plan, shall be fully implemented. Soil contaminated by hazardous substances, paints, fuel, or chemical spills, shall be immediately cleaned-up, managed, and disposed of in an approved manner. Where potential spills can occur, materials handling procedures shall be specified and procedures for immediate cleanup/remediation of spills shall be described in the SPCC plan or employee training plans. The equipment necessary to implement a cleanup shall be made available to facility personnel. The operator shall immediately notify the designated State and local government agencies after becoming aware of a visible oil sheen in stormwater runoff from its facility or in a water of the State in the project vicinity as a result of activities at the site. The caller should be prepared to report the name, address and telephone number of the person reporting spill, the exact location of the spill, company name and location, the material spilled, the estimated quantity, the source of spill, the cause of the spill, the nearest downstream water with the potential to receive the spill, and the actions being taken for containment and cleanup.

(3) The operator shall observe, and if those observations reasonably warrant, conduct analyses of excavated or dredged material in order to ensure that potential pollutants are not present in concentrations that could cause or

contribute to a violation of applicable water quality standards. Information regarding the evaluation or detailed results of any analyses of excavated/dredged material shall be made available to the Department upon request.

(4) Solids, sludges, removed substances, or any other pollutant or other waste removed in the course of treatment or control of stormwater shall be disposed of in a manner that complies with applicable Department rules.

(5) The operator shall ensure that agents, employees, contractors, subcontractors, or other onsite persons with authorized access to the site, are informed of the pollution prevention and control requirements of this chapter.

(6) Post-construction stormwater management is not required for projects that do not significantly alter runoff volumes or velocities from conditions existing prior to the NPDES construction activity. Said management, if required, shall be implemented to control the discharge of pollutants associated with significant hydrologic modifications to the site resulting from construction activities. Post-construction stormwater management is not required by the provisions of this chapter to address stormwater quality from operation of the completed facility provided construction activity is complete, reclamation or effective stormwater quality remediation of the construction disturbance has been achieved.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.31 Reserved.

335-6-12-.32 Reserved.

335-6-12-.33 Ineffective BMPs, Discharge Prohibitions, and Noncompliance Notification.

(1) The discharge of pollutants from NPDES construction sites/activity not effectively treated to the maximum extent practicable by BMPs implemented and maintained pursuant to the requirements of this chapter is prohibited. If, for any reason, there is a non-compliant discharge that causes or contributes to a violation of applicable water quality standards, the operator is required to visually monitor and notify the Department as soon as possible, but in no case later than 24-hours after becoming aware of such discharge.

(2) The operator shall document and submit the following information in a form acceptable to the Department within five (5) days of becoming aware of any BMP deficiency/failure or non-compliant discharge that causes or contributes to a violation of applicable water quality standards:

(a) A description, including any photographs, and the reason for the deficiency, including an estimate of the flow, discharge volume, and any analytical data associated with the noncompliant discharges;

(b) The period of noncompliant discharge, including beginning and ending times and dates, and, if not already corrected, the anticipated date the non-compliant discharge is expected to cease, and steps taken (or to be taken) to reduce, eliminate, mitigate, and prevent the recurrence of such discharge;

(c) If the non-compliant discharge was caused by chronic or catastrophic precipitation event(s), information from the on-site precipitation gauge or weather station in close proximity to the facility documenting the amount and duration of the precipitation event(s); and

(3) The Department may require testing deemed necessary to protect waters of the State or to determine continuing compliance with the requirements of this chapter.

(4) The operator shall take all reasonable precautions to prevent the discharge of waters which have been, or could be, contaminated by pesticides, paints, solvents, preservatives, surfactants, surface blasting, pressure cleaning, excess coagulant, excess flocculent, or other chemicals, or activities. Termaticides, other pest and parasite controls, and water used to clean equipment used for the application of potentially hazardous or toxic chemicals shall be handled and disposed of and in a manner so as to prevent any pollutant from such material from entering the waters of the State according to applicable State and federal law.

(5) NPDES construction sites discharging through a municipal separate storm sewer system (MS4) shall comply with the requirements of this chapter prior to discharging to the system receiving the NPDES construction stormwater discharge.

(6) The discharge of stormwater, generated by any process, facility, or by any other means not under the operational control of the operator, not identified in the NOR, or not identified specifically in the description of a source when requesting registration, is not authorized by this chapter.

(7) Discharge Prohibitions.

