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DRAFT

Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
August 17, 2018

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Convened: 11:00 a.m.
Adjourned: 11:46 a.m.

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Part A

MEETING OF THE ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
AUGUST 17, 2018
11:00 A.M.

LOCATION: Alabama Department of Environmental Management Building
Alabama Room
1400 Coliseum Boulevard
Montgomery, Alabama 36110

A P P E A R A N C E S

COMMISSION MEMBERS PRESENT:
H. Lanier Brown, II, Chair
Terry D. Richardson, Ph.D., Vice Chair
John (Jay) H. Masingill, III
Elliott Craig Martin, D.V.M
Mary J. Merritt
Samuel L. Miller, M.D.

ALSO PRESENT:
Robert Tambling, EMC Legal Counsel
Kayla Currie, Assistant Attorney General
Lance R. LeFleur, ADEM Director
Debi Thomas, EMC Executive Assistant

MR. BROWN: At this time we would will call the August 17, 2018, meeting of the Environmental Management Commission to order. The Chair acknowledges that we have a quorum.

The first item on the agenda is consideration of the minutes of the meetings held on April 20, 2018, and June 15, 2018.

Is there a motion?

MR. MARTIN: I motion to approve the minutes as presented.

MR. MASINGILL: Second.

MR. BROWN: Call for a question. All in favor?

THE COMMISSIONERS: Aye.

MR. BROWN: Motion carries.

Next on the agenda is a report from the ADEM director. Good morning, Director LeFleur.

MR. LEFLEUR: Good morning all, and welcome to the final meeting of the Alabama Environmental Management Commission for fiscal year 2018.

Today's report will update the

Commission on the Department's budget status, review the performance of the Department's Drinking Water program using EPA dashboards, report on the emerging nationwide issue of per- and polyfluoroalkyl chemicals in drinking water, update you on several ongoing departmental initiatives, and address some of the recent media reports.

As we approach the end of fiscal year 2018, there are no anticipated problems with funding or expenditures. Of course, the federal portion of our FY 2019 funding will, once again, come to fore as Congress goes through its budget process at federal level.

At this time, things still appear on target for the Restore Act funding around calendar year end for the new facility to house our Mobile field office and coastal program. An analysis of the historic and projected future geographic dispersion of the workload in the southern part of the state has been performed to help with identifying the optimum location for the facility.

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Today's report will give you the annual update on our Drinking Water program and will begin with a review of the EPA Interactive Visual Compliance and Enforcement Metrics known as dashboards.

As is done in each dashboard presentation, we will first look at the size of the universe regulated facilities, then the rate of inspections, the findings from those inspections, and finally the enforcement actions taken where violations are found. We'll give special attention to trends to not only look at where we are compared to the rest of the nation but where we are going.

Please turn your attention to the screen to where we'll -- I'll show you -- walk you through a few of the 26 drinking water drafts available for analysis of the Drinking Water program through fiscal year 2017.

This slide shows there are three categories of public water systems, PWSs; community systems, which are those serving organized communities, such as cities and

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towns shown in dark blue; transient non-community systems, such as campgrounds or interstate rest stops shown in red; and non-transient, non-community systems, such would be present at a commercial or an industrial facility shown in green.

The total universe is 585 facilities. During the last seven years, the number of facilities in the universe has ranged from 583 to 590, so the trend is essentially flat.

Although Alabama has far fewer drinking water systems than most states as a result of an intentional strategy implemented in the 1980s. The program encouraged the development of substantial systems having the technical, financial, and managerial ability to operate in accordance with state and federal requirements.

The next two slides deal with inspections.

This slide shows the percentage of public water systems in the state that have

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been visited by ADEM inspectors during each of the last seven fiscal years. More than ninety-nine percent of the systems in Alabama have had a site visit in each of the last seven years compared to the national average of about forty percent. The trend is flat at approximately one hundred percent.

A sanitary survey of a public drinking water system is an indepth review of all water sources, treatment plants, storage tanks, and pumping facilities, along with an administrative review of operating procedures, plans, and other documentation.

The sanitary survey must be performed at least once every three years for community systems, thirty-three percent per year, and every five years or twenty percent per year for non-community water systems. As shown on this graph, Alabama's rate for sanitary surveys for both community systems, shown in red, and non-community systems, shown in orange, consistently exceeds requirements as well as the national average.

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In recent years, the Alabama trend has been increasing while the national average is slightly down, which is widening the gap between sanitary surveys performed in Alabama versus the national average.

This next slide shows the percentage of public water systems with health-based violations. Health-based violations are those potentially impacting human health. The rates of Alabama's health-based violations, shown in green, are well below the national average represented by the orange line.

An important statistic not shown in the EPA dashboard program is that more than ninety-nine percent of Alabama's population served by community water systems receives drinking water in compliance with all health-based standards as compared to only ninety-five percent in Region Four and less than ninety-three percent nationally. As you can see, the trend in health-based violations is down significantly both for the Department and

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nationally.

Of those systems with health-based violations, a portion falls into the category of serious violators as shown on this slide. To become seriously -- a serious violator, a water system accumulates a number of lesser violations without returning to compliance or it has a few critical violations such as an acute health-based violation. Continual reporting violation -- continual reporting violations can also cause a water system to be deemed a serious violator. As with other measures of violations, at less than one half of one percent, Alabama has a much lower rate of serious violators, shown in red, than the three percent national average represented by the orange line. The trend is clearly down, which is good.

Moving now to enforcement actions taken as a result of non-compliance, this next dashboard shows the percentage of public water systems subject to either formal or informal enforcement actions. It's been the

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Department's strategy to achieve compliance and to deter future non-compliance through high rates of inspections and high rates of informal enforcement actions.

In earlier graphs you saw the higher inspection rates. In this graph you now see the high rate of informal enforcement actions shown in light blue compared to national averages. Light blue actually looks gray in this slide.

The reason for the drop in FY 2017 is that fewer enforcement actions of any kind were required because of continued high inspection rates and past high levels of informal enforcement. The objective is for the trend to eventually turn down as we approach one hundred percent compliance.

EPA requires the state to take a formal enforcement action if a water system remains a serious violator for more than one quarter. The Department takes very few formal enforcement actions shown in dark blue compared to national averages because nearly

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all Alabama serious violators return to compliance before a formal enforcement action is required.

The rate of return to compliance is shown on this next dashboard graph. The graph reflects the percentage of the violating drinking water systems that return all violations to compliance during at least one quarter of the fiscal year. Many of the violations included in this graph are monitoring or reporting violations for which a system does not return to compliance until the next reporting period, which could be as long as twelve months.

As you saw in previous slides, Alabama has a low occurrence of serious violations and formal enforcement actions, yet as shown in the purple of this slide, Alabama is always above the national average, represented by the orange line, for returning those drinking water systems that are in non-compliance to compliance. These are exactly the results we want.

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To summarize, in the Drinking Water program as in other Department regulatory programs, compliance is the objective. As shown in this dashboard analysis, the Department's strategy of high rates of inspections and high rates of informal enforcement results in lower levels to non-compliance and when there is non-compliance, a rapid return to compliance. The strategy not only achieves higher levels of compliance, it does so more cost effectively.

The Department maintains a continuous effort to address emerging issues related to the environment. And in keeping with the drinking water theme, the next portion of today's report will update you on an emerging issue with a group of manmade materials known as per- and polyfluoroalkyl substances, or PFASs, appearing in drinking water around the nation.

PFASs are a large group of environmentally persistent manufactured

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chemicals used in industrial applications and consumer products. PFASs are very stable, slow to degrade in the environment, and can lead to potentially adverse effects in humans and wildlife. The stability that made PFASs useful in products such as nonstick cookware, fire retardants for carpets, firefighting foams and many other applications also keeps them from breaking down in the environment.

Studies by a number of health research organizations have shown that PFASs accumulate in humans. Animal studies show that increased exposure to high concentrations of PFASs may cause abnormal endocrine activity and reproductive and developmental problems. Studies also show possible links to other abnormalities, including cancer, in some laboratory animals at high dosages.

EPA and the Agency for Toxic Substances and Disease Registry, which is a federal agency within the Centers for Disease Control, are doing research to determine what levels of these compounds are safe in humans.

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In response to the possible health concerns, in 2016, EPA issued nationwide drinking water health advisories for the two most prevalent PFASs and is evaluating the need for a safe maximum contaminate level or MCL such as has been done for dozens of other contaminates potentially in drinking water. The health advisories were set at levels intended to protect against adverse health defects over a lifetime of exposure to two PFASs, PFOA and PFOS, in drinking water for the most potentially vulnerable populations including nursing infants and pregnant women.

The most widely used forms of these materials are no longer manufactured in the United States, and many of the products containing these compounds such as fluorocarbon-coated non-stick cookware are being phased out. Drinking water contamination is typically localized and associated with a specific facility, for example, an industrial facility where these

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chemicals were produced or used in a manufacture of other -- in the manufacture of other products or an airfield where they were used for firefighting.

One of several plants that previously produced PFASs is located in Alabama. The facility no longer manufactures PFOA or PFOS and is taking extensive actions to remove legacy contaminates at and around the manufacturing site.

PFASs have also been detected in the Coosa River watercourse that flows through a carpet manufacturing area in Georgia into Alabama. For some time, carpet manufacturers used PFASs to make carpets resistant to water, grease or stains, which may mean the PFASs -- the PFAS contaminants showing up in that area of Alabama are from the carpet manufacturing area in Georgia.

PFAS groundwater contamination has also occurred at military installations around the nation where firefighting training has taken place. The Department of Defense is

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actively assessing such sites in Alabama.

In 2013 through 2015, an EPA rule required that all large public drinking water systems and a portion of small systems test for the presence of several PFAS compounds. As a result of that testing, eight public drinking water systems in Alabama were identified as having PFOA and PFOS concentrations of concern. All of those water systems have now either changed water sources, installed treatment, or are in the process of installing treatment to bring the levels of PFOA and PFOS below the lifetime drinking water health advisory level. The public can be confident that the water from every public drinking water system in Alabama is safe to drink. EPA and other agencies will continue to study the potential threats to public health from PFASs, and we can expect to hear more on this subject in years to come.

The Chief of the Water Division, Glenda Dean, the Drinking Water Division Branch Chief, Aubrey White, and the Chief of

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the Decatur field office, Bruce Freeman, are actively engaged with EPA, the Environmental Council of States, federal and state environmental and health agencies, and others working to develop appropriate testing protocols, health-based standards, proper messaging to the public, and to address other issues related to PFASs.

Another initiative to help assure safe drinking water supplies in Alabama involves educating the public on the importance of protecting our watersheds. Recent reports to the Commission have highlighted a plan to strategically place signage along the interstates in Alabama notifying drivers of when they are entering one of twelve major watersheds in the state. The signage is multipurpose. It will first make people aware of the watersheds and educate them about watersheds and finally encourage actions to prevent -- to protect the watersheds. That plan is now being implemented. There are several signs already

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installed at points where interstate highways enter Alabama.

The signage will be tied into watershed information at interstate rest stops. A benefit, in addition to helping protect watersheds, is that the signage is anticipated to help reduce the litter along interstates and possibly other roadways, which in turn reduces taxpayer's costs for litter removal.

Prior reports to the Commission have also highlighted a program to test for lead contamination in the drinking water at every public school in Alabama over a three-year period. The program is not one mandated by EPA or any regulation but rather was initiated by the Alabama State Department of Education and ADEM to provide peace of mind to parents of school-aged children in Alabama.

During the first year of the program, more than a third of the fifteen hundred public schools in the state and just over twenty-five hundred individual fixtures

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at those schools have been tested. Fortunately only five fixtures of the more than twenty-five hundred tested eventually proved to exceed the action level established by EPA. All those affected fixtures have been taken out of service or replaced. The school drinking water lead testing results are available to any interested party on the ADEM website in the "What's Happening in Your County" application.

Lead contamination in drinking water is primarily controlled by consistently implementing specific operating procedures at drinking water utilities. The exceptionally low level -- low occurrence of lead contamination in Alabama schools attests to the excellent work done by Alabama public drinking water utilities in controlling lead.

Moving to an entirely different topic, the Department has responded to a number of false and misleading public statements by certain activist groups and media sources. One group of misleading

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reports is related to the Department's nondiscrimination program, and the other relates to a recently completed federal criminal trial involving a proposed Superfund listing of an area known as 35th Avenue in Birmingham. Anyone wishing to access the Department's responses, which set the record straight, can do so by clicking the eFile application on the ADEM website and selecting Director's Correspondence on the left side of the next screen.

At the April and June Commission meetings, the public was invited to provide input on the 2019 Unified Strategic Plan. Following this meeting, the Department will begin working with members of the Commission's Strategic Planning Ad Hoc Committee to consider any updates to the 2014 Unified Strategic Plan. A report on that work will be presented at the October Commission meeting.

You have heard repeatedly that if we are to be a high performing organization in the future we most develop our employees. In

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fact, one of the Department's Operating Plan Objectives is to promote a high performing work environment in part by encouraging the ongoing development of our employees.

Achieving the formal designation of Professional Geologist requires extensive education, on-the-job experience, and rigorous testing. It's my pleasure to recognize Daniel Fields in our Land Division who has recently achieved a significant professional milestone by earning the Professional Geologist designation. Daniel.

(Applause.)

MR. LEFLEUR: Congratulations. And you do get a raise.

That concludes today's report. I will be pleased to answer any questions the Commission may have.

MR. BROWN: Any questions for the director?

(No response.)

MR. BROWN: Thank you.

Next, the Chair calls on

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Rulemaking Committee Chair Richardson for a report on the Rulemaking Committee on proposed amendments to the Administrative Code 335-6-6-.12.

DR. RICHARDSON: Thank you, Mr. Chairman. The Rulemaking Petition 17-03, the Petitioner's Alabama River Alliance and others, was referred to the Rulemaking Committee by the Commission on April 21st, 2017. Since that time, we've had some holdups, but we've had the opportunity to now address the issue.

We have had some stakeholder meetings. We have heard from the public in the Commission meetings over seven times. We have had a lot of input on this issue, all of which the Committee members studiously looked over.

At this time the Committee put forth the motions and approved the motion to recommend that the Commission not proceed to rulemaking with ADEM Administrative Code Rule 335-6-6-.12 with additional rules or

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modifications to the rules for public notification of separate sanitary sewer overflows. That is a recommendation in the form of a motion from this Committee, Mr. Chairman.

MR. BROWN: Is there a motion?

MR. MARTIN: That was a motion, so I'll second it.

MR. BROWN: All in favor?

THE COMMISSIONERS: Aye.

MR. BROWN: All opposed? Aye.

Next, is the report from the Commission Chair, deferred.

Next on the agenda is consideration of proposed amendments to ADEM Administrative Code 335-3, Air Pollution Control Program. Chair calls on the Department for comments.

MR. GORE: Good morning, Mr. Chair, madam, gentlemen. My name is Ron Gore. I'm the head of the Department's Air Division. I'm here to ask you to make four changes to the Department's air rules.

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We had a public comment period on these changes that ran from March 26th to May the 11th with a public hearing on May the 9th. There were no oral comments. We did have three written comments spread around. I'll describe them as we go along.

First and simplist is the annual or semi-annual adopting of the updates to EPA rules that we adopt by reference to maintain primacy for those rules. There were no comments on those proposed changes.

We had to make a definitional change, this is the second, to our what's called Across State Air Pollution Rule which is kind of a trading rule, a trading program for air pollutants among the states in the Eastern U.S. No comments on that rule.

We had to make a definitional change to some of our construction permit rules involving replacement units. EPA made a comment asking us to clarify the rule, and we do not think that clarification was needed. So we did not propose that you adopt that

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change.
And last, we are asking that the Commission void some landfill rules that you adopted in April of 2017. Alabama and two other states adopted some EPA rules very quickly after EPA proposed them. And as soon as this body adopted those rules, EPA found some logic errors in the rules and asked the states not to adopt the rules at all. But Alabama, and I believe it was New York and Arizona, had already adopted the rules. So the EPA asked that we kind of unadopt them, which is what we're asking you to do.
The previous rules that apply to landfills will still be in effect until the EPA fixes these rules a couple of years from now, and we'll be back before you to ask that you adopt those change rules here in a couple of years.
So pending any questions, I would like to ask that y'all adopt these four changes.
MR. BROWN: Any questions of the

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Department? Chair will entertain a motion.
DR. RICHARDSON: Move to adopt the proposed amendments.
MR. MILLER: Second.
MR. BROWN: All in favor.
THE COMMISSIONERS: Aye.
MR. BROWN: Thank you.
MR. GORE: Thank you.
MR. BROWN: Next item is consideration for proposed amendments to ADEM Administrative Code 335-6, Water Quality Regulations, and the Chair calls on the Department for comments. Good morning.
MS. LUTZ: Good morning. Honorable Chair, Members of the Commission, I'm Daphne Lutz, Chief of the Industrial Municipal Branch within the Water Division.
You have before you the complete hearing record for proposed revisions to the Water Division's Division Six regulations. On May 27, 2018, the Department initiated the rulemaking process to consider proposed revisions to ADEM Administrative Code Chapter

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335-6-13. This chapter prescribes the financial assurance requirements for centralized waste treatment facilities.
The Department proposed two significant revisions to Chapter 335-6-13. First, a trust fund was removed as an allowable mechanism for demonstrating financial assurance. This mechanism has been found to be ineffective if an owner or operator ceases operation or abandons a facility prior to fully funding the trust fund.
Second, a requirement was added for the owner or operator of the centralized waste treatment facility to submit an annual certification that the mechanism used to demonstrate financial assurance remains current and valid.
The Department also proposed revisions that specify that the owner or operator of a centralized waste treatment facility is required to submit the original copy of the financial assurance mechanism to

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the Department while retaining a duplicate copy.
The remaining revisions were administrative in nature to correct errors, provide clarity, or promote consistency.
On July 12th, 2018, a public hearing was held to receive data, views, and comments from interested persons regarding the proposed revisions.
Written comments were accepted any time during the public comment period, which extended from May 27 through July 12, 2018. No one presented testimony at the hearing and no comments were received during the public comment period.
The Department proposes that the Commission adopt the rule revisions as proposed.
Do you have any questions?
MR. BROWN: No, thank you.
MS. LUTZ: Thank you.
MR. BROWN: Caucus -- excuse me. Is there a motion?