(a) Except as specifically provided otherwise by this chapter, discharge of any untreated stormwater from a NPDES construction site to waters of the State at any time is prohibited, except as a direct result of periods of chronic or catastrophic precipitation or weather conditions as determined by the Department, provided:

1. The Department is notified as required by this chapter;

2. Appropriate, effective BMPs that meet or exceed the requirements of this chapter have been fully implemented and regularly maintained prior to the causative precipitation event;

3. The discharge is unavoidable after the operator has taken action to prevent discharge(s) to the maximum extent practicable;

4. The operator takes action to terminate discharge(s) to the maximum extent practicable and as soon as possible; and

5. The operator takes action to mitigate any impacts caused by the discharge(s) to the maximum extent practicable and as soon as possible.

(b) Uncontaminated drainage or runoff which does not come into contact with construction activity or other pollutants should be excluded from flowing onto the site to the extent practicable.

(8) The operator shall give the Department written advance notice of any anticipated noncompliance, planned changes, or other circumstances regarding disturbance activities which may result in noncompliance with the requirements of this chapter.

(9) Noncompliance Notification.

(a) If for any reason, the operator's discharge: 1. threatens human health or welfare, fish or aquatic life, or water quality standards; 2. does not comply with an applicable toxic pollutant effluent standard or prohibition established under § 307(a) of the FWPCA, 33 U.S.C. § 1317(a); 3. contains a quantity of a hazardous substance which has been determined may be harmful to public health or welfare under § 311(b)(4) of the FWPCA, 33 U.S.C. § 1321(b)(4); 4. exceeds any chapter condition or discharge limitation for an effluent characteristic as a result of an unanticipated bypass and/or upset; 5. is an unpermitted direct or indirect discharge of a pollutant to a water of the state (unpermitted discharges properly reported to the Department under any other requirement are not required to be reported under this provision); or 6. if the operator is in significant noncompliance with the CBMPP and BMPs required by this chapter, the operator shall report the occurrence and circumstances of such discharge to the Department with a written report with content and in a format acceptable to the Department no later than five (5) days after becoming aware of the occurrence of such discharge.

(b) If for any reason, the operator's discharge does not comply with any limitation or condition of this chapter, the operator shall submit to the Department a written report as provided in rule 335-6-12-.33(14)(c) below. Such report shall be submitted no later than five (5) days after becoming aware of the occurrence of such noncompliance.

(c) Any written report required to be submitted to the Department by rule 335-6-12-.33(14)(a) or (b) above shall be submitted using a copy of the Noncompliance Notification Form, and shall include the following information:

1. A description of the discharge and cause of noncompliance;

2. The period of noncompliance, including dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

3. A description of the steps taken and/or being taken to reduce or eliminate the non-complying discharge and to prevent its recurrence.

4. A description of the efforts taken to mitigate any adverse impacts of such noncomplying discharge.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.34 Reserved.

335-6-12-.35 Other Requirements.

(1) Operators of NPDES construction sites shall at all times properly operate and maintain all BMPs, facilities, systems of treatment and control, and associated appurtenances which are installed or used by the operator to achieve compliance with the conditions of this chapter. Proper operation and maintenance includes effective performance, adequate funding, proper completion of logs/reports, maintenance of records, and adequate laboratory and process controls, including appropriate quality assurance procedures, adequate staff, and prerequisite and annual training requirements as described in rule 335-6-12-.19. Proper operation and maintenance includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the requirements of this chapter.

(2) Any person who falsifies, tampers with, or knowingly renders inaccurate or inoperable any equipment, monitoring device, record, method, or other activity, responsibility, or practice required to be performed or maintained under this chapter may be punished by fines and/or imprisonment as provided by State and federal law.

(3) Bypass – Any bypass is subject to the requirements of rule 335-6-6-.12(m).

(4) Upset – Any upset is subject to the requirements of rule 335-6-6-.12(n).

(5) Property Rights, and Other Rights and Responsibilities

(a) Registration approval under this chapter does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other

private rights, or any infringement of federal, State, or local laws or regulations, nor does it authorize or approve the construction of any physical structures or facilities or the undertaking of any work in any waters of the State or waters of the United States.

(b) Except as expressly provided by this chapter, liability and responsibility for compliance with the requirements of this chapter are not delegable by contract or otherwise. The operator shall ensure that any partner, consultant, agent, contractor, subcontractor, or other person employed by, under contract, paid a salary by, or under the direction/control of the operator complies with the requirements of this chapter. Failure of a QCI, QCP, qualified person under the direct supervision of a QCP, or any other person under contract to perform or inform the operator shall not be considered a valid defense in any enforcement action and shall not stay any requirement of this chapter. Violations resulting from the actions of such person shall be considered violations of this chapter and may subject the operator to enforcement action.

(c) Except as otherwise provided by Alabama law, issuance of registration under this chapter does not modify in any way an operator's legal responsibility or liability, to apply for, obtain, or comply with other applicable ADEM, federal, State, or local government permits, authorizations, registrations, ordinances, regulations, certifications, licenses, or other approvals, not regulated by this chapter prior to commencing or continuing construction disturbance regulated by this chapter.

(6) Groundwater. Unless specifically authorized by this chapter, other laws or rules or the Director, the discharge of pollutants to groundwater is not authorized. Should a threat of groundwater contamination occur, the Director may require groundwater evaluation and/or monitoring to properly assess the degree of the problem and the Director may require that any operator undertake measures to mitigate, remediate, and/or abate any such discharge and/or contamination. Groundwater investigation/evaluation, monitoring, mitigation, remediation, and other activities performed voluntarily by the operator or required by the Director, shall be conducted in accordance with a plan accepted by the Department.

(7) Coastal Zone Management. Registration approval under this chapter for construction projects subject to the Alabama Coastal Area Management Program (ACAMP) are conditionally certified under the ADEM Coastal Program requirements, contingent upon continued compliance with the requirements of this chapter and ADEM Administrative Code division 335-8. Registration approval under this chapter does not modify, abrogate, or supercede the requirement for an operator to apply for and/or obtain, if applicable, Alabama Coastal Area Management Program (ACAMP) permits and/or certifications required by division 335-8, including the requirement to obtain a Coastal Area Non-Regulated Use Permit for Commercial and Residential Developments in the Coastal Area that are, or will be greater than size thresholds established by division 335-8.

(8) Registration or the requirements of this chapter do not modify, abrogate, or supercede the requirement for an operator to apply for and/or otherwise obtain, if applicable, CWA § 404 permit coverage or other approvals from the U.S. Army Corps of Engineers (COE) and CWA § 401 Water Quality Certification from the Department.

(9) If any applicable effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is established under § 307(a) of the FWPCA, 33 U.S.C. § 1317(a), for a toxic pollutant discharged by the operator and such standard or prohibition is more stringent than any discharge limitation or requirement on a pollutant regulated or described in this chapter, or controls a pollutant not limited/controlled by this chapter, registration under this chapter shall be modified to conform to the toxic pollutant effluent standard or prohibition and the operator shall be notified of such modification. If registration has not been modified to conform to the toxic pollutant effluent standard or prohibition before the effective date of such standard or prohibition, the operator shall attain compliance with the requirements of the standard or prohibition within the time period required by the standard or prohibition and shall continue to comply with the standard or prohibition until the registration is modified or a complete request for re-registration is received by the Department.

(10) Duty to Mitigate and Remediate Adverse Impacts.

(a) The operator shall notify the Department and promptly take all reasonable steps to 1) mitigate and prevent/minimize any adverse impact resulting from noncompliance with any limitation or requirement of this chapter, 2) determine the nature and impact of the non-complying discharge, and 3) remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody or stormwater conveyance structure. The necessity to suspend or cease construction or other activities authorized under this chapter in order to effectively mitigate and remediate adverse impacts shall not be a defense in any enforcement action.

(b) After consultation initiated by the operator with the Department, if it is determined by the Department that removal of pollutants or other mitigation or remediation alternatives may not be protective of water quality, or are otherwise not appropriate or feasible, the operator may be required by the Department to design and implement additional and/or alternative measures to address or mitigate water quality impacts caused by the activity, BMP deficiency, upset or bypass condition, or non-complying discharge.

(11) Duty to Comply.

(a) The operator shall take all reasonable steps, including cessation of construction, building, production, or other activities, to prevent/minimize any violation of this chapter or to prevent/minimize any adverse impact of any violation of the requirements of this chapter.

(b) Upon the loss or failure of any treatment facility or BMP, including

but not limited to, the loss or failure of the primary source of power of any monitoring/sampling equipment, the operator shall, where necessary to maintain compliance with the requirements of this chapter, cease, suspend, reduce, or otherwise control construction or other activities until treatment is restored or effective BMPs have been repaired or installed.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

335-6-12-.36 Reserved.