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DR. RICHARDSON: Move to adopt the proposed amendments.
MS. MERRITT: Second.
MR. BROWN: All in favor.
THE COMMISSIONERS: Aye.
MR. BROWN: Next on the agenda is appeal, Bobby Lewis versus ADEM, the City of Dothan, EMC Docket No. 18-01.
The Commission will consider the Recommendation of the Hearing Officer on the Department's Motion to Dismiss. The Department upon City of Dothan's request has rescinded its November 1st, 2017, modification of Solid Waste Proposal Permit 35-06. The Petitioners and intervener do not oppose the Department's Motion to Dismiss. This request for hearing is moot.
The Chair will entertain a motion.
MS. MERRITT: I move to adopt the Recommendation of the Hearing Officer.
DR. RICHARDSON: Second.
MR. BROWN: All in favor.

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THE COMMISSIONERS: Aye.
MR. BROWN: Passes. Next, the Court -- excuse me, the Commission notes that in the matter of Johnny Rick Hayes d/b/a Rick's Oil Recovery versus ADEM, 18-02, Petitioner Johnny Rick Hayes has withdrawn his request for hearing in that matter.
Agenda item nine is other business. Is there any other business anybody wants to bring up?
(No response.)
MR. BROWN: Next, the Chair notes the next Commission meeting is October 19, 2018. With that we will move to the public comment period.
Four people have signed up to give three-minute presentations. The Chair requests that you observe the three-minute limit and limit your statements to matters that directly relate to the function of this Commission.
The first name listed is Charlie Powell of an organization called Picnic

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wishing to speak on North Birmingham.
MR. POWELL: Good morning.
MR. BROWN: Good morning.
MR. POWELL: My name is Charlie Powell, and I'm the founder and the president of Pinic, not picnic. But anyway --
MR. BROWN: Oh, I'm sorry.
MR. POWELL: I've been -- I've been in that neighborhood -- lived in that neighborhood forty-two of my sixty-five years, and I've seen more changes to the Jackson thing that's been happening down there and -- well, we've been getting a little help -- good help from Gadsden and the EPA but there's much more need to be done.
And it's a serious matter now with the peoples that living there. It seems like to me more or less they playing with us. I mean, you got the EPA in there and the company that's still performing around there. Well, look like to me everybody doing what they want to do, but they ain't thinking about the peoples that's there. People are dying

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there. And it's -- it's been going on ever since the '70s.
And with a lot of things that went on out there, this might be a win-win situation for everybody. Well, the EPA, twenty-three million cleaning up, the plant still operate. The only help as we get is from the gas that's controlling the air. It's much more better than what it was, but any pollution is bad for anybody's health, especially ours.
Well, we're having strokes, heart attacks, cancer. My wife is a patient of cancer. People's dying every day. Well, it's too late for the ones that's dying, but something can be did out there. So a lot of the people's actions will be to move. A lot of them want to stay. Well, you have to respect their wishes, but the ones that want to leave I think that if they are not able to leave, with all of this money floating around here, it would be more economical just to move the ones that want to be moved, and the ones

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that's there still control this air and this pollution because it's bad there.

And on that note, I thank you for letting me speak. Any questions?

MR. BROWN: Thank you. Next is Keisha Brown with Enact to speak about North Birmingham.

MS. BROWN: Good morning. Thank you for allowing me to speak. My name is Keisha Brown, and I live in the Harriman Park neighborhood, which is in the heart of the 35th Avenue Superfund site. And during the last couple of years they have been doing soil sampling in my community. And in my yard they did do sampling and they found harmful chemicals in my yard five years ago. And my next-door neighbor had the highest level of chemicals in the community.

My thing is -- the second part to this question I ask: What is the next crucial steps to help the health of the citizens in the community because if the same chemicals are keep falling down every day and some

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people's yards are getting replaced with soil -- mine didn't get replaced because they said it wasn't, quote, unquote, cleanup level. But these chemicals were harmful. Percentages was in my property.

What can be done in the future to help people? Because you live inside your house, you're going inside of your house. We had precautions given to us saying that when you go outdoors, you can't eat or chew gum and wipe your feet off and wash your hands.

Well, common sense you're going to wash your hands and wash your feet off, but if you're going in your house and dust and residue and soot is getting in your house, and if you're not living down the street and my daughters are coming to your house, what are the next crucial steps to help aspects of the community?

People are sick and majority of the people who are elderly are sick. And that's ninety-five percent of the people who need ways -- transportation to going back to

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and from the doctor because our hospital closed ten years ago and we don't have a clinic, so -- and what is the next crucial that will help these citizens in this Superfund site?

Cleaning up, yeah, they're doing that, putting soil -- getting the soil up and putting soil down and grass, but that's still not helping the situation when the same percentages are falling every day.

So I just want to know what is the next crucial step for the health impact of the citizens in the Superfund site, Harriman Park, and the other surrounding North Birmingham communities such as Collegeville, Fairmont, and Harriman. And that's -- thank you so much.

MR. BROWN: Thank you, Ms. Brown.

Next is Betty Collins with person -- I can't read it. I'm sorry. Just come on.

MS. COLLINS: Good morning to everyone.

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MR. BROWN: Good morning.

MS. COLLINS: Thank you for allowing me to come and stand before you all. In this packet I have a toxic from all the pollution that's in our neighborhood, which I've been in -- I stayed in that neighborhood for a long, long time. But unfortunately I'm not in that neighborhood anymore, but I do attend church in that neighborhood in over forty something years.

And while I was there, my mom died, my father-in-law died, my daughter-in-law died, my church members died. Just three weeks ago we buried the last old church member in our church of cancer and all that pollution.

Like I said, I went to the doctor on this past Wednesday. He gave me a toxic thing and it's really black. So it's come from all -- even though I don't live there, I have been -- toxins have got in my body from that community.

And I say that, even though they

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had a trial. But what does that mean for the rest of the people that's left there because we're still suffering. We're still going to church there. We'll still have our activities there. So something need to be done in that community for the people.

As Mr. Powell and Ms. Keisha have stated, if some don't want to leave, somebody needs to help because that's what it's all about is helping and having a heart for the people. No, I don't live there no more, but I'm concerned about every soul that's there. Can you all find it in your hearts to help us because they need help?

The children -- my granddaughter has asthma. She has asthma from there. And my sister died when she was fifty-five years old. She went to sleep and laid down and died, just died from all of that pollution.

As I say, my father-in-law, I took him to Carraway Hospital thirty-eight times for radiation, chemo, and he died. So all of this is just -- it's heart filling.

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And my daughter-in-law, forty-two years old died, left three children, and that's heartbreaking. Our young church member, thirty-two years old, just died in June of this year. I have been to six funerals in our church this year, and the oldest one was eighty-one. The youngest was thirty-two. That is so heartbreaking.

So if y'all would, please, please, consider helping that community. Thank you for listening to me.

MR. BROWN: Thank you.

(Applause.)

MR. BROWN: Next is David Ludder, Environmental Defense Alliance.

MR. LUDDER: Mr. Chairman, Members of the Commission, please forgive me, but I'm going to read from a portion of a prepared statement, and I'm going to talk fast because of the three-minute limit.

I speak to you today on behalf of the Environmental Defense Alliance. The Alliance is an Alabama nonprofit membership organization dedicated to improving environmental quality.

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The paramount concern of this Commission should be the health and welfare of the residents of North Birmingham. Rather than trying to defend the past conduct of ADEM and other state officials, the Alliance asks the Commission to defend the health of North Birmingham residents.

You can do this by taking two actions. First, you can advise the Director to formally withdraw ADEM's support for the January 8, 2015, letter invoking the dispute resolution process established by EPA for resolving disputes between Alabama and the EPA regarding the proposed listing of the 35th Avenue site on a national priorities list. If the state wishes to continue to pursue the dispute resolution process, let the Attorney General or Governor do it without ADEM.

Second, and most importantly, you can advise the Director of ADEM to withdraw all previous objections to EPA's proposed

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listing of the 35th Avenue site on the national priorities list and to affirmatively notify EPA that ADEM conditionally concurs with EPA's proposal.

Next, the Commission must confront the troubling actions of one of its own members, Scott Phillips. State law commands that agency heads report violations of the State Ethics Law to the Alabama Ethics Commission. This Commission should advise the Director of ADEM to evaluate the existing evidence and determine whether it is sufficient to conclude that Scott Phillips violated the State Ethics Law. And if the Director concludes that Scott Phillips violated the State Ethics Law, he should report the same to the Alabama Ethics Commission.

In addition, the Commission should make a clear public statement that the actions of Scott Phillips are not acceptable to the AEMC by rescinding the resolution it adopted on June 16, 2017, expressing gratitude

for Scott Phillips' service on the Commission. The evidence revealed during the trial of Roberson and Gilbert demonstrates that Scott Phillips is not deserving of gratitude from the public or this Commission.

Finally, this Commission needs to address the lack of transparency by Commission members in the conduct of official business. The use of private email services to communicate with others about official business and the failure to disclose those emails must end. Meetings and phone calls with regulated parties or their representatives must be memorialize and disclosed. Without this kind of transparency, the public will not have confidence that you are protecting them rather than regulated parties.

In this regard, the Environmental Defense Alliance calls upon Chairman Lanier Brown to disclose all emails he has exchanged with others concerning the 35th Avenue site and to disclose the details of all meetings

and phone calls he has had with others concerning the 35th Avenue site. Failing this act of transparency, the Environmental Defense Alliance calls for his resignation.

On behalf of the Alliance, I thank you for the opportunity to speak today. This is only a portion of my statement. My full statement will be delivered to Debi Thomas. Thank you.

(Applause.)

MR. BROWN: Thank you.

Anything else?

(No response.)

MR. BROWN: Is there a motion to adjourn?

MR. MILLER: I move.

MR. BROWN: Second?

MR. MARTIN: Second.

MR. BROWN: All in favor.

THE COMMISSIONERS: Aye.

MR. BROWN: We're adjourned.

(The hearing concluded on August 17, 2018, at 11:46 a.m.)

REPORTER'S CERTIFICATE

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, Elaine Scott, Certified Court Reporter and Commissioner for the State of Alabama at Large, hereby certify that on August 17, 2018, I reported the hearing in the matter of the Environmental Management Commission, and that pages 1 through 43 contain a true and accurate transcription of the hearing by counsel for the parties set out herein.

I further certify that I am neither of kin nor of counsel to any of the parties to said cause nor in any manner interested in the results thereof.

/s/Elaine Scott, CCR
ELAINE SCOTT, Court Reporter
and Commissioner for the State
of Alabama at Large
CCR NO. 354, Expires 9/30/18

MY COMMISSION EXPIRES NOVEMBER 16, 2019

JEFFERSON COUNTY)

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Elaine Scott

/s/Elaine Scott, CCR
ELAINE SCOTT, Court Reporter
and Commissioner for the State
of Alabama at Large
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Part B

Attachment Index

Attachment 1 Agenda

Attachment 2 Director's Slides
(Agenda Item 2)

Attachment 3 Order adopting motion to adopt the recommendation of the Rulemaking Committee to not proceed to rulemaking with ADEM Administrative Code Rule 335-6-6-.12 with additional rules or modifications to the rules for public notification of Separate Sanitary Sewer Overflows
(Agenda Item 3)

Attachment 4 Resolution adopting amendments to ADEM Administrative Code 335-3, Air Pollution Control Program Regulations, and Attachment A – Adopted Amendments
(Agenda Item 5)

Attachment 5 Resolution adopting amendments to ADEM Administrative Code 335-6, Water Quality Program Regulations, and Attachment A – Adopted Amendments
(Agenda Item 6)

Attachment 6 Order adopting the Recommendation of Hearing Officer
(Agenda Item 7)

Attachment 1

Amended 8/3/18

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: August 17, 2018
TIME: 11:00 A.M.
LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

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3.	Report and possible recommendation from the Rulemaking Committee on ADEM Administrative Code Rule 335-6-6-.12, Conditions Applicable to All NPDES Permits, and the need for any additional rules or modifications for public notification of Separate Sanitary Sewer Overflows (SSOs) (NPDES-Related Matter)	2
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* The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, under Environmental Management Commission.

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

1. CONSIDERATION OF MINUTES OF MEETINGS HELD ON APRIL 20, 2018, AND JUNE 15, 2018

2. REPORT FROM THE ADEM DIRECTOR

3. REPORT AND POSSIBLE RECOMMENDATION FROM THE RULEMAKING COMMITTEE ON ADEM ADMINISTRATIVE CODE 335-6-6-.12, CONDITIONS APPLICABLE TO ALL NPDES PERMITS, AND THE NEED FOR ANY ADDITIONAL RULES OR MODIFICATIONS FOR PUBLIC NOTIFICATION OF SEPARATE SANITARY SEWER OVERFLOWS (SSOs) (NPDES-RELATED MATTER)

The Rulemaking Committee Chair will report on the Committee's discussion and consideration of ADEM Administrative Code 335-6-6-.12, Conditions Applicable to All NPDES Permits, to determine the need for any additional rules or modifications for public notification of Separate Sanitary Sewer Overflows (SSOs). The Committee may also present to the Commission its recommendation as to whether the Commission should proceed to rulemaking with additional rules or modifications for public notification of SSOs.

On April 21, 2017, the Environmental Management Commission adopted a motion denying the Petition for Rulemaking to Amend ADEM Administrative Code Rule 335-6-6-.12, Conditions Applicable to All NPDES Permits, EMC Rulemaking Petition 17-03, Petitioners Alabama Rivers Alliance, et al., based on ADEM Administrative Code Rule 335-2-2-.05, Consideration of Petition, paragraphs (g) and (i), with the reasons for denial being that adoption of the proposed rule would negatively impact the overall regulatory scheme of the Department and consideration of any other relevant factors, evidence, data, or information. The Petition for Rulemaking sought the amendment of Rule 335-6-6-.12 by expansion of the provisions of Rule 335-6-6-.12(1)(7)(v), Minimum requirements for public notification, and the addition of Rule (vii), Public notification plan.

The motion adopted by the Commission on April 21, 2017, also referred the proposed amendments in the Petition for Rulemaking to the Rulemaking Committee to determine by working with the Department and stakeholders the need for any additional rules or modifications to the existing rules in Rule 335-6-6-.12 for public notification of Separate Sanitary Sewer Overflows (SSOs).

4. REPORT FROM THE COMMISSION CHAIR

5. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-3, AIR POLLUTION CONTROL PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code 335-3, Air Pollution Control Program Regulations. Revisions to the Division 3 Regulations are being proposed to amend ADEM Administrative Code Rules 335-3-8-.40, 335-3-10-.01, 335-3-10-.03, 335-3-11-.01, 335-3-11-.06, 335-3-11-.07, 335-3-14-.04, and 335-3-19-.01 through 335-3-19-.05.

A. Revisions to the Division 3 Code are proposed to incorporate by reference changes to the EPA's New Source Performance Standards (NSPS), and National Emissions Standards for Hazardous Air Pollutants (NESHAPs).

B. Revisions are recommended to Chapter 335-3-8 to incorporate title changes to be consistent with EPA's Cross State Air Pollution Rules (CSAPR).

C. Chapter 335-3-14 is being proposed for revision to clarify the definition of replacement units.

D. The State Plans to control emissions at Existing Municipal Solid Waste Landfills (MSWL) are also being recommended for revision to rescind previous regulations.

Chapters 335-3-8, and 14, are considered part of the federally-enforceable State Implementation Plan (SIP). Revisions to these Chapters are proposed to be incorporated into Alabama's SIP.

The Department held public hearing on the proposed amendments on May 9, 2018.

6. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-6, WATER QUALITY PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code 335-6, Water Quality Program Regulations. Revisions to Division 6 Regulations are being proposed to amend ADEM Administrative Code Rules 335-6-13-.02, 335-6-13-.03, 335-6-13-.04, 335-6-13-.06, 335-6-13-.07, and 335-6-13-.08. The revisions will remove the trust fund as an allowable financial assurance mechanism and require an annual certification that the financial mechanism established for financial assurance is current and valid. Administrative corrections and administrative revisions for clarification and consistency will also be proposed. The Department held a public hearing on the proposed amendments on July 12, 2018.

7. BOBBY LEWIS, ET AL. V. ADEM, AND CITY OF DOTHAN, ALABAMA, EMC DOCKET NO. 18-01

The Commission will consider in the above matter the Recommendation of the Hearing Officer on the Department's Motion to Dismiss. The Hearing Officer recommends that the Motion to Dismiss be granted. The Department, upon the City of Dothan's request, has rescinded its November 1, 2017, modification of Solid Waste Disposal Permit 35-06 issued to the City of Dothan. The Petitioners and Intervenor do not oppose the Department's Motion to Dismiss this request for hearing as moot.

8. JOHNNY RICK HAYES D/B/A RICK'S OIL RECOVERY V. ADEM, EMC DOCKET NO. 18-02

The Commission will acknowledge for the record Petitioner Johnny Rick Hayes d/b/a Rick's Oil Recovery's withdrawal of the request for hearing in the above matter.

9. OTHER BUSINESS

10. FUTURE BUSINESS SESSION

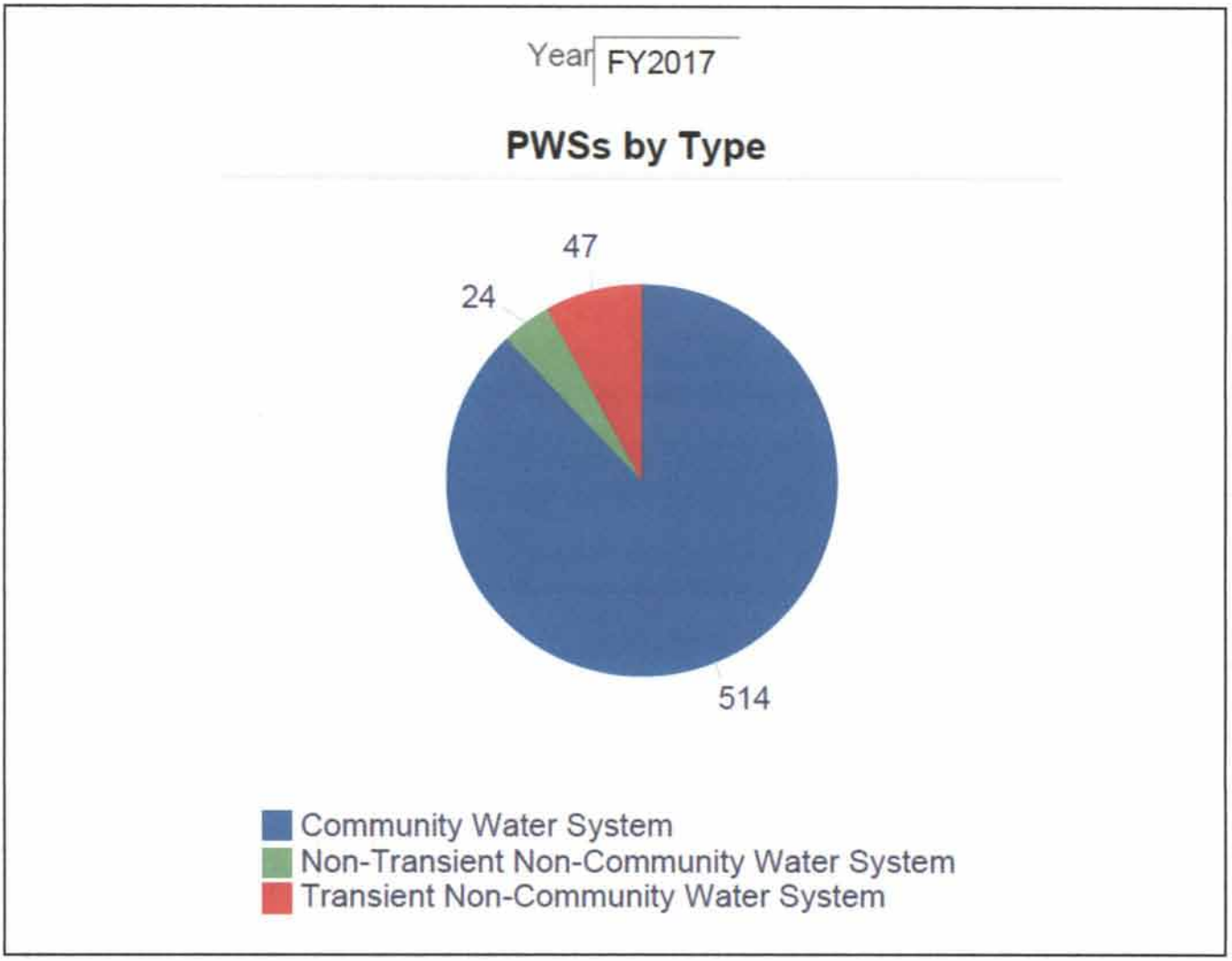
PUBLIC COMMENT PERIOD

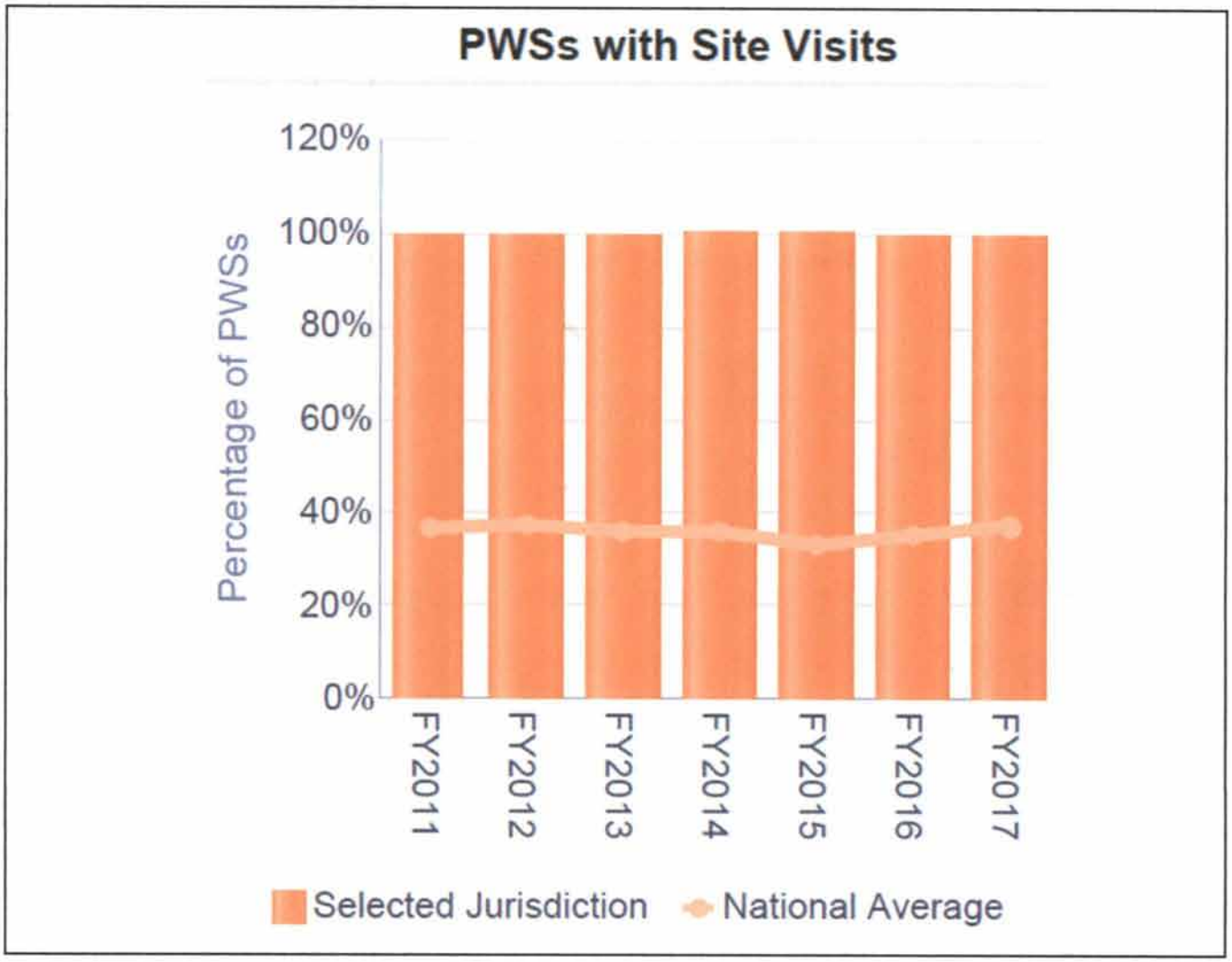
BRIEF STATEMENTS BY MEMBERS OF THE PUBLIC REGISTERED TO SPEAK

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

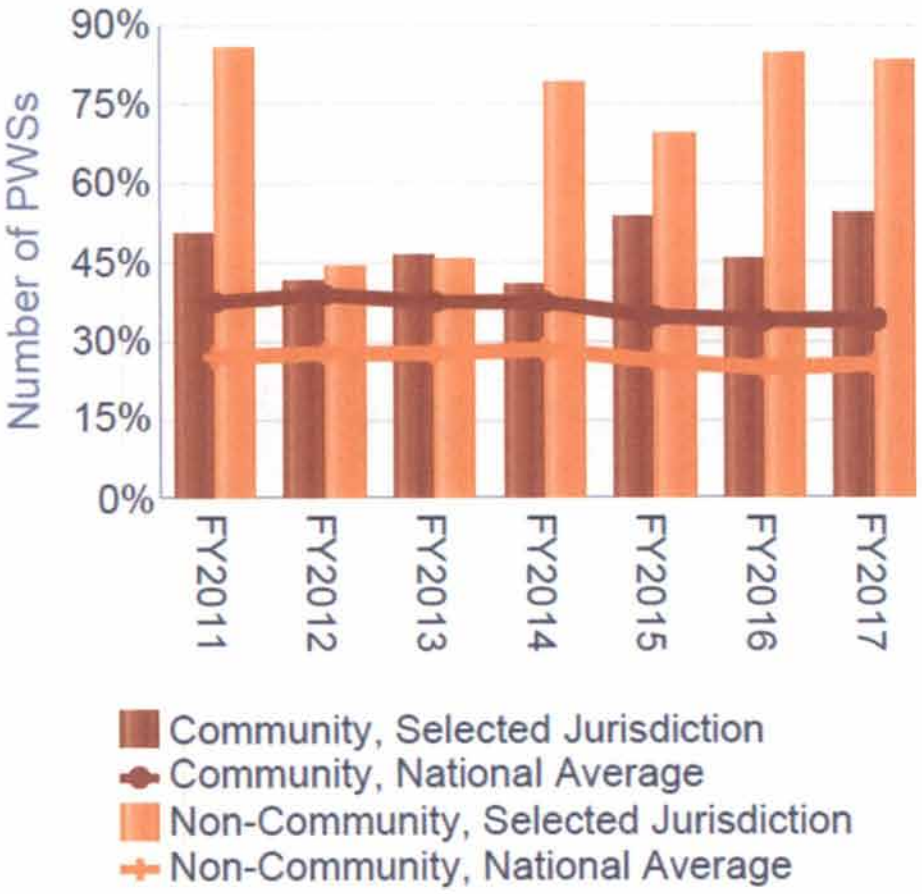
The Guidelines for Public Comment are used in the application of ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda and Public Participation. The Guidelines for Public Comment serve to educate and inform the public as to how the Commission interprets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

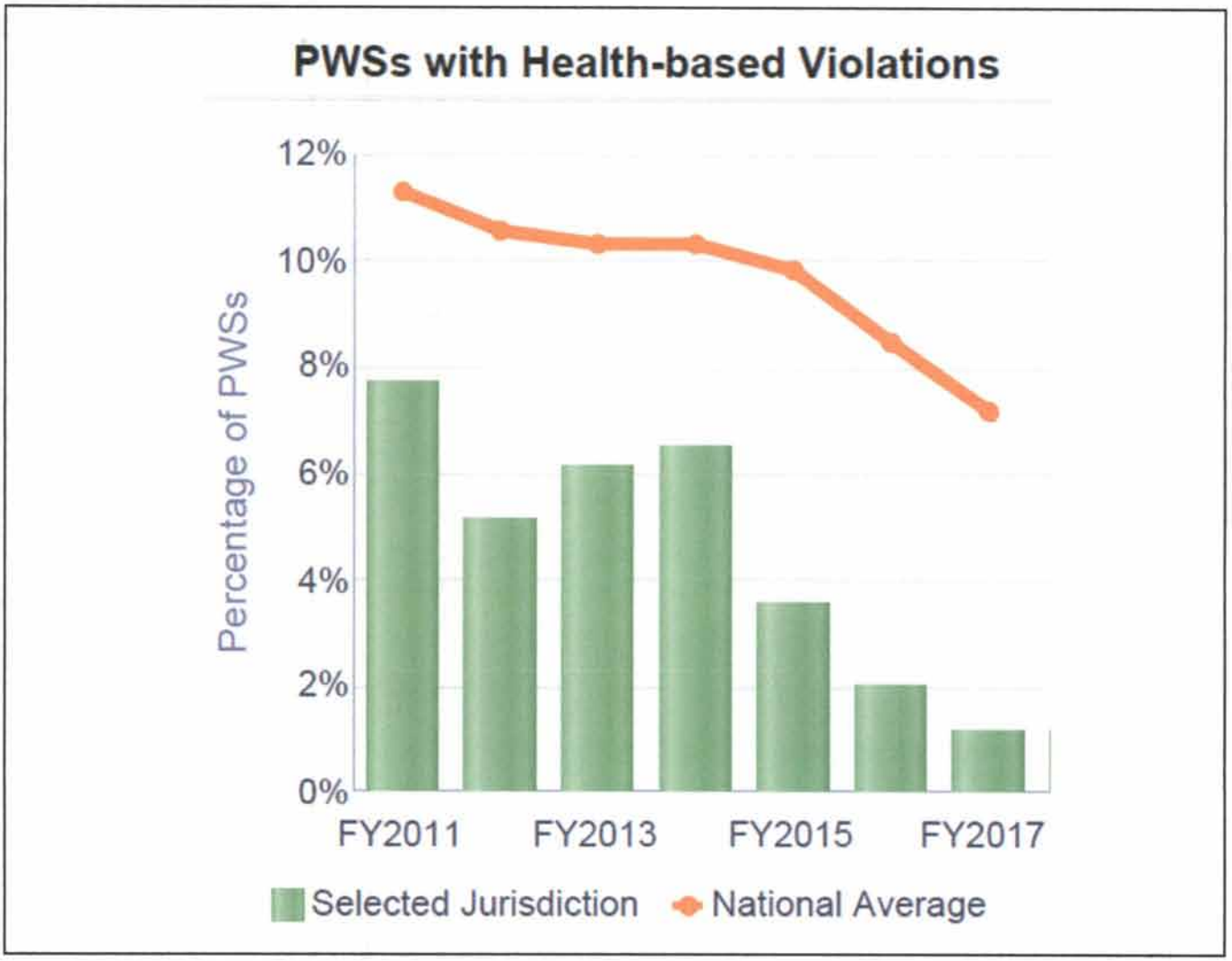
Attachment 2

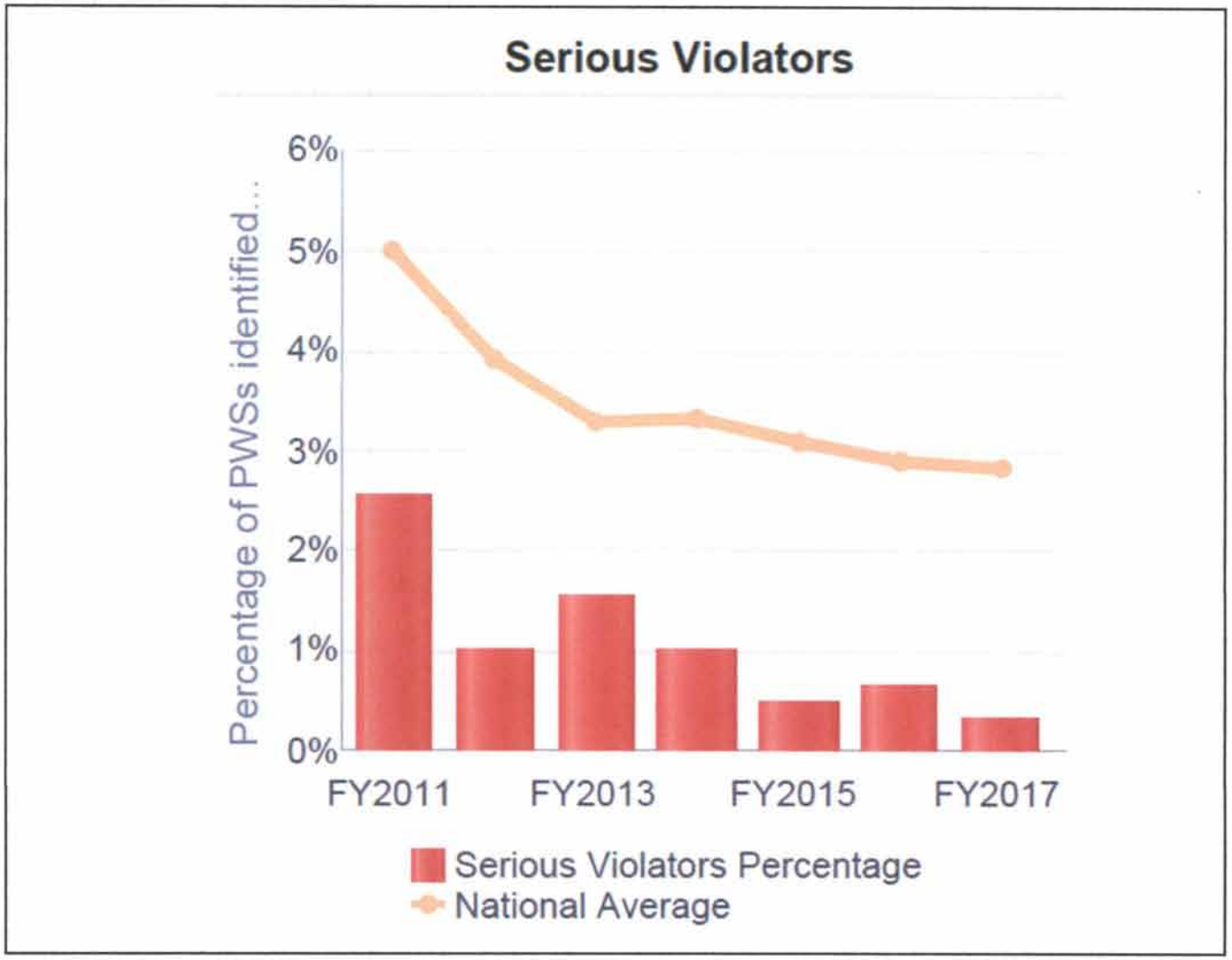

Year FY2017
PWSs by Type
47
24
514
Community Water System
Non-Transient Non-Community Water System
Transient Non-Community Water System


PWSs with Site Visits
Percentage of PWSs
120%
100%
80%
60%
40%
20%
0%
FY2011
FY2012
FY2013
FY2014
FY2015
FY2016
FY2017
Selected Jurisdiction
National Average