335-6-12-.37 Severability. If any provision, requirement, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

Author: Richard Hulcher.
Statutory Authority: Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16 et seq., as amended.
History: January 23, 2003.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER DIVISION - WATER QUALITY PROGRAM

CHAPTER 335-6-13
CENTRALIZED WASTE TREATMENT FACILITY FINANCIAL ASSURANCE REQUIREMENTS

TABLE OF CONTENTS

335-6-13-.01 Purpose
335-6-13-.02 Applicability
335-6-13-.03 Definitions
335-6-13-.04 Other Closure Requirements
335-6-13-.05 Financial Assurance Violations
335-6-13-.06 Financial Assurance Criteria
335-6-13-.07 Allowable Mechanisms for Financial Assurance
335-6-13-.08 Release from Financial Assurance Requirements by the Department

335-6-13-.01 Purpose. To require certain centralized waste treatment facilities to post a performance bond or other financial assurance in an amount sufficient to close the facility if the facility owner or operator ceases operation, abandons the facility, or fails to properly maintain the facility to ensure compliance with state environmental regulations.

Author: Chris Sasser; Daphne Smart
Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.
History: March 26, 2013.

335-6-13-.02 Applicability.

(1) The requirements of 335-6-13-.06 apply to owners or operators of centralized waste treatment facilities as defined by federal effluent guidelines set forth at 40 CFR Part 437, when applying for issuances or reissuances, or modifications of a permit for a facility that processes or treats industrial wastes, industrial wastewater, or used material. The following facilities are exempt from the requirements of this Chapter:

(a) waste treatment facilities which treat waste only from sources owned or operated by the owner of the waste treatment facilities or

(b) waste treatment facilities which treat waste pursuant to a contract at a waste treatment facility which also treat waste from sources owned or operated by the owner.

Author: Chris Sasser; Daphne Smart
Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.
History: March 26, 2013.

335-6-13-.03 <u>Definitions</u>. Wherever used in this rule, unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of this rule, the following shall mean:

(a) "Active life" means the period of operation beginning with the initial receipt of wastes, wastewater, or other used material and ending at completion of closure of the facility.

(b) "Annual" shall mean a calendar year.

(c) "Application" means forms and additional information that are required by rule 335-6-6 or 335-6-5 to be submitted when applying for an NPDES or SID Permit.

(d) "Centralized Waste Treatment Facility" also referred to as waste treatment facility means a facility as defined by federal effluent guidelines set forth at 40 CFR Part 437.

(e) "Certification" means a statement of professional opinion based upon knowledge and belief.

(f) "CFR" means Code of Federal Regulations.

(g) "Closure" for the purpose of this regulation only means removal and proper disposal, processing, or handling of industrial wastes, wastewaters, used materials, sludge, and any other materials, including but not limited to raw materials, byproducts, additives, and products.

(h) "Current closure cost estimate" as used in 335-6-13-.06 means the most recent of the estimates prepared in accordance with 335-6-13-.06.

(i) "Department" means the Alabama Department of Environmental Management as established by Code of Alabama 1975, § 22-22A-4.

(j) "Director" means the Director of the Alabama Department of Environmental Management, appointed pursuant to Code of Alabama 1975, § 22-22A-4, or his or her designee.

(k) "Discharge" means the addition, introduction, leaking, spilling, or emitting of any sewage, industrial wastes, pollutant or other wastes into waters of the state.

(l) "Engineer" means a person currently registered as a professional engineer with the State of Alabama Board of Registration for Professional Engineers and Land Surveyors.

(m) "Final closure" means the completion of closure of a facility.

(n) "Financial Assurance" means a financial arrangement by the owner or operator of a centralized waste treatment facility which guarantees the availability of funds which may be used for closure of the facility if determined necessary by the Department should the owner or operator cease operation, abandon the facility, or fail to properly maintain the facility to ensure compliance with state environmental regulations.

(o) "NPDES" or National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits for the discharge of pollutants into waters of the state.

(p) "Operator" means the person(s) having direct supervision over and responsibility for the daily operation of the centralized waste treatment facility.

(q) "Owner" means the person(s) who owns a facility or part of a facility.

(r) "Permit" means an issued NPDES or SID Permit.

(s) "SID Permit" or State Indirect Discharge Permit means a permit issued to an industrial user.

(t) "State" means the State of Alabama.

Author: Chris Sasser; Daphne Smart
Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.
History: March 26, 2013.

335-6-13-.04 Other Closure Requirements. These rules and regulations do not supersede any other Departmental regulations regarding closure of any type of facility. Affected facilities shall comply with the conditions of these rules and any other applicable rules and regulations.