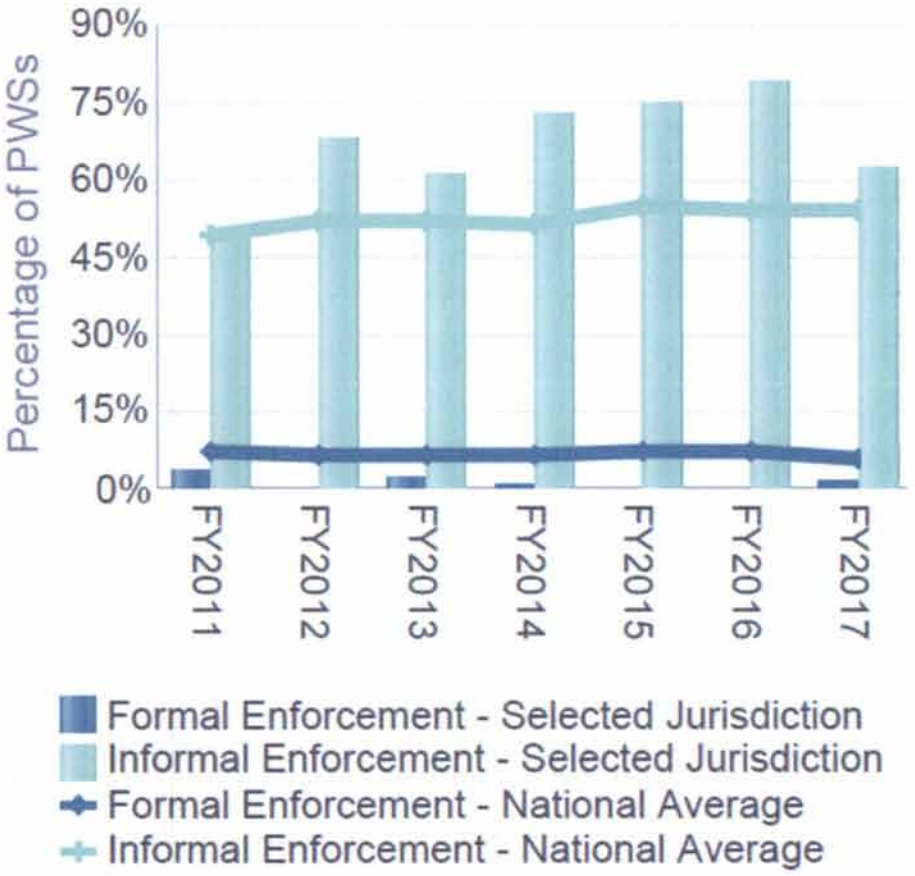
PWSs with Sanitary Surveys

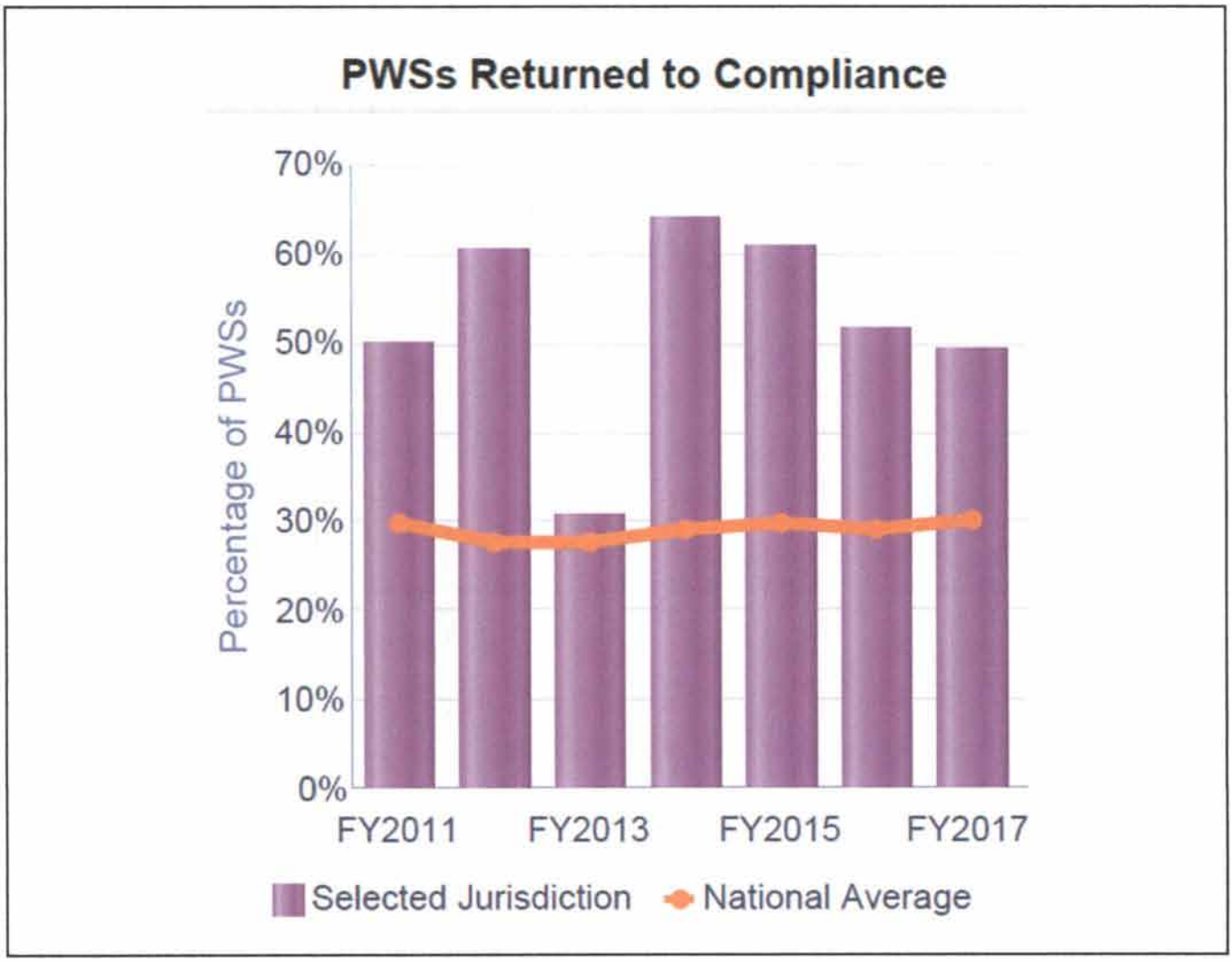



PWSs with Health-based Violations
12%
10%
8%
6%
4%
2%
0%
Percentage of PWSs
FY2011
FY2013
FY2015
FY2017
Selected Jurisdiction
National Average

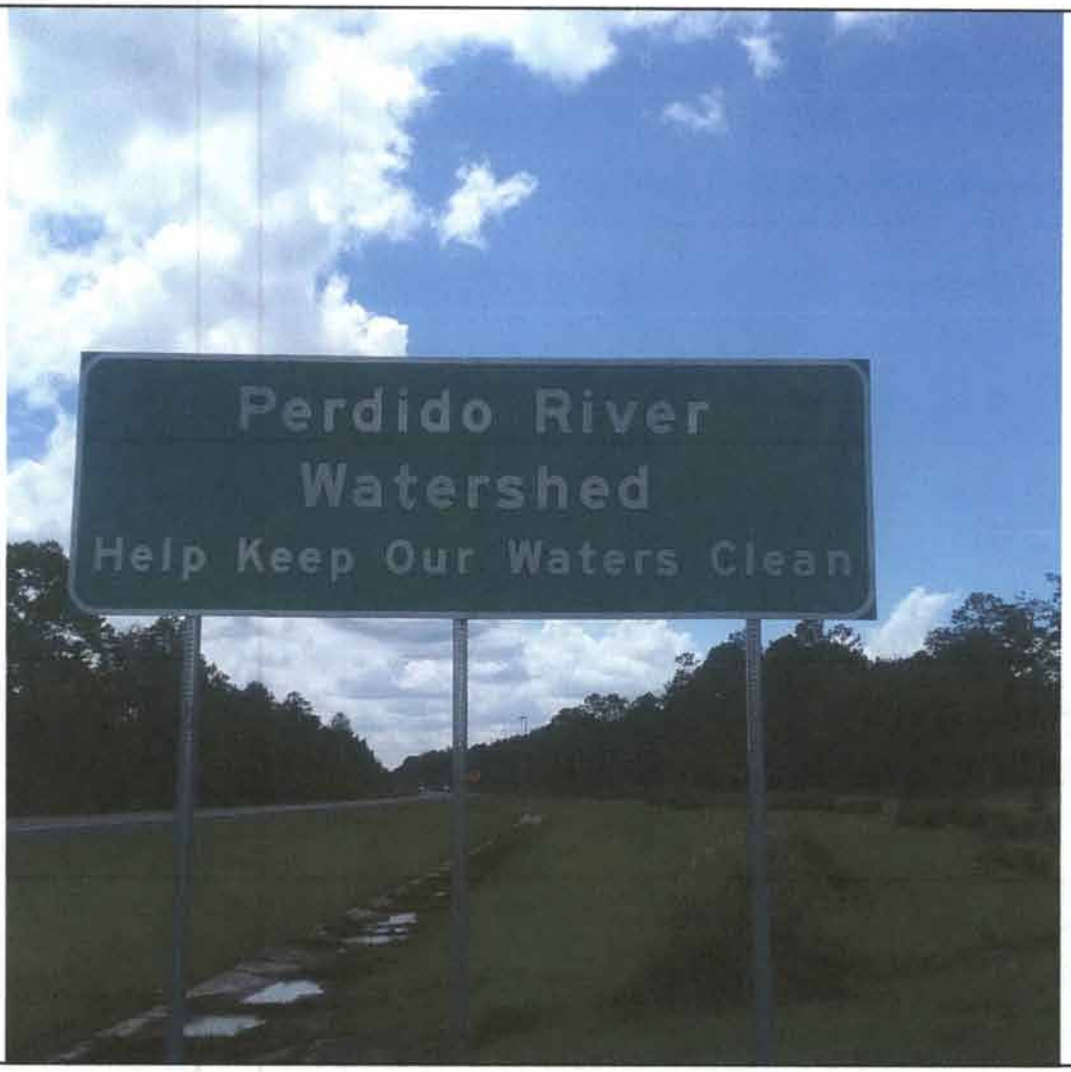

Serious Violators
Percentage of PWSs identified...
6%
5%
4%
3%
2%
1%
0%
FY2011
FY2013
FY2015
FY2017
Serious Violators Percentage
National Average

PWSs with Enforcement Actions




PWSs Returned to Compliance
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of PWSs
FY2011
FY2013
FY2015
FY2017
Selected Jurisdiction
National Average

Escatawpa River
Watershed
Help Keep Our Waters Clean


Perdido River
Watershed
Help Keep Our Waters Clean

Tallapoosa River
Watershed
Help Keep Our Waters Clean

Attachment 3

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTION

Adopt the recommendation of the Rulemaking Committee to not proceed to rulemaking with ADEM Administrative Code Rule 335-6-6-.12 with additional rules or modifications to the rules for public notification of Separate Sanitary Sewer Overflows

ORDER

This cause coming before the Environmental Management Commission pursuant to the motion referenced above, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the motion referenced above is hereby adopted; and

2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below.

Issued this 17th day of August 2018.

APPROVED:

Commission Member

Commission Member

Commission Member

Commission Member

Commission Member

Commission Member

Commission Member

Commission Member

DISAPPROVED:

Commission Member

Commission Member

Commission Member

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 17th day of August 2018.

H. Lanier Brown, II, Chair
Environmental Management Commission
Certified this 17th day of August 2018

Attachment 4

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-3 of the Department's Air Division – Air Pollution Control Program Rules in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

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

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

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

NOW THEREFORE, pursuant to Ala. Code. §§ 22-27-2, 22-27-7, 22-27-9, 22-27-12 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-3 [335-3-8-.40/TR NOx ozone Season Trading Program – Applicability (Amend); 335-3-10-.01/General (Amend); 335-3-10-.03/ Appendices to 40 CFR 60 (Amend); 335-3-11-.01/General (Amend); 335-3-11-.06/National Emission Standards for Hazardous Air Pollutants for Source Categories (Amend); 335-3-11-.07/Appendices to 40 CFR 63 (Amend); 335-3-14-.04/Air

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)] (Amend); 335-3-19-.01/Definitions Reserved (Repeal); 335-3-19-.02/General Provisions Reserved (Repeal); 335-3-19-.03/Standards for Existing Municipal Solid Waste Landfills Reserved (Repeal); 335-3-19-.04/Compliance Schedules Reserved (Repeal); 335-3-19-.05/Petition for Alternatives Standards and Compliance Schedules Reserved (Repeal);] of the Department's Air Division – Air Pollution Control Program Rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

ADEM Admin. Code division 335-3 – Air Pollution Control Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 17th day of August 2018.

APPROVED:

DISAPPROVED:

ABSTAINED:

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 17th day of August 2018.

H. Lanier Brown, II, Chair
Environmental Management Commission
Certified this 17th day of August 2018

335-3-8-.40 TR NO_X Ozone Season Group 2 Trading Program – Applicability.

(1) Applicability.

(a) Except as provided in subparagraph (b) of this paragraph:

1. The following units in the State of Alabama shall be TR NO_X Ozone Season Group 2 units, and any source that includes one or more such units shall be a TR NO_X Ozone Season Group 2 source, subject to the requirements of rules 335-3-8-.39 through 335-3-8-.70: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

2. If a stationary boiler or stationary combustion turbine that, under subparagraph (a)1. of this paragraph, is not a TR NO_X Ozone Season Group 2 unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a TR NO_X Ozone Season Group 2 unit as provided in subparagraph (a)1. of this paragraph on the first date on which it both combusts fossil fuel and serves such generator.

(b) Any unit in the State that otherwise is a TR NO_X Ozone Season Group 2 unit under subparagraph (a) of this paragraph and that meets the requirements set forth in subparagraphs (b)1.(i) and (ii) or 2.(i) and (ii) of this paragraph shall not be a TR NO_X Ozone Season Group 2 unit:

1. Any unit:

(i) Qualifying as a cogeneration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(ii) Not supplying in 2005 or any calendar year thereafter more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(iii) If, after qualifying under subparagraphs (b)1.(i) and (ii) of this paragraph as not being a TR NO_X Ozone Season Group 2 unit, a unit subsequently no longer meets all the requirements of subparagraphs (b)1.(i) and (ii) of this paragraph, the unit shall become a TR NO_X Ozone Season Group 2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of subparagraph (b)1.(ii) of this paragraph. The unit shall thereafter continue to be a TR NO_X Ozone Season Group 2 unit.

2. Any unit:

(i) Qualifying as a solid waste incineration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing

to qualify as a solid waste incineration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(ii) With an average annual fuel consumption of fossil fuel for the first 3 consecutive calendar years of operation starting no earlier than 2005 of less than 20 percent (on a Btu basis) and an average annual fuel consumption of fossil fuel for any 3 consecutive calendar years thereafter of less than 20 percent (on a Btu basis).

(iii) If, after qualifying under subparagraphs (b)2.(i) and (ii) of this paragraph as not being a TR NO_X Ozone Season Group 2 unit, a unit subsequently no longer meets all the requirements of subparagraphs (b)2.(i) and (ii) of this paragraph, the unit shall become a TR NO_X Ozone Season Group 2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 2005 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more. The unit shall thereafter continue to be a TR NO_X Ozone Season Group 2 unit.

(c) A certifying official of an owner or operator of any unit or other equipment may submit a petition (including any supporting documents) to the Administrator at any time for a determination concerning the applicability, under subparagraphs (a) and (b) of this paragraph, to the unit or other equipment. The certifying official of an owner or operator of any unit or other equipment shall submit a copy of the petition (including any supporting documents) to the Department.

1. Petition content. The petition shall be in writing and include the identification of the unit or other equipment and the relevant facts about the unit or other equipment. The petition and any other documents provided to the Department and the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: "I am authorized to make this submission on behalf of the owners and operators of the unit or other equipment for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

2. Response. The Administrator will issue a written response to the petition and may request supplemental information determined by the Administrator to be relevant to such petition. The Administrator's determination concerning the applicability, under subparagraphs (1)(a) and (b) of this rule, of the TR NO_X Ozone Season Group 2 Trading Program to the unit or other equipment shall be binding on Alabama, the Department, and any other State or permitting authority unless the Administrator determines that the petition contained significant, relevant errors or omissions.

Author: Ronald W. Gore.
Statutory Authority: Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: November 24, 2015. **Amended:** Filed: June 19, 2018; Effective: August 3, 2018.

335-3-10-.01 General.

(1) The Environmental Protection Agency Regulations, and the Appendices applicable thereto, governing Standards of Performance for New Stationary Sources (40 CFR 60 and Appendices) designated in rules 335-3-10-.02 and -.03 are incorporated by reference as they exist in 40 CFR 60 (July 1, 2017), and 82 FR 36688 [08/07/2017, amendments to Appendix B], 82 FR 37822 [08/14/2017, amendments to Appendix F], 82 FR 44106 [09/21/2017, amendments to Appendix F] as amended by the word or phrase substitutions given in rule 335-3-10-.04. References for specific documents containing the complete text of subject regulations are given in Appendix C to these Regulations. Authorities which are not delegable to the state are also listed in Appendix C.

[NOTE: The standards pertaining to the Consolidated Federal Air rule are located in chapter 335-3-11A.]

(a) The materials incorporated by reference are available for purchase and inspection at the Department's offices at 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

(2) The emission standards in this chapter shall supercede the emission standards in chapters 335-3-3, -4, -5, -6, -7, and -8 if both of the following criteria are met:

(a) the source category is subject to the regulations in this chapter for the specific pollutants to which an emission standard under this chapter applies, and

(b) the emission standard under chapters 335-3-3, -4, -5, -6, -7, and -8 is more stringent than the emission standard in this chapter for the specific pollutants regulated.

(3) Definitions. For purposes of this chapter, the definitions listed in 40 CFR §60.2 will apply.

Author:
Statutory Authority: Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8, and 41-22-9.
History: Effective: May 25, 1976. **Amended:** Effective: February 13, 1985. **Amended:** Effective: June 9, 1987. **Amended:** Effective: June 16, 1988. **Amended:** Effective: September 21, 1989. **Amended:** Effective: November 1, 1990. **Amended:** Effective: March 28, 1991. **Amended:** Effective: July 31, 1991. **Amended:** Effective: September 19, 1991. **Amended:** Effective: October 24, 1991. **Amended:** Effective: December 28, 1993. **Amended:** Effective: April 27, 1995. **Amended:** Effective: November 21, 1996. **Amended:** Effective: September 25, 1997. **Amended:** Effective: March 27, 1998. **Amended:** Effective: July 15, 1999. **Amended:** Effective: January 13, 2000. **Amended:** Effective: September 7, 2000. **Amended:** Effective: March 14, 2002. **Amended:** Effective: October 3, 2002. **Amended:** Effective: April 3, 2003. **Amended:** Effective: October 2, 2003. **Amended:** Effective: March 22, 2005. **Amended:** Effective: December 12, 2005. **Amended:** Effective: July 11, 2006. **Amended:** Effective: April 3, 2007. **Amended:** Effective: January 22, 2008. **Amended:** Effective: August 5, 2008. **Amended:** Effective: January 19, 2009. **Amended:** Effective: March 30, 2010. **Amended:** Effective: May 23, 2011. **Amended:** Effective: May 29, 2012. **Amended:** Effective: January 22, 2013. **Amended:** Effective: May 28, 2013. **Amended:** Effective: September 24, 2013. **Amended:** Effective: November 24, 2015. **Amended:** Effective: June 2, 2017. **Amended:** Filed: June 19, 2018; Effective: August 3, 2018.

335-3-10-.03 Appendices to 40 CFR 60.

(1) Appendix A - Reference Method.

(2) Appendix B - Performance Specifications.

(3) Appendix F - Quality Assurance Procedures.

Author: Robert Cowne.
Statutory Authority: Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8, and 41-22-9.
History: Effective Date: June 16, 1988. **Amended:** Effective: November 1, 1990. **Amended:** Effective: March 28, 1991. **Amended:** Effective: July 31, 1991. **Amended:** Effective: September 19, 1991. **Amended:** Effective: October 24, 1991. **Amended:** Effective: December 28, 1993. **Amended:** Effective: November 21, 1996. **Amended:** Effective: March 27, 1998. **Amended:** Effective: January 13, 2000. **Amended:** Effective: September 7, 2000. **Amended:** Effective: March 14, 2002. **Amended:** Effective: October 3, 2002. **Amended:** Effective: March 22, 2005. **Amended:** Effective: November 14, 2006. **Amended:** Effective: April 3, 2007. **Amended:** Effective: January 22, 2008. **Amended:** Effective: January 19, 2009. **Amended:** Effective: March 30, 2010. **Amended:** Effective: May 23, 2011. **Amended:** Effective: May 28, 2013. **Amended:** Effective: November 24, 2015. **Amended:** Effective: June 2, 2017. **Amended:** Filed: June 19, 2018; Effective: August 3, 2018.

335-3-11-.01 General.

(1) The Environmental Protection Agency Regulations, and the Appendices applicable thereto, governing Hazardous Air Pollutants, 40 CFR, Part 61 and Appendices, designated in rules 335-3-11-.02 and 335-3-11-.03 and 40 CFR Part 63, and Appendices designated in rules 335-3-11-.06 and 335-3-11-.07 are incorporated by reference as they exist in 40 CFR 61 (2016), and 81 FR 59800 [08/30/2016, amendments to Subparts A and Appendix B], and 40 CFR 63 (July 1, 2017), and 82 FR 45193 [09/28/2017, amendments to Subparts AA and BB], 82 FR 47328 [10/11/2017, amendments to Subparts A and MM], 82 FR 48156 [10/16/2017, amendments to Subpart CCCC], 82 FR 49513 [10/26/2017, amendments to Subpart VVV], 82 FR 60873 [12/26/2017, amendments to Subpart NNN], 83 FR 3986 [01/29/2018, amendments to Subpart DD], as amended by the word or phrase substitutions given in rule 335-3-11-.04. References for specific documents containing the complete text of subject regulations are given in Appendix C to these Regulations. Authorities which are not delegable to the state are also listed in Appendix C.

[NOTE: The standards pertaining to the Consolidated Federal Air rule are located in chapter 335-3-11A.]

(a) The materials incorporated by reference are available for purchase and inspection at the Department's offices at 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

(2) In the event of any conflict between the regulations contained in this chapter and regulations contained in other chapters, the more stringent regulations will take precedence.

(3) Definitions. For purposes of this chapter, the definitions listed in 40 CFR 61.02, Subpart A will apply in rules 335-3-11-.02 and 335-3-11-.03 and the definitions listed in 40 CFR 63.2, Subpart A will apply in rules 335-3-11-.06 and 335-3-11-.07.

Author:
Statutory Authority: Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8, and 41-22-9.
History: Effective Date: May 25, 1976. **Amended:** Effective: February 13, 1985. **Amended:** Effective: June 9, 1987. **Amended:** Effective: June 16, 1988. **Amended:** Effective: November 1, 1990. **Amended:** Effective: March 28, 1991. **Amended:** Effective: July 31, 1991. **Amended:** Effective: September 19, 1991. **Amended:** Effective: October 30, 1992. **Amended:** Effective: December 28,1993. **Amended:** Effective: November 23, 1995. **Amended:** Effective: November 21, 1996. **Amended:** Effective: September 25, 1997. **Amended:** Effective: March 27, 1998. **Amended:** Effective: November 19, 1998. **Amended:** Effective: July 15, 1999. **Amended:** Effective: January 13, 2000. **Amended:** Effective: September 7, 2000. **Amended:** Effective: March 14, 2002. **Amended:** Effective: October 3, 2002. **Amended:** Effective: April 3, 2003. **Amended:** Effective: October 2, 2003. **Amended:** Effective: March 22, 2005. **Amended:** Effective: December 12, 2005. **Amended:** Effective: July 11, 2006. **Amended:** Effective: April 3, 2007. **Amended:** Effective: January 22, 2008. **Amended:** Effective: August 5, 2008.

Amended: Effective: January 19, 2009. **Amended:** Effective: March 30, 2010. **Amended:** Effective: May 23, 2011. **Amended:** Effective: May 29, 2012. **Amended:** Effective: January 22, 2013. **Amended:** Effective: May, 28, 2013. **Amended:** Effective: September 24, 2013. **Amended:** Effective: November 24, 2015. **Amended:** Effective: June 2, 2017. **Amended:** Filed: June 19, 2018; Effective: August 3, 2018.

335-3-11-.06 National Emission Standards for Hazardous Air Pollutants for Source Categories.

(1) Subpart A – General Provisions.

(2) Subpart B - Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j).

[NOTE: The requirements for implementation of §112(g) are found in rule 335-3-14-.06]

(3) Subpart D - Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants.

(4) Reserved.

(5) Subpart F - National Emission Standards for Hazardous Air Pollutants From Synthetic Organic Chemical Manufacturing Industry.

(6) Subpart G - National Emission Standards for Organic Hazardous Air Pollutants From Synthetic Organic Chemical Manufacturing Industry Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

(7) Subpart H - National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.

(8) Subpart I - National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

(9) Reserved.

(10) Reserved.

(11) Subpart L - National Emission Standards for Coke Oven Batteries.

(12) Subpart M - National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

(13) Subpart N - National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

(14) Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities.

(15) Reserved.

(16) Subpart Q - National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.

(17) Subpart R - National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

(18) Subpart S - National Emission Standards for Hazardous Air Pollutants for Pulp and Paper Production.

(19) Subpart T - National Emission Standards for Halogenated Solvent Cleaning.

(20) Subpart U - National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.

(21) Reserved.

(22) Subpart W - National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production.

(23) Subpart X - National Emission Standards from Secondary Lead Smelting.

(24) Subpart Y - National Emission Standards for Marine Tank Vessel Loading Operations [with the exceptions of those subsections referencing the Valdez Marine Terminal (VMT) in Alaska].

(25) Reserved.

(26) Subpart AA – National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing Plants.

(27) Subpart BB – National Emission Standards for Hazardous Air Pollutants from Phosphate Fertilizers Production Plants.

(28) Subpart CC - National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.

(29) Subpart DD - National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(30) Subpart EE - National Emission Standards for Magnetic Tape Manufacturing Operations.

(31) Reserved.

(32) Subpart GG - National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(33) Subpart HH – National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities.

(34) Subpart II - National Emission Standards for Shipbuilding and Ship Repair (Surface Coating) Operations.

(35) Subpart JJ - National Emission Standards for Wood Furniture Manufacturing Operations.

(36) Subpart KK - National Emission Standards for the Printing and Publishing Industry.

(37) Reserved.

(38) Subpart MM – National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.

(39) Reserved.

(40) Subpart OO - National Emission Standards for Tanks - Level 1.

(41) Subpart PP - National Emission Standards for Containers.

(42) Subpart QQ - National Emission Standards for Surface Impoundments.

(43) Subpart RR - National Emission Standards for Individual Drain Systems.

(44) Subpart SS – National Emission Standards Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

(45) Subpart TT – National Emission Standards for Equipment Leaks – Control Level 1.

(46) Subpart UU – National Emission Standards for Equipment Leaks – Control Level 2 Standards.

(47) Subpart VV National Emission Standards for Oil-Water Separators and Organic-Water Separators.

(48) Subpart WW – National Emission Standards for Storage Vessels (Tanks) – Control Level 2.

(49) Subpart XX – National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.

(50) Subpart YY – National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards.

(51) Reserved.

(52) Reserved.

(53) Reserved.

(54) Subpart CCC – National Emission Standards for Hazardous Air Pollutants for Steel Pickling – HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(55) Subpart DDD – National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

(56) Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.

(57) Reserved.

(58) Subpart GGG - National Emission Standards for Hazardous Air Pollutants for Source Categories: Pharmaceuticals Production.

(59) Subpart HHH – National Emission Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities.

(60) Subpart III - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

(61) Subpart JJJ - National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins.

(62) Reserved.

(63) Subpart LLL - National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry.

(64) Subpart MMM – National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(65) Subpart NNN – National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(66) Subpart OOO – National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production.

(67) Subpart PPP – National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(68) Reserved.

(69) Subpart RRR – National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(70) Reserved.

(71) Reserved.

(72) Subpart UUU – National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(73) Subpart VVV – National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(74) Reserved.

(75) Subpart XXX – National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese.

(76) Reserved.

(77) Reserved.

(78) Subpart AAAA –National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills.

(79) Reserved.

(80) Subpart CCCC – National Emission Standards for Hazardous Air Pollutants: Nutritional Yeast.

(81) Subpart DDDD – National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products.

(82) Subpart EEEE – National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline).

(83) Subpart FFFF – National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing.

(84) Subpart GGGG – National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production.

(85) Subpart HHHH – National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production.

(86) Subpart IIII – National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks.

(87) Subpart JJJJ – National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating.

(88) Subpart KKKK – National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans.

(89) Reserved.

(90) Subpart MMMM – National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.

(91) Subpart NNNN – National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances.

(92) Subpart OOOO – National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles.

(93) Subpart PPPP – National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.

(94) Subpart QQQQ – National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products.

(95) Subpart RRRR – National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture.

(96) Subpart SSSS – National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil.

(97) Reserved.

(98) Reserved.

(99) Subpart VVVV – National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing.

(100) Subpart WWWW – National Emission Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production.

(101) Subpart XXXX – National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing.

(102) Subpart YYYY – National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.

(103) Subpart ZZZZ – National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (major source provisions only).

(104) Subpart AAAAA – National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.

(105) Subpart BBBBB – National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.

(106) Subpart CCCCC – National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.

(107) Subpart DDDDD – National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters.

(108) Subpart EEEEE – National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.

(109) Subpart FFFFF – National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities.

(110) Subpart GGGGG – National Emission Standards for Hazardous Air Pollutants: Site Remediation.

(111) Subpart HHHHH – National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing.

(112) Subpart IIIII – National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants.

(113) Subpart JJJJJ – National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.

(114) Subpart KKKKK – National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.

(115) Subpart LLLLL – National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing.

(116) Reserved.

(117) Subpart NNNNN – National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production.

(118) Reserved.

(119) Subpart PPPPP – National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Standards.

(120) Subpart QQQQQ – National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities

(121) Subpart RRRRR – National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing.

(122) Reserved.

(123) Subpart TTTTT – National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

(124) Subpart UUUUU– National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units.

(125) Reserved.

(126) Reserved.

(127) Reserved.

(128) Subpart YYYYY– National Emission Standards for Hazardous Air Pollutants for Electric arc Furnace Steelmaking Facilities Area Sources .

(129) Subpart ZZZZZ – National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.

(130) Reserved.

(131) Reserved.

(132) Reserved.

(133) Subpart DDDDDD – National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.

(134) Subpart EEEEEE – National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.

(135) Subpart FFFFFF – National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.

(136) Subpart GGGGGG – National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources – Zinc, Cadmium, and Beryllium.

(137) Reserved.

(138) Reserved.

(139) Reserved.

(140) Reserved.

(141) Subpart LLLLLL – National Emission Standards forHazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.

(142) Subpart MMMMMM – National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.

(143) Reserved.

(144) Subpart OOOOOO – National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.

(145) Reserved.

(146) Subpart QQQQQQ – National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.

(147) Reserved.

(148) Reserved.

(149) Subpart TTTTTT– National Emission Standards for Hazardous Air Pollutants for Secondary nonferrous Metals Processing Area Sources.

(150) Reserved.

(151) Subpart VVVVVV– National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.

(152) Reserved.

(153) Reserved.

(154) Subpart YYYYYY– National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production Facilities Area Sources .

(155) Subpart ZZZZZZ – National Emission Standards for Hazardous Air Pollutants for Aluminum, Copper, and Other Nonferrous Foundries Area Sources.

(156) Subpart AAAAAAA – National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing Area Sources

(157) Reserved.

(158) Subpart CCCCCCC – National Emission Standards for Hazardous Air Pollutants for Paints and Allied Products Manufacturing Area Sources.

(159) Subpart DDDDDDD – National Emission Standards for Hazardous Air Pollutants for Prepared Feeds Manufacturing Area Sources.

(160) Reserved.

(161) Reserved.

(162) Reserved.

(163) Subpart HHHHHHH – National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production.

Author: Richard E. Grusnick.
Statutory Authority: Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8, and 41-22-9.
History: Effective Date: November 23, 1995. **Amended:** Effective: November 21, 1996. **Amended:** Effective: September 25, 1997. **Amended:** Effective: March 27, 1998. **Amended:** Effective: November 19, 1998. **Amended:** Effective: July 15, 1999. **Amended:** Effective: January 13, 2000. **Amended:** Effective: September 7, 2000. **Amended:** Effective: March 14, 2002. **Amended:** Effective: October 3, 2002. **Amended:** Effective: April 3, 2003. **Amended:** Effective: October 2, 2003. **Amended:** Effective: March 22, 2005. **Amended:** Effective: December 12, 2005. **Amended:** Effective: July 11, 2006. **Amended:** Effective: April 3, 2007. **Amended:** Effective: January 22, 2008. **Amended:** Effective: August 5, 2008. **Amended:** Effective: January 19, 2009. **Amended:** Effective: March 30, 2010. **Amended:** Effective: May 23, 2011. **Amended:** Effective: May 29, 2012. **Amended:** Effective: January 22, 2013. **Amended:** Effective: May 28, 2013. **Amended:** Effective: September 24, 2013. **Amended:** Effective: November 24, 2015. **Amended:** Effective: June 2, 2017. **Amended:** Filed: June 19, 2018; Effective: August 3, 2018.

335-3-11-.07 Appendices to 40 CFR 63.

(1) Appendix A - Test Methods.

(2) Appendix B - Sources Defined for Early Reduction Provisions.

(3) Appendix C - Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit.

(4) Appendix D - Alternative Validation Procedure for EPA Waste and Wastewater Methods.

(5) Appendix E – Monitoring Procedure for Nonthoroughly Mixed Open Biological Treatment System Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions.

Author: Richard E. Grusnick.
Statutory Authority: Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8, and 41-22-9.
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335-3-14-.04 Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)]

(1) Applicability.

(a) The requirements of this rule apply to the construction of any new major stationary source (as defined in subparagraph (2)(a) of this rule) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Clean Air Act.

(b) The requirements of paragraphs (9) through (17) of this rule apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this rule otherwise provides.

(c) No new major stationary source or major modification to which the requirements of paragraphs (9) through (17)(c) of this rule apply shall begin construction without a permit that states that the major stationary source or major modification will meet those requirements.

(d) Except as otherwise provided in subparagraph (1)(j) of this rule, and consistent with the definition of major modification contained in subparagraph (2)(b) of this rule, a project is a major modification for a regulated NSR pollutant only if it causes two types of emissions increases – a significant emissions increase [as defined in subparagraph (2)(mm) of this rule], and a significant net emissions increase [as defined in subparagraphs (2)(c) and (2)(w) of this rule].

(e) Before beginning actual construction, the procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified, according to subparagraphs (1)(f) through (i) of this rule. The procedure for calculating whether a significant net emissions increase will occur at the major stationary source is contained in the definition in subparagraph (2)(c) of this rule. Regardless of any such preconstruction projections, a major modification can result only if the project causes a significant emissions increase and a significant net emissions increase.

(f) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference(s) between the projected actual emissions [as defined in subparagraph (2)(nn) of this rule] and the baseline actual emissions [as defined in subparagraphs (2)(uu)1. and 2. of this rule], for each existing emissions unit, equals or exceeds the significant rate for that pollutant [as defined in subparagraph (2)(w) of this rule].

(g) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit [as defined in subparagraph (2)(d) of this rule] from each new emissions unit following completion of the project and the baseline actual emissions [as defined in subparagraph (2)(uu)3. of this rule] of these units before the project equals or exceeds the significant rate for that pollutant [as defined in subparagraph (2)(w) of this rule].

(h) Actual-to-potential test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference(s) between the potential to emit [as defined in subparagraph (2)(d) of this rule] and the actual emissions [as defined in subparagraph (2)(u) of this rule], for each existing emissions unit, equals or exceeds the significant rate for that pollutant [as defined in subparagraph (2)(w) of this rule].

(i) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subparagraphs (1)(f) through (h) of this rule as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant rate for that pollutant [as defined in subparagraph (2)(w) of this rule].

(j) Any major stationary source subject to a plantwide applicability limit (PAL), as defined in subparagraph (23)(b)5. of this rule, for a regulated NSR pollutant shall comply with the requirements under paragraph (23) of this rule.

(k) Greenhouse gases (GHGs)

1. GHGs, as defined in Subparagraph (2)(zz) of this Rule, shall not be utilized in determining if a source is a major stationary source, as defined in

Subparagraph (2)(a) of this Rule, or in determining if a modification is a major modification, as defined in Subparagraph (2)(b) of this Rule.

2. GHGs shall only be subject to the requirements of this Rule if:

(i) A new major stationary source or major modification causes a significant emissions increase of GHGs, as defined in subparagraph (2)(mm) of this rule, and a significant net emissions increase of GHGs, as defined in subparagraphs (2)(c) and (2)(w) of this rule, and

(ii) The new major stationary source or major modification is required to obtain a permit subject to the requirements of this Rule as a result of emissions of regulated NSR pollutants other than GHGs.

Reserved.

(2) Definitions. For the purposes of this rule only, the following terms will have meanings ascribed in this paragraph:

(a) "Major Stationary Source" shall mean:

1. Any of the following stationary sources [see subparagraph (e) of this paragraph] of air pollutants which emits, or has the potential to emit [see subparagraph (d) of this paragraph], 100 tons per year or more of any regulated NSR pollutant:

- carbon black plants (furnace process);
- charcoal production plants;
- chemical process plants;
- coal cleaning plants (with thermal dryers);
- coke oven batteries;
- fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;
- fuel conversion plants;
- glass fiber processing plants; and
- hydrofluoric acid plants;
- sulfuric acid plants;
- nitric aid plants;
- iron and steel mill plants;
- kraft pulp mills;
- lime plants;
- municipal incinerators capable of charging more than 250 tons of refuse per day;

- petroleum refineries;
- petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- phosphate rock processing plants;
- portland cement plants;
- primary aluminum ore reduction plants;
- primary copper smelters;
- primary lead smelters;
- primary zinc smelters;
- secondary metal production plants;
- sintering plants;
- sulfur recovery plants;
- taconite ore processing plants;

(i) Notwithstanding the stationary source size specified in subparagraph (a)1. of this paragraph, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any regulated NSR pollutant;

(ii) Any physical change that would occur at a stationary source not otherwise qualifying under this rule as a major stationary source, if the changes would constitute a major stationary source by itself.

2. A stationary source that is considered major for VOC or NO_X shall be considered major for ozone.

(b) "Major Modification" shall mean any physical change in or change in the method of operation of a major stationary source that would result in a significant [see subparagraph (w) of this paragraph] net emissions increase [see subparagraph (c) of this paragraph] of any regulated NSR pollutant.

1. Any net emissions increase that is significant for VOC or NO_X shall be considered significant for ozone.

2. Any net emissions increase that is significant for SO_2 or NO_X shall be considered significant for $PM_{2.5}$.

3. A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (P.L. 93-319, 15 U.S.C. 791 note) or any superseding legislation, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (June 10, 1920, P.L. 280, 16 U.S.C. 791a);

(iii) Use of an alternative fuel by reason of an order or rule under Section 125 of the CAA;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(I) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975.

(II) The source is approved to use under any permit issued under the Federal Prevention of Significant Deterioration ("PSD") regulations (40 CFR 52.21) or under regulations of this rule;

(vi) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975.

(vii) Any change in ownership at a stationary source.

(viii) Reserved.

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(x) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated NSR pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

4. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph (23) of this rule for a PAL for that pollutant. Instead, the definition at subparagraph (23)(b)8. of this rule shall apply.

(c) "Net Emissions Increase" shall mean with respect to any regulated NSR pollutant, the amount by which the sum of the following exceeds zero:

1. Any increase in emissions as calculated pursuant to subparagraph (1)(e) through (i) of this rule from a particular physical change or change in method of operation at a stationary source; and

2. Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subparagraph shall be determined as provided in subparagraph

(2)(uu) of this rule, except that subparagraphs (2)(uu)1.(iii) and (2)(uu)2.(iv) of this rule shall not apply.

(i) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(I) The date five (5) years before construction [see subparagraph (h) of this paragraph] on the particular change commences [see subparagraph (i) of this paragraph]; and

(II) The date that the increase from the particular change occurs.

(ii) An increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit for the source under this rule, which is in effect when the increase in actual emissions from the particular change occurs.

(iii) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date [see subparagraph (n)2. of this paragraph] is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM_{10} and $PM_{2.5}$ emissions can be used to evaluate the net emissions increase for PM_{10}. Only $PM_{2.5}$ emissions can be used to evaluate the net emissions increase for $PM_{2.5}$.

(iv) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(v) A decrease in actual emissions is creditable only to the extent that:

(I) The old level of actual emissions or the old level of allowable emissions [see subparagraph (p) of this paragraph], whichever is lower, exceeds the new level of actual emissions;

(II) It is enforceable [see subparagraph (q) of this paragraph], at and after the time that actual construction on the particular change begins; and

(III) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(vi) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(d) "Potential to Emit" shall mean the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed,

shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions [see paragraph 335-3-14-.04(2)(r)] do not count in determining the potential to emit of a stationary source.

(e) "Stationary Source" shall mean any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(f) "Building, Structure, Facility, or Installation" shall mean all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., all have the same two digit code) as described in the Standard Industrial Classification Manual.

(g) "Emissions Unit" shall mean any part of a stationary source which emits or would have the potential to emit any regulated NSR pollutant including an electric utility steam generating unit as defined in subparagraph (2)(vv) of this rule. For purposes of this rule, there are two types of emissions units as described in subparagraphs (2)(g)1. and 2. of this rule.

1. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

2. An existing emissions unit is any emissions unit that does not meet the requirements in subparagraph (2)(g)1. of this rule. A replacement unit, as defined in subparagraph (bbb) of this rule, is an existing emissions unit.

(h) "Construction" shall mean any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in emissions.

(i) "Commence" as applied to construction of a major stationary source or major modification shall mean that the owner or operator has all necessary preconstruction approvals or permits [see subparagraph (j) of this paragraph] and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction [see subparagraph (k) of this paragraph] of the source, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(j) "Necessary Preconstruction Approvals or Permits" shall mean those permits or approvals required under Alabama air quality control laws and regulations which are part of the State Implementation Plan.

(k) "Begin Actual Construction" shall mean, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(l) "Best Available Control Technology (BACT)" shall mean an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR 60 and 61. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means which achieve equivalent results.

(m) "Baseline Concentration" shall mean that ambient concentration level which exists in the baseline area [see subparagraph (o) of this paragraph] at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

1. The actual emissions, as defined in paragraph (2)(u) of this rule, representative of sources in existence on the applicable minor source baseline date, except as provided in subparagraph (m) 3. of this paragraph;

2. The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

3. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(i) Actual emissions, as defined in paragraph (2)(u) of this rule, from any major stationary source on which construction commenced after the major source baseline date; and

(ii) Actual emissions increases and decreases, as defined in paragraph (2)(u) of this rule, at any stationary source occurring after the minor source baseline date.

(n) "Major Source Baseline Date" means in the case of particulate matter less than 10 microns in diameter and sulfur dioxide, January 6, 1975; in the case of nitrogen dioxide, the major source baseline date is February 8, 1988, and in the case of particulate matter less than 2.5 microns in diameter, the major source baseline date is October 20, 2010.

1. "Minor Source Baseline Date" means the earliest date after the trigger date on which the first complete [see subparagraph (v) of this paragraph], application is submitted by a major stationary source or major modification subject to the requirements of Federal PSD regulations or this rule. The trigger date is:

(i) In the case of particulate matter less than 10 microns in diameter and sulfur oxides, August 7, 1977, and

(ii) In the case of nitrogen dioxide, February 8, 1988.

(iii) In the case of particulate matter less than 2.5 microns in diameter, October 20, 2011.

2. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(i) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the CAA for the pollutant on the date of its complete application under Federal PSD regulations or this rule.

(ii) In the case of a major stationary source, the pollutant would be emitted in significant amounts or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

3. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments.

(o) "Baseline Area" shall mean any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the CAA in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) microgram per cubic meter (annual average) of the pollutant for which the minor source baseline date is established.

1. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments.

(p) "Allowable Emissions" shall mean the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in 40 CFR 60, 61, and 63;

2. The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

3. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

(q) "Enforceable" shall mean all limitations and conditions which are enforceable, including those requirements developed pursuant to 40 CFR 60, 61, and 63, requirements within the State Implementation Plan and any permit requirements established pursuant to chapters 14, 15, or 16 of these regulations.

(r) "Secondary Emissions" shall mean emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this rule, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

1. Emissions from ships or trains coming to or from the new or modified stationary source; and

2. Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(s) "Innovative Control Technology" shall mean any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

(t) "Fugitive Emissions" shall mean those emissions which could not reasonably pass through a stack, chimney, vent, roof monitor, or other functionally equivalent opening.

(u) "Actual Emissions" shall mean the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance

with subparagraphs (u)1. through (u)3. below, except that this definition shall not apply for establishing a PAL under paragraph (23) of this rule. Instead, subparagraphs (2)(nn) and (2)(uu) of this rule shall apply for this purpose.

1. In general, actual emissions as of any given date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24- month period which precedes the given data and which is representative of normal source operation. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

2. The Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

3. For any emissions unit which has not begun normal operations on the given date as determined in subparagraph (u)1., actual emissions shall equal the potential to emit of the unit on that date.

(v) "Complete" shall mean, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

(w) "Significant" shall mean, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	**Emissions Rate (tons per year)**
Carbon monoxide	100
Nitrogen oxides	40
Sulfur dioxide	40
Particulate matter	25
PM_{10}	15
$PM_{2.5}$	10 (of direct $PM_{2.5}$)
	40 (of SO_2 or NOx)
Ozone	40 (of VOC or NO_X)
Lead	0.6
Fluorides (excluding HF)	3
Sulfuric acid mist	7
Hydrogen sulfide (H_2S)	10
Total reduced sulfur (including H_2S)	10

Pollutant	**Emissions Rate (tons per year)**
Reduced sulfur compounds (including H_2S)	10
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6}
Municipal waste combustor metals (measured as particulate matter)	15
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	40
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	50
Greenhouse gases (GHGs) CO_2e	75,000

1. Significant means, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that paragraph (2)(w) of this rule does not list: 100 TPY.

2. Notwithstanding subparagraph (w) above, significant shall mean any emissions rate or any net emissions increase, excluding GHGs, associated with a major stationary source or major modification which would construct within ten (10) kilometers of a Class I area and have an impact on such area equal to or greater than one (1) microgram per cubic meter (24-hour average).

3. For GHGs, a source or modification would not be significant unless it results in:

(i) An emissions increase and a net emissions increase in GHGs on a total mass basis, and

(ii) A significant emissions increase and a significant net emissions increase in GHGs on a CO_2e basis.

(x) "Federal Land Manager" shall mean, with respect to any lands in the United States, the Secretary of the Department with authority over such lands.

(y) "High Terrain" shall mean any area having an elevation 900 feet or more above the base of the stack of a source.

(z) "Low Terrain" shall mean any area other than high terrain.

(aa) "Indian Governing Body" shall mean the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

(bb) "Indian Reservation" shall mean any Federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(cc) "Adverse Impact on Visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

(dd) "Visibility Impairment" means any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions.

(ee) "Natural Conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(ff) "Environmentally Beneficial Activity" shall mean:

1. Any activity or project undertaken at an existing emissions unit which, as its primary purpose, reduces emissions of air pollutants from such unit, and is limited to the installation or modification of any of the following:

(i) Conventional or advanced flue gas desulfurization, or sorbent injection for SO_2;

(ii) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for particulate matter or other pollutants;

(iii) Flue gas recirculation, low-NO_X burners, selective non-catalytic reduction or selective catalytic reduction for NO_X;

(iv) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, flares, carbon adsorbers, or combustion devices installed or modified to comply with hazardous emission standards for volatile organic compounds or hazardous air pollutants;

(v) Activities or projects undertaken to accommodate switching to an inherently less polluting fuel, including but not limited to natural gas or coal reburning, or the cofiring of natural gas and other inherently less polluting fuels, for the purpose of controlling emissions, and including any activity that is necessary to accommodate switching to an inherently less polluting fuel;

(vi) Pollution prevention projects which the Director determines to be environmentally beneficial.

(vii) Installation or modification of a technology other than those listed in subparagraphs (ff)1.(i) through (v), for the purposes set forth in subparagraph (ff)1., which has demonstrated an effectiveness at reducing emissions and is determined by the Director to be environmentally beneficial.

2. Environmentally beneficial projects do not include:

(i) The replacement of an existing emissions unit with a newer or different unit;

(ii) Reconstruction of an existing emissions unit;

(iii) Pollution prevention projects which result in an increased risk from the release of hazardous air pollutants;

(iv) Any project which would result in the increased production of an existing emissions unit.

(v) Any project which reduces emissions solely by transferring them to or from another media.

(vi) Any project which would cause an exceedance of an existing enforceable emissions limitation which was established to avoid applicability of the requirements of this rule.

(gg) "Pollution Prevention Projects" shall mean any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. It does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(hh) "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(ii) "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(jj) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(kk) "Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics,

direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

1. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(ll) Reserved.

(mm) "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in subparagraph (2)(w) of this rule) for that pollutant.

(nn) "Projected actual emissions" means

1. The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (consecutive 12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

2. In determining the projected actual emissions under subparagraph (2)(nn)1. of this rule (before beginning actual construction), the owner or operator of the major stationary source:

(i) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under these regulations; and

(ii) Shall include fugitive emissions to the extent quantifiable and emissions associated with startups and shutdowns; and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under subparagraph (2)(uu) of this rule and that are not resulting from the particular project, including any increased utilization due to product demand growth; or

(iv) In lieu of using the method set out in subparagraphs (2)(nn)2.(i) through (iii), may elect to use the emissions unit's potential to emit, in tons per year, as defined under subparagraph (2)(d) of this rule.

(oo) Reserved.

(pp) "Prevention of Significant Deterioration (PSD) program" means the preconstruction permit program in this rule. Any permit issued under this program is a major NSR permit.

(qq) "Continuous emissions monitoring system (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements of this rule, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(rr) "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O2 or CO2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(ss) "Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of this rule, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O2 or CO2 concentrations), and to record average operational parameter value(s) on a continuous basis.

(tt) "Continuous emissions rate monitoring system (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(uu) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with subparagraphs (2)(uu)1. through 4. of this rule.

1. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Director may allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups and shutdowns.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any

emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subparagraph (2)(uu)1.(ii) of this rule.

2. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Department for a permit required under this rule, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups and shutdowns.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR part 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR § 51.165(a)(3)(ii)(G).

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subparagraphs (2)(uu)2.(ii) and (iii) of this rule.

3. For a new emissions unit, as defined in subparagraph (2)(g)1. of this rule, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero. During the first two years from the date which the emissions unit commenced operation, the baseline actual emissions shall equal the potential to emit for the unit. Thereafter, the unit will be considered an existing emissions unit and the baseline actual emissions will be determined in accordance with subparagraph (2)(uu)1. for an electric steam generating unit or subparagraph (2)(uu)2. for other emissions units.

4. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subparagraph (2)(uu)1. of this rule, for other existing emissions units in accordance with the procedures contained in subparagraph (2)(uu)2. of this rule, and for a new emissions unit in accordance with the procedures contained in subparagraph (2)(uu)3. of this rule.

(vv) Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(ww) "Regulated NSR pollutant", for purposes of this rule, means the following:

1. Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator of EPA (e.g., volatile organic compounds and NO_X are precursors for ozone);

2. Any pollutant that is subject to any standard promulgated under section 111 of the Clean Air Act;

3. Any Class I or II substance subject to a standard promulgated under or established by title VI of the Clean Air Act; or

4. Any pollutant that otherwise is subject to regulation under the Clean Air Act; except that any or all hazardous air pollutants either listed in section 112 of the Clean Air Act, including compounds listed in 40 CFR Part 68 pursuant to Section 112(r) of the Clean Air Act, or added to the list pursuant to section 112(b)(2) of the Clean Air Act, which have not been delisted pursuant to section 112(b)(3) of the Clean Air Act, are not regulated NSR pollutants unless the listed

hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Clean Air Act.

5. $PM_{2.5}$ and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. Such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10}. Applicability determinations made prior to January 1, 2011 without accounting for condensable particulate matter shall not be considered invalid.

(xx) Reserved.

(yy) "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

(zz) Greenhouse gases (GHGs) means the aggregate of: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(aaa) CO_2 equivalent emissions (CO_2e) shall represent the amount of GHGs emitted as computed by the following:

1. Multiplying the mass amount of emissions (TPY) for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential as listed in Appendix I.

2. Sum the resultant value determined in subparagraph (aaa)1. for each gas to calculate the TPY of CO_2e.

(bbb) Replacement unit means an emissions unit for which all the criteria listed in subparagraphs (2)(bbb)1. through 4. of this section are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced. A replacement unit is subject to all permitting requirements for modifications under this rule.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR §60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit. A functionally equivalent unit would be a unit that serves the same purpose as the replaced unit. The Director shall be the determiner of whether a unit is functionally equivalent to the replaced unit.

3. The replacement does not alter the basic design parameters of the process unit. Basic design parameters shall include, but not be limited to, maximum hourly heat input, maximum hourly fuel utilization, or maximum

hourly raw material feed, as appropriate. Basic design parameters of a replaced unit shall also include all source specific emission limits and/or monitoring requirements. The Director shall be the determiner of whether the basic design parameters of the replaced unit are altered.

4. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

5. A Replacement Unit as defined in this subparagraph shall be subject to the applicability test in subparagraph (1)(f) of this rule for any modification.

(3) Ambient Air Increments. In areas designated as Class I, II or III, increases in pollutant concentration over the baseline shall be limited to the following:

Area	Pollutant	Maximum Allowable Increase (micrograms per cubic meter)
Class I	PM_{10}:	Annual arithmetic mean 4
		24-hour maximum..... 8
	$PM_{2.5}$	Annual arithmetic mean 1
		24-hour maximum..... 2
	Sulfur dioxide:	Annual arithmetic mean 2
		24-hour maximum..... 5
		3-hour maximum..... 25
	Nitrogen dioxide:	Annual arithmetic mean..... 2.5
Class II	PM_{10}:	Annual arithmetic mean..... 17
		24-hour maximum..... 30
	$PM_{2.5}$	Annual arithmetic mean 4
		24-hour maximum..... 9
	Sulfur dioxide:	Annual arithmetic mean..... 20
		24-hour maximum..... 91
		3-hour maximum..... 512
	Nitrogen dioxide:	Annual arithmetic mean..... 25
Class III	PM_{10}:	Annual arithmetic mean..... 34
		24-hour maximum..... 60
		Annual arithmetic mean 8

	$PM_{2.5}$	24-hour maximum..... 18

Area	Pollutant	Maximum Allowable Increase (micrograms per cubic meter)
	Sulfur dioxide:	Annual arithmetic mean 40
		24-hour maximum 182
		3-hour maximum 700
	Nitrogen dioxide:	Annual arithmetic mean 50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

(4) Ambient Air Ceilings. No concentration of a pollutant shall exceed:

(a) The concentration permitted under the National Secondary Ambient Air Quality Standard, or

(b) The concentration permitted under the National Primary Ambient Air Quality Standard, whichever concentration is lowest for the pollutant for a period of exposure.

(5) Area Classifications.

(a) The following area, which was in existence on August 7, 1977, shall be a Class I area and may not be redesignated:

1. The Sipsey Wilderness Area, located in Franklin, Winston, and Lawrence counties, Alabama.

(b) Any other area is initially designated Class II:

(6) Exclusions from Increment Consumption.

(a) The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

1. Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

2. Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

3. Concentrations of PM_{10} attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

4. The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

5. Concentrations attributable to the temporary increase in emissions of sulfur dioxide, PM_{10}, or nitrogen oxides from stationary sources which are affected by plan revisions approved by the EPA as being exempt from increment consumption.

(b) No exclusion of such concentrations shall apply for more than five (5) years after the effective date of the order to which subparagraph (a)1. of this paragraph or the plan to which subparagraph (a)2. of this paragraph refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply for more than five (5) years after the later of such effective dates.

(7) Reserved.

(8) Review of Major Stationary Sources and Major Modification - Source Applicability and Exemptions.

(a) No major stationary source or major modification shall begin actual construction unless, as a minimum, requirements contained in paragraphs (9) through (17) of this rule have been met.

(b) The requirements contained in paragraphs (9) through (17) shall apply to any major stationary source and any major modification with respect to each regulated NSR pollutant that it would emit, except as this rule would otherwise allow.

(c) The requirements contained in paragraphs (9) through (17) apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassified under Section 107(d)(1)(A)(ii) or (iii) of the CAA.

(d) The requirements contained in paragraphs (9) through (17) shall not apply to a major stationary source or major modification, if:

1. Reserved.

2. Reserved.

3. Reserved.

4. Reserved.

5. Reserved.

6. The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution; or

7. The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification, and the source does not belong to any of the following categories:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the CAA; or

8. The source is a portable stationary source which has previously received a permit under this rule; and

(i) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(ii) The emissions from the source would not exceed its allowable emissions; and

(iii) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(iv) Reasonable notice is given to the Director prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Director not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the Director.

(e) The requirements of paragraphs (9) through (17) of this rule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the CAA.

(f) The requirements of paragraphs (10), (12), and (14) of this rule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the allowable emissions of that pollutant from the source or the net emissions increase of that pollutant from the modification:

1. Would impact no Class I area and no area where an applicable increment is known to be violated, and

2. Would be temporary.

(g) The requirements of paragraphs (10), (12), and (14) of this rule as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT would be less than 50 tons per year.

(h) The Director may exempt a stationary source or modification from the requirements of paragraph (12) of this rule with respect to monitoring for a particular pollutant if:

1. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts which are less than the following amounts:

Carbon monoxide ..... 575 $\mu g/m^3$, 8-hour average;
Nitrogen dioxide ..... 14 $\mu g/m^3$, annual average;
PM_{10} ..... 10 $\mu g/m^3$, 24-hour average;
$PM_{2.5}$ 4 $\mu g/m^3$, 24-hour average; Sulfur dioxide ..... 13 $\mu g/m^3$, 24-hour average; Ozone;[1]
Lead ..... 0.1 $\mu g/m^3$, 3-month average;
Fluorides ..... 0.25 $\mu g/m^3$, 24-hour average;
Total reduced sulfur ..... 10 $\mu g/m^3$, 1-hour average;
Hydrogen sulfide ..... 0.2 $\mu g/m^3$, 1-hour average;

or

2. The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subparagraph (h)1. of this paragraph, or the pollutant is not listed in subparagraph (h)1. of this paragraph; or

3. The owner or operator of the stationary source or modification submits an application under this rule that the Director determines is complete, except with respect to the requirements for monitoring PM_{10} in paragraph (12) of this rule, on or before June 1, 1988. If a complete permit application is received after June 1, 1988, but not later than December 1, 1988, the requirements for PM_{10} monitoring under paragraph (12) of this rule apply in that data shall have been gathered over at least the period from February 1, 1988 to the date the complete application is received, except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months) then the shorter period of data gathering will suffice to meet the requirements of paragraph (12) of this rule.

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[1]No de minimus air quality level is provided for ozone. However, any net increase of 100 tons per year or more of VOC or NO_X subject to rule 335-3-14-.04 would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

(i) Reserved.

(j) Reserved.

(k) At the discretion of the Director, the requirements for air quality monitoring of PM_{10} in subparagraphs (12)(a)1. through 4. of this rule may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for a permit under this rule on or before June 1, 1988 and the Director subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring PM_{10} in subparagraphs (12)(a)1. through 4.

(l) The requirements for air quality monitoring of PM_{10} in subparagraphs (12)(a)2. and 4. and subparagraph (12)(c) shall apply to a particular source or modification if the owner or operator of the source of modification submits an application for permit under this rule after June 1, 1988 and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988 to the date the application becomes otherwise complete in accordance with the provisions set forth under subparagraph (12)(a)8., except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that subparagraph (12)(a)3. requires shall have been gathered over that shorter period.

(m) Any project which is an environmentally beneficial project as defined in subparagraph (2)(ff) of this rule shall not be considered a major modification as defined in paragraph (2) of this rule and is exempt from all provisions of this rule except paragraphs (10), (11), (13), (15), and (16).

(n) The requirements of paragraphs (10), (11), (12), (14), and (15) of this Rule shall not apply with respect to GHGs for any major stationary source or major modification.

(9) Control Technology Review.

(a) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable limitation standard and standard of performance under 40 CFR 60 and 61.

(b) A new major stationary source shall apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

(c) A major modification shall apply BACT for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(d) For phased construction projects, the determination of BACT shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of BACT for the source.

(10) Source Impact Analysis.

(a) Required Demonstration. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

1. Any National Ambient Air Quality Standard in any air quality control region; or

2. Any applicable maximum allowable increase over the baseline concentration in any area.

(b) Significant Impact Levels. The demonstration required in subparagraph (10)(a) is deemed to have been made if the emissions increase for the new stationary source alone or from the modification alone would cause, in all areas, air quality impacts less than the following amounts:

Pollutant	**Averaging Time**	**Class I Significance Level**	**Class II Significance Level**
SO_2	3 hour		25 µg/m³
	24 hour		5 µg/m³
	Annual		1 µg/m³
PM_{10}	24 hour		5 µg/m³
	Annual		1 µg/m³
$PM_{2.5}$	24 hour	0.07 µg/m³	1.2 µg/m³
	Annual	0.06 µg/m³	0.3 µg/m³
NO_2	Annual		1 µg/m³
CO	1 hour		2,000 µg/m³
	8 hour		500 µg/m³

(11) Air Quality Models.

(a) All estimates of ambient concentrations required under this rule shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models". (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711)

(12) Air Quality Analysis.

(a) Preapplication Analysis.

1. Any application for a permit under this rule shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(i) For the source, each pollutant that it would have the potential to emit in a significant amount;

(ii) For the modification, each pollutant for which it would result in a significant net emissions increase.

2. With respect to any such pollutant for which no NAAQS exists, the analysis shall contain such air quality monitoring data as the Director determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

3. With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

4. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one (1) year and shall represent the year preceding receipt of the application, except that, if the Director determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not to be less than four (4) months), the data that is required shall have been gathered over at least that shorter period.

5. Reserved.

6. The owner or operator of a proposed stationary source or modification of VOC who satisfies all conditions of rule 335-3-14-.05 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under subparagraph (a) of this paragraph.

7. For any application that becomes complete, except as the requirements of subparagraphs (a)3. and 4. of this paragraph pertaining to PM_{10}, after December 1, 1988 and no later than August 1, 1989 the data that subparagraph (a)3. of this paragraph requires shall have been gathered over at least the period

from August 1, 1988 to the date the application becomes otherwise complete, except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that subparagraph (a)3. of this paragraph requires shall have been gathered over that shorter period.

8. With respect to any requirements for air quality monitoring of PM_{10} under subparagraphs (8)(k) and (l) of this rule, the owner or operator of the source or modification shall use a monitoring method approved by the Director and shall estimate the ambient concentrations of PM_{10} using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Director.

(b) Post-construction Monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Director determines is necessary to determine the impact for said source or modification may have, or is having, on air quality in any area.

(c) Operations of Monitoring Stations. The owner or operator of a major stationary source or major modification shall meet Federal monitoring quality assurance requirements during the operation of monitoring stations for purposes of satisfying this paragraph.

(d) Visibility Monitoring. The Director may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the Director deems necessary and appropriate.

(13) Source Information. The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or to make any determination required under this rule.

(a) With respect to a source or modification to which rules 335-3-14-.04(9), 335-3-14-.04(10), 335-3-14-.04(12), and 335-3-14-.04(14) apply, such information shall include:

1. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

2. A detailed schedule for construction of the source or modification;

3. A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates and any other information necessary to determine that BACT would be applied.

(b) Upon request of the Director, the owner or operator shall also provide information on:

1. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

2. The air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

(14) Additional Impact Analyses.

(a) The owner or operator shall provide an analysis of the impact on visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(b) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

(15) Sources Impacting Federal Class I Areas - Additional Requirements.

(a) Notice to Federal Land Managers and to EPA. The Director shall provide notice of any permit application for a proposed major stationary source or major modification the emissions from which would affect a Class I area to EPA, the Federal Land Manager and the Federal official charged with direct responsibility for management of any lands within any such area. The Director shall provide such notice promptly after receiving the application. The Director shall also provide EPA, the Federal Land Manager and such Federal officials with notice of every action related to the consideration of such permit.

(b) The Director shall notify all affected Federal Land Managers within 30 days of receipt of an advance notification of any permit application for a proposed major stationary source or modification, the emissions from which may affect a Class I Area. The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application. At least 30 days prior to the publication of the notice for public comment on the application, the Director shall provide the Federal Land Manager with a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility.

(c) Visibility analysis. The Director shall consider any analysis performed by the Federal Land Manager concerning visibility impairment if the analysis is received within 30 days of being provided the permit application information and analysis required by subparagraph (b) of this paragraph above. Where the Director finds that such an analysis does not demonstrate to the satisfaction of the Director that an adverse impact on visibility will result in the Federal Class I area, the Director must, in the notice of public comment on the permit application, either explain his decision or give notice as to where the explanation can be obtained.

(d) Denial - Impact on Air Quality Related Values. The Federal Land Manager of any such lands may demonstrate to the Director that the emissions from a proposed source or modification would have an adverse impact on the air quality related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Director concurs with such demonstration, then he shall not issue the permit.

(e) Class I Variances. The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and he so certifies, the Director may issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, $PM_{2.5}$, PM_{10}, and nitrogen oxides would not exceed the following maximum allowable increases over baseline concentration for such pollutants:

Pollutant	Maximum Allowable Increase (micrograms per cubic meter)
PM_{10}	Annual arithmetic mean 17
	24-hour maximum..... 30
PM2.5	Annual arithmetic mean 4
	24-hour maximum.....9
Sulfur dioxide	Annual arithmetic mean 20
	24-hour maximum..... 91
	3-hour maximum.....325
Nitrogen dioxide	Annual arithmetic mean 25

provided that the applicable requirements of this rule are otherwise met.

(f) Sulfur Dioxide Variance by Governor with Federal Land Manager's Concurrence. The owner or operator of a proposed source or modification which cannot be approved under subparagraph (c) of this paragraph may demonstrate to the Governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of twenty-four (24) hours or less applicable to any Class I area and, in the case of Federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance

from such maximum allowable increase. If such variance is granted, the Director shall issue a permit to such source or modification pursuant to the requirements of paragraph (16) of this rule provided, that the applicable requirements of this rule are otherwise met.

(g) Variance by the Governor with the President's Concurrence. In any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the Director shall issue a permit pursuant to the requirements of paragraph (16) of this rule provided, that the applicable requirements of this rule are otherwise met.

(h) Emission Limitations for Presidential or Gubernatorial Variance. In the case of a permit issued pursuant to subparagraphs (f) or (g) of this paragraph, the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, during any annual period:

Period of exposure	**Maximum Allowable Increase (micrograms per cubic meter)**	
	Terrain areas	
	Low	**High**
24-hour maximum	36	62
3-hour maximum	130	221

(16) Public Participation.

(a) After receipt of an application for an Air Permit or any addition to such application, the Director shall advise the applicant of any deficiency in the application or in the information submitted. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this rule, the date on which the Director received all required information.

(b) Within one (1) year after receipt of a complete application, the Director shall make a final determination of the application. This involves performing the following actions in a timely manner:

1. Make a preliminary determination whether construction should be approved, approved with conditions or disapproved.

2. Make available on the Department's web site a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.

3. Notify the public, by posting on the Department's web site for the duration of the comment period of 30 days, the preliminary determination, the degree of increment consumption that is expected from the source or modification, the opportunity to comment on the proposed permit, how to request and/or attend a public hearing on the proposed permit, a copy of the proposed permit, and information on how to access the administrative record for the proposed permit.

4. Send a copy of the notice of public comment to the applicant, to EPA and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other State or local air pollution control agencies, the chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification.

5. Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

6. Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than ten (10) days after the close of the public comment period, the applicant may, as part of the public record, submit a written response to any comments submitted by the public. The Director shall consider the applicant's response in making a final decision. The Director shall make all comments available for public inspection on the same web site where the Director made available preconstruction information relating to the proposed source or modification.

7. Make a final determination whether construction should be approved, approved with conditions or disapproved pursuant to this rule.

8. Notify the applicant in writing of the final determination and make such notification available for public inspection at the same web site where the Director made available preconstruction information and public comments relating to the source or modification.

(17) Source Obligation.

(a) An Air Permit authorizing construction shall become invalid if construction is not commenced within twenty-four (24) months after receipt of such approval, if construction is discontinued for a period of twenty-four (24) months or more, or if construction is not completed within a reasonable time. The Director may extend the twenty-four (24) month period upon satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within twenty-four (24) months of the projected and approved commencement date.

(b) An Air Permit authorizing construction shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, State or Federal law.

(c) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of paragraphs (9) through (17) of this rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(d) The provisions of this subparagraph (17)(d) apply to projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL), that are not excluded from the definition of physical change or change in the method of operation, where there is not a reasonable possibility that the project is a part of a major modification and may result in a significant emissions increase and the owner or operator elects to use the method specified in subparagraphs (2)(nn)2.(i) through (iii) of this rule for calculating projected actual emissions.

1. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under subparagraph (2)(nn)2.(iii) of this rule and an explanation for why such amount was excluded, and any netting calculations, if applicable.

2. The owner or operator of the source shall make the information required to be documented and maintained pursuant to subparagraph (17)(d) of this rule

available for review upon a request for inspection by the Department or the general public.

3. Nothing in this subparagraph shall be construed to exempt the owner or operator of such a unit from obtaining any minor source Air Permit in accordance with the requirements of this chapter.

(e) The provisions of this subparagraph (17)(e) apply to projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification, and that is not excluded from the definition of physical change or change in the method of operation, may result in a significant emissions increase and the owner or operator elects to use the method specified in subparagraphs (2)(nn)2.(i) through (iii) of this rule for calculating projected actual emissions.

1. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under subparagraph (2)(nn)2.(iii) of this rule and an explanation for why such amount was excluded, and any netting calculations, if applicable.

2. Before beginning actual construction, the owner or operator shall provide a copy of the information set out in subparagraph (17)(e)1. of this rule to the Director. Nothing in this subparagraph shall be construed to require the owner or operator of such a unit to obtain any determination from the Director before beginning actual construction; however, nothing in this subparagraph shall be construed to exempt the owner or operator of such a unit from obtaining any minor source Air Permit in accordance with the requirements of this chapter.

3. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subparagraph (17)(e)1.(ii) of this rule; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

4. The owner or operator shall submit a report to the Director within 60 days after the end of each year during which records must be generated under subparagraph (17)(e)3. of this rule. The report shall contain the following:

(i) All information required by subparagraph (17)(e)1. of this rule.

(ii) The name, address and telephone number of the major stationary source;

(iii) The annual emissions as calculated pursuant to subparagraph (17)(e)3. of this rule; and

(iv) Any other information that the owner or operator wishes to include in the report.

5. The owner or operator of the source shall make the information required to be documented and maintained pursuant to subparagraph (17)(e) of this rule available for review upon a request for inspection by the Department.

6. All information submitted to the Department pursuant to the requirements of subparagraph (17)(e) of this rule shall be available for review at the request of any member of the public in accordance with the Department's public records review procedures found in ADEM Admin. Code r. 335-1-1-.06.

(18) Innovative Control Technology.

(a) An owner or operator of a proposed major stationary source or major modification may request the Director in writing no later than the close of the comment period under paragraph (16) of this rule to approve a system of innovative control technology.

(b) The Director shall determine that the source or modification may employ a system of innovative control technology, if:

1. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare or safety in its operation or function;

2. The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under subparagraph (9)(b) of this rule by a date specified by the Director. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance;

3. The source or modification would meet the requirements of paragraphs (9) and (10) of this rule based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Director;

4. The source or modification would not before the date specified by the Director:

(i) Cause or contribute to a violation of an applicable National Ambient Air Quality Standard; or

(ii) Impact any Class I area; or

(iii) Impact any area where an applicable increment is known to be violated; and

5. The consent of the Governor of any other affected state is secured;

6. All other applicable requirements including those for public participation have been met.

(c) The Director shall withdraw any approval to employ a system of innovative control technology made under this rule, if:

1. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare or safety; or

3. The Director decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare or safety.

(d) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subparagraph (c) of this paragraph, the Director may allow the source or modification up to an additional three (3) years to meet the requirement for the application of BACT through use of a demonstrated system of control.

(19) Permit Rescission.

(a) Any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under this rule as in effect on July 30, 1987 or any earlier version of this rule, may request that the Director rescind the permit or a particular portion of the permit.

(b) The Director shall grant an application for rescission if the application shows that this rule would not apply to the source or modification.

(c) If the Director rescinds a permit under this rule, the public shall be given adequate notice of the rescission. Publication of an announcement of rescission on the Department's web site within sixty (60) days of the rescission shall be considered adequate notice.

(20) Reserved.

(21) Reserved.

(22) Reserved.

(23) Actuals PALs. The provisions in subparagraphs (23)(a) through (o) of this rule govern actuals PALs.

(a) Applicability.

1. The Director may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in subparagraphs (23)(a) through (o) of this rule. The term "PAL" shall mean "actuals PAL" throughout paragraph (23) of this rule.

2. Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in subparagraphs (23)(a) through (o) of this rule, and complies with the PAL permit:

(i) Is not a major modification for the PAL pollutant;

(ii) Does not have to be approved through the PSD program;

3. A major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(b) Definitions. For the purposes of this rule, the definitions in subparagraphs (23)(b)1. through 11. of this rule apply. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (2) of this rule or in the Clean Air Act.

1. "Actuals PAL" for a major stationary source means a PAL based on the baseline actual emissions (as defined in subparagraph (2)(uu) of this rule) of all emissions units (as defined in subparagraph (2)(g) of this rule) at the source, that emit or have the potential to emit the PAL pollutant.

2. "Allowable emissions" means "allowable emissions" as defined in subparagraph (2)(p) of this rule, except as this definition is modified according to subparagraphs (23)(b)2.(i) and (ii) of this rule.

(i) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(ii) An emissions unit's potential to emit shall be determined using the definition in subparagraph (2)(d) of this rule, except that the words "or enforceable as a practical matter" should be added after "enforceable."

3. "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in subparagraph (2)(w) of this rule or in the Clean Air Act, whichever is lower.

4. "Major emissions unit" means:

(i) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant, other than GHG as CO2e, in an attainment area, or

(ii) Any emissions unit that has the potential to emit 75,000 tons per year of GHG as CO2e.

5. "Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with subparagraphs (23)(a) through (o) of this rule.

6. "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

7. "PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

8. "PAL major modification" means, notwithstanding subparagraphs (2)(b) and (2)(c) of this rule (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

9. "PAL permit" means the major NSR permit, the minor NSR permit, or the title V permit issued by the Director that establishes a PAL for a major stationary source.

10. "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

11. "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in subparagraph (2)(w) of this rule or in the Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in subparagraph (23)(b)4. of this rule.

(c) Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Director for approval:

1. A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or

operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations, or work practices apply to each unit.

2. Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup and shutdown.

3. The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subparagraph (23)(m)1. of this rule.

(d) General requirements for establishing PALs.

1. The Director is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in subparagraphs (23)(d)1.(i) through (vii) of this rule are met.

(i) The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month total, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(ii) The PAL shall be established in a PAL permit that meets the public participation requirements in subparagraph (23)(e) of this rule.

(iii) The PAL permit shall contain all the requirements of subparagraph (23)(g) of this rule.

(iv) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(v) Each PAL shall regulate emissions of only one pollutant.

(vi) Each PAL shall have a PAL effective period of 10 years.

(vii) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subparagraphs (23)(l) through (n) of this rule for each emissions unit under the PAL through the PAL effective period.

2. At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable

as decreases for purposes of offsets under rule 335-3-14-.05 of this chapter unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(e) Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with those of this rule and 40 CFR Parts 51.160 and 51.161. This includes the requirement that the Director provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Director must address all material comments before taking final action on the permit.

(f) Setting the 10-year actuals PAL level. The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in subparagraph (2)(uu) of this rule) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under subparagraph (2)(w) of this rule or under the Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. Emissions from units on which actual construction began after the beginning of the 24-month period must be added to the PAL level in an amount equal to the potential to emit of the unit if the unit began operation less than 24 months prior to the submittal of the PAL application. Baseline actual emissions from units on which actual construction began after the beginning of the 24-month period and commenced operation 24 months or more prior to the submittal of the PAL application must be added to the PAL based upon any 24 month period since the unit commenced operation. The Director shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Director is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(g) Contents of the PAL permit. The PAL permit must contain, at a minimum, the information in subparagraphs (23)(g)1. through 10. of this rule.

1. The PAL pollutant and the applicable source-wide emission limitation in tons per year.

2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).

3. Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with subparagraph (23)(j) of this

rule before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Director.

4. A requirement that emission calculations for compliance purposes must include emissions from startups and shutdowns.

5. A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subparagraph (23)(i) of this rule.

6. The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subparagraph (23)(m)1. of this rule.

7. A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under subparagraph (23)(l) of this rule.

8. A requirement to retain the records required under subparagraph (23)(m) of this rule on site. Such records may be retained in an electronic format.

9. A requirement to submit the reports required under subparagraph (23)(n) of this rule by the required deadlines.

10. Any other requirements that the Director deems necessary to implement and enforce the PAL.

(h) PAL effective period and reopening of the PAL permit. The requirements in subparagraphs (23)(h)1. and 2. of this rule apply to actuals PALs.

1. PAL effective period. The Director shall specify a PAL effective period of 10 years.

2. Reopening of the PAL permit.

(i) During the PAL effective period, the Director must reopen the PAL permit to:

(I) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(II) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under rule 335-3-14-.5 of this chapter; and

(III) Revise the PAL to reflect an increase in the PAL as provided under subparagraph (23)(k) of this rule.

(ii) The Director shall have discretion to reopen the PAL permit for the following:

(I) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(II) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and is required by these regulations; and

(III) Reduce the PAL if the Director determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on a published air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(iii) Except for the permit reopening in subparagraph (23)(h)2.(i)(I) of this rule for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subparagraph (23)(e) of this rule.

(i) Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in subparagraph (23)(j) of this rule shall expire at the end of the PAL effective period, and the requirements in subparagraphs (23)(i)1. through 5. of this rule shall apply.

1. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in subparagraphs (23)(i)1.(i) and (ii) of this rule.

(i) Within the time frame specified for PAL renewals in subparagraph (23)(j)2. of this rule, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Director) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subparagraph (23)(j)5. of this rule, such distribution shall be made as if the PAL had been adjusted.

(ii) The Director shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Director determines is appropriate.

2. Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Director may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

3. Until the Director issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required

under subparagraph (23)(i)1.(ii) of this rule, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

4. Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in subparagraph (2)(b) of this rule.

5. The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, synthetic minor limit, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period.

(j) Renewal of a PAL.

1. The Director shall follow the procedures specified in subparagraph (23)(e) of this rule in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Director.

2. Application deadline. A major stationary source owner or operator shall submit a timely application to the Director to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

3. Application requirements. The application to renew a PAL permit shall contain the information required in subparagraphs (23)(j)3.(i) through (iv) of this rule.

(i) The information required in subparagraphs (23)(c)1. through 3. of this rule.

(ii) A proposed PAL level.

(iii) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(iv) Any other information the owner or operator wishes the Director to consider in determining the appropriate level for renewing the PAL.

4. PAL adjustment. In determining whether and how to adjust the PAL, the Director shall consider the options outlined in subparagraphs (23)(j)4.(i) and (ii) of this rule. However, in no case may any such adjustment fail to comply with subparagraph (23)(j)4.(iii) of this rule.

(i) If the emissions level calculated in accordance with subparagraph (23)(f) of this rule is equal to or greater than 80 percent of the PAL level, the Director may renew the PAL at the same level without considering the factors set forth in subparagraph (23)(j)4.(ii) of this rule; or

(ii) The Director may set the PAL at a level that he or she determines to be more representative of the source's baseline actual emissions, or that he or she determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Director in his or her written rationale.

(iii) Notwithstanding subparagraphs (23)(j)4.(i) and (ii) of this rule:

(I) If the potential to emit of the major stationary source is less than the PAL, the Director shall adjust the PAL to a level no greater than the potential to emit of the source; and

(II) The Director shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subparagraph (23)(k) of this rule (increasing a PAL).

5. If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Director has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

(k) Increasing a PAL during the PAL effective period.

1. The Director may increase a PAL emission limitation only if the major stationary source complies with the provisions in subparagraphs (23)(k)1.(i) through(iv) of this rule.

(i) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(ii) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such

a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(iii) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in subparagraph (23)(k)1.(i) of this rule, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

(iv) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

2. The Director shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subparagraph (23)(k)1.(ii)), plus the sum of the baseline actual emissions of the small emissions units.

3. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subparagraph (23)(e) of this rule.

(l) Monitoring requirements for PALs.

1. General requirements.

(i) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(ii) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subparagraphs (23)(l)2.(i) through (iv) of this rule and must be approved by the Director.

(iii) Notwithstanding subparagraph (23)(l)1.(ii) of this rule, an alternative monitoring approach that meets subparagraph (23)(l)1.(i) of this rule may be employed if approved by the Director.

(iv) Failure to use a monitoring system that meets the requirements of this rule renders the PAL invalid.

2. Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subparagraphs (23)(l)3. through 9. of this rule:

(i) Mass balance calculations for activities using coatings or solvents;

(ii) CEMS;

(iii) CPMS or PEMS; and

(iv) Emission factors.

3. Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(i) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(ii) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(iii) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Director determines there is site-specific data or a site-specific monitoring program to support another content within the range.

4. CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and

(ii) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

5. CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(ii) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Director, while the emissions unit is operating.

6. Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(i) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(ii) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(iii) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Director determines that testing is not required.

7. A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

8. Notwithstanding the requirements in subparagraphs (23)(l)3. through 7. of this rule, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Director shall, at the time of permit issuance:

(i) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(ii) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

9. Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Director. Such testing must occur at least once every 5 years after issuance of the PAL.

(m) Recordkeeping requirements.

1. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (23) of this rule and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

2. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

(i) A copy of the PAL permit application and any applications for revisions to the PAL; and

(ii) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(n) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Director in accordance with the applicable title V operating permit. The reports shall meet the requirements in subparagraphs (23)(n)1. through 3. of this rule.

1. Semi-annual report. This report shall contain the information required in subparagraphs (23)(n)1.(i) through (vii) of this rule.

(i) The identification of owner and operator and the permit number.

(ii) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subparagraph (23)(m)1. of this rule.

(iii) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

(iv) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

(v) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(vi) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by (23)(l)7 of this rule.

(vii) A signed statement by a responsible official (as defined in chapter 16 of these Regulations) certifying the truth, accuracy, and completeness of the information provided in the report.

2. Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 335-3-16-.05(c)3.(ii) shall satisfy this reporting requirement. The reports shall contain the following information:

(i) The identification of owner and operator and the permit number;

(ii) The PAL requirement that experienced the deviation or that was exceeded;

(iii) Emissions resulting from the deviation or the exceedance; and

(iv) A signed statement by a responsible official (as defined in chapter 16 of these Regulations) certifying the truth, accuracy, and completeness of the information provided in the report.

3. Re-validation results. The owner or operator shall submit to the Director the results of any re-validation test or method within 3 months after completion of such test or method.

(o) Transition requirements.

1. The Director may not issue a PAL that does not comply with the requirements in subparagraphs (23)(a) through(o) of this rule after the effective date of this rule.

2. The Director may supersede any PAL that was established prior to the effective date of this rule with a PAL that complies with the requirements of subparagraphs (23)(a) through (o) of this rule.

(24) If any provision of this rule, or the application of such provision to any person or circumstance, is held invalid, the remainder of this rule, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Author: Marilyn G. Elliott; Ronald W. Gore.
Statutory Authority: Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: December 10, 1981. **Amended:** Effective: February 13, 1985. **Amended:** Effective: November 13, 1985. **Amended:** Effective: November 1, 1990. **Amended:** Effective: December 28, 1993. **Amended:** Effective: April 27, 1995. **Amended:** Effective: November 21, 1996. **Amended:** Effective: January 15, 1998. **Amended:** Effective: May 20, 1999. **Amended:** Effective: September 7, 2000. **Amended:** Effective: March 14, 2002. **Amended:** Effective: July 11, 2006. **Amended:** Effective: January 18, 2011. **Amended:** Effective: May 23, 2011. **Amended:** Effective: May 29, 2012. **Amended:** Effective: May 28, 2013. **Amended:** Effective: November 25, 2014. **Amended:** Effective: June 2, 2017. **Amended:** Filed: June 19, 2018; Effective: August 3, 2018.

335-3-19-.01 Reserved.

335-3-19-.02 Reserved.

335-3-19-.03 Reserved.

335-3-19-.04 Reserved.

335-3-19-.05 Reserved.

Attachment 5

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-6 of the Department's Water Division's Water Quality Program Rules and Regulations in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

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

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

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

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-6 [rules 335-6-13-.02/Applicability (Amend); 335-6-13-.03/Definitions (Amend); 335-6-13-.04/Other Closure Requirements (Amend); 335-6-13-.06/Financial Assurance Criteria (Amend); 335-6-13-.07/Allowable Mechanisms for Financial Assurance (Amend); 335-6-13-.08/Release from Financial Assurance Requirements by the Department (Amend);] of the

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

Department's Water Division – Water Supply Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

ADEM Admin. Code division 335-6 – Water Quality Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 17th day of August 2018.

APPROVED:

DISAPPROVED:

ABSTAINED:

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 17th day of August 2018.

H. Lanier Brown, II, Chair
Environmental Management Commission
Certified this 17th day of August 2018

335-6-13-.02 Applicability.

(1) The requirements of this chapter 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, 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 Lutz
Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.
History: Effective: March 26, 2013. **Amended:** Filed: August 21, 2018. Effective: October 5, 2018.

335-6-13-.03 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) "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 the information required by chapter 335-6-6 or 335-6-5 to be submitted when applying for an NPDES permit or SID permit, respectively.

(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 chapter 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 at a waste treatment facility.

(h) "Current closure cost estimate" as used in rule 335-6-13-.07 means the most recent of the estimates prepared in accordance with rule 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, designated 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 waste, pollutant or other wastes into waters of the state.

(l) "Engineer" means a person currently licensed as a professional engineer with the State of Alabama Board of Licensure for Professional Engineers and Land Surveyors.

(m) "Final closure" means the completion of closure of a waste treatment 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 that may be used for closure of the facility if determined necessary by the Department should the owner or operator cease proper operation of the facility, abandon the facility, or fail to properly maintain the facility to ensure compliance with state environmental regulations.

(o) "NPDES permit" means a National Pollutant Discharge Elimination System permit issued pursuant to chapter 335-6-6.

(p) "Operator" means the person(s) having direct supervision over and responsibility for the daily operation of a centralized waste treatment facility.

(q) "Owner" means the person(s) who owns a centralized waste treatment facility or part of a facility.

(r) "Permit" means an issued NPDES permit or SID permit.

(s) "SID permit" means a State Indirect Discharge permit issued pursuant to chapter 335-6-5.

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

Author: Chris Sasser; Daphne Lutz
Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.
History: Effective: March 26, 2013. **Amended:** Filed: August 21, 2018. Effective: October 5, 2018.

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. Owners or operators of affected waste treatment facilities shall comply with this chapter and any other applicable rules and regulations.

Author: Chris Sasser; Daphne Lutz
Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.
History: Effective: March 26, 2013. **Amended:** Filed: August 21, 2018. Effective: October 5, 2018.

335-6-13-.06 Financial Assurance Criteria.

(1) Prior to the issuance a permit or prior to the reissuance or modification of an existing permit for a centralized waste treatment facility subject to the requirements of this chapter, the owner or operator shall post a performance bond or other financial assurance as described in this chapter in an amount sufficient for closure of the facility.

(2) The owner or operator shall obtain a minimum of two detailed, written estimates, in current dollars, of the cost of hiring a third party to perform closure of the centralized waste treatment facility. The owner or operator shall submit the closure cost 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 waste treatment 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 closure cost estimates and documentation of the increase in required financial assurance to the Department 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) The Department requests such in order to verify there is adequate funding for closure. This re-evaluation shall be due as requested by the Department.

(4) The owner or operator demonstrating financial assurance shall provide continuous coverage for closure until:

(a) The owner or operator is released from financial assurance requirements by the Department or

(b) If ownership or operation of the waste treatment facility is transferred to another person, the new owner or operator has demonstrated financial assurance to the Department as required by this chapter.

(5) The bond or other financial assurance may be declared forfeited if required by the Department when the owner or operator abandons the centralized waste treatment facility, ceases operation of the facility, or fails to properly maintain the facility to ensure compliance with state environmental regulations.

Author: Chris Sasser; Daphne Lutz
Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.
History: Effective: March 26, 2013. **Amended:** Filed: August 21, 2018. Effective: October 5, 2018.

335-6-13-.07 Allowable Mechanisms for Financial Assurance. Mechanisms used to demonstrate financial assurance under rule 335-6-13-.06 shall ensure that the funds necessary for closure will be available when they are needed. Only the mechanisms specified in paragraphs (2) through (6) of this rule are allowable.

(1) Reserved.

(2) Surety Bond Guaranteeing Payment or Performance.

(a) An owner or operator may demonstrate financial assurance by obtaining a payment or performance surety bond that conforms to the requirements of subparagraphs (2)(a)1. through (2)(a)5. of this rule.

1. The bond shall be effective before the initial start-up of operations for new centralized waste treatment facilities, or before the reissuance or modification of a permit for existing facilities.

2. The surety 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.

3. The penal sum of the bond shall be in an amount at least equal to the current closure cost estimate, except as provided in paragraph (6) of this rule.

4. Under