Author: Chris Sasser; Daphne Smart
Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.
History: March 26, 2013.

335-6-13-.05 Financial Assurance Violations. Failure of the obligor of the bond or financial assurance to provide service satisfactory to the Department shall constitute a cause of action for recovery in a civil action at the instance of the Department.

Author: Chris Sasser; Daphne Smart
Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.
History: March 26, 2013.

335-6-13-.06 Financial Assurance Criteria.

(1) Prior to the issuance or reissuance of a permit or prior to modification of an existing permit, the owner or operator of a facility subject to the requirements of this rule, shall post a performance bond or other financial assurance as described in this rule in an amount sufficient for closure of the facility.

(2) The owner or operator shall have a minimum of two detailed written estimates, in current dollars, of the cost of hiring a third party to perform closure of a facility prior to issuance or reissuance of a permit or modification of a permit. The owner or operator shall submit the closure cost estimates with the permit application and submit a copy of the estimates with the permit application.

(3) The owner or operator shall re-evaluate the closure cost estimate and the amount of financial assurance required if:

(a) Changes to the closure plan or facility conditions significantly increase the maximum cost of closure at any time during the active life of the facility. The owner or operator shall submit any updated cost estimates and documentation of the increase in required financial assurance at least 30 days prior to initiating changes at the facility which would significantly increase the maximum cost of closure at any time during the active life of the facility.

(b) Required by the Department to verify adequate funding to close a facility. This re-evaluation shall be due as required by the Department.

(4) The owner or operator shall establish financial assurance for closure of the facility in compliance with Division 6 rules. The owner or operator (or previous owner/operator) shall provide continuous coverage for closure until:

(a) released from financial assurance requirements by the Department.

(b) a new owner/operator establishes the financial assurance mechanism in accordance with this rule, if ownership/operation is transferred to another entity.

(5) The bond or other financial assurance may be declared forfeited if required by the Department when the owner or operator abandons the facility, ceases operation of the facility, or fails to properly maintain the facility to ensure compliance with state environmental regulations.

Author: Chris Sasser; Daphne Smart
Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.
History: March 26, 2013.

335-6-13-.07 <u>Allowable Mechanisms for Financial Assurance</u>. Allowable mechanisms used to demonstrate financial assurance under 335-6-13-.07 shall ensure that the funds necessary to meet the costs of closure will be available when they are needed. Owners and/or operators shall choose from the options specified in 335-6-13-.07 (1) through (6).

(1) Trust Fund.

(a) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements below. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement shall be placed in the facility's record and a copy submitted to the Department.

(b) Payments into the trust fund shall be made annually by the owner or operator over the life of the permit or over the remaining expected life of the facility, whichever is shorter, in the case of a trust fund for closure. This period is referred to as the pay-in period.

(c) For a trust fund used to demonstrate financial assurance for closure, the first payment into the fund shall be at least equal to the current cost estimate for closure, except as provided in 335-6-13-.07(6) divided by the number of years in the pay-in period as defined in 335-6-13-.07(1)(b). The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = [CE - CV]/Y$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(d) The initial payment into the trust fund shall be made before the initial start-up of operations for new facilities or before the reissuance or modification of a permit for existing facilities.

(e) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in 335-6-13-.07, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of 335-6-13-.07(1).

(f) The owner or operator, or other person authorized to conduct closure activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if justification and documentation of the cost is placed in the facility's record, submitted to and approved by the Department. The owner or operator shall place the documentation of the justification for reimbursement in

the facility's record and notify the Department that reimbursement has been received.

(g) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in 335-6-13-.07 or if he is no longer required to demonstrate financial responsibility in accordance with the requirements of 335-6-13-.08.

(2) Surety Bond Guaranteeing Payment or Performance.

(a) An owner or operator may demonstrate financial assurance for closure by obtaining a payment or performance surety bond which conforms to the requirements of 335-6-13-.07(2). The bond shall be effective before the initial start up of operations for new facilities or before the reissuance or modification of a permit for existing facilities. The owner or operator shall place a copy of the bond in the facility record and submit a copy of the bond to the Department for approval. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(b) The penal sum of the bond shall be in an amount at least equal to the current closure cost estimate, except as provided in 335-6-13-.07(6).

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(d) The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of 335-6-13-.07(1) except the requirements for initial payment and subsequent annual payments specified in 335-6-13-.07(1) b through e.

(e) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. Payments from the trust fund shall be approved by the Department.

(f) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the Department 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator shall obtain alternate financial assurance as specified in 335-6-13-.07 within 90 days of the notice of cancellation.

(g) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in 335-6-13-.07 or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with 335-6-13-.08.

(3) Letter of Credit.

(a) An owner or operator may satisfy the requirements of 335-6-13-.07 by obtaining an irrevocable standby letter of credit which conforms to the requirements of 335-6-13-.07(1). The letter of credit shall be effective before the initial start-up of operations for new facilities or before the reissuance or modification of a permit for existing facilities. The owner or operator shall place a copy of the letter of credit in the facility's record and submit a copy of the letter of credit to the Department for approval. The issuing institution shall be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(b) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date shall be included with the letter of credit in the facility record and a copy shall be submitted to the Department. The letter shall provide the name and address of the facility, name and address of the owner/operator, and the amount of funds assured.

(c) The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure except as provided in 335-6-13-.07(6). The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has cancelled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the Department 120 days in advance of cancellation. If the letter of credit is cancelled by the issuing institution, the owner or operator shall obtain alternate financial assurance within 90 days of the notice of cancellation.

(d) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in 335-6-13-.07 or if the owner or operator is released from the financial assurance requirements in accordance with 335-6-13-.08.

(4) Insurance.

(a) An owner or operator may demonstrate financial assurance for closure by obtaining insurance which conforms to the requirements of 335-6-13-.07. The insurance shall be effective before the initial start-up of operations for new facilities or before the reissuance or modification of a permit for existing facilities At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States. The owner or operator shall place a copy of the insurance policy in the facility's record and submit a copy of the insurance policy to the Department for approval.

(b) The closure insurance policy shall guarantee that funds will be available for closure of the facility when final closure occurs. The policy shall also guarantee that once closure begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to

conduct closure up to an amount equal to the face amount of the policy upon the direction of the Department.

(c) The insurance policy shall be issued for a face amount at least equal to the current cost estimate for closure except as provided in 335-6-13-.07(6). The term face amount means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(d) An owner or operator, or other person authorized to conduct closure may receive reimbursements for closure. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure and if justification and documentation of the cost is placed in the facility's record and approved by the Department. The owner or operator shall place the documentation of the justification for reimbursement in the facility's record and notify the Department that reimbursement has been received.

(e) The insurance policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(f) The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the Department 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator shall obtain alternate financial assurance as specified in 335-6-13-.07 within 90 days of the notice of cancellation.

(g) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in 335-6-13-.07 or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of 335-6-13-.08.

(5) State-Approved Mechanism. An owner or operator may satisfy the requirements of 335-6-13-.07 by obtaining other mechanisms that meet the criteria specified in 335-6-13-.07, and that are approved by the Department.

(6) Use of Multiple Mechanisms. An owner or operator may demonstrate financial assurance for closure as required by 335-6-13-.06(4) and (5), by establishing more than one financial mechanism per facility. The mechanisms must be as specified in 335-6-13-.07(1) to (5), except that financial assurance for an amount at least equal to the current cost estimate for closure may be provided by a combination of mechanisms, rather than a single mechanism.

(7) The language of the mechanisms listed in 335-6- 13-.07(1) to (5), must ensure that the instruments satisfy the following criteria:

(a) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure.

(b) The financial assurance mechanisms must ensure that funds will be available in a timely fashion if needed.

(c) The financial assurance mechanisms must be obtained by the owner or operator by the required dates as indicated in these requirements until the owner or operator is released from the financial assurance requirements under 335-6-13-.08.

(d) The financial assurance mechanisms must be legally valid, binding, and enforceable under state and federal law.

(8) Discounting. The Department may allow discounting of closure cost estimates in 335-6-13-.06 (2) and (3) up to the rate of return for essentially risk free investments, net of inflation, under the following conditions:

(a) The Department determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from an engineer so stating;

(b) The Department finds the facility in significant compliance with applicable and appropriate permit conditions; and

(c) Discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.

Author: Chris Sasser; Daphne Smart
Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.
History: March 26, 2013.

335-6-13-.08 Release from Financial Assurance Requirements by the Department. Upon the submission of a certification by the owner or operator and a determination by the Department that the facility has been properly closed, the facility shall be released from the financial assurance requirements of this chapter. This certification must be submitted to the Director, by registered mail, signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Director upon request.

Author: Chris Sasser; Daphne Smart
Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.
History: March 26, 2013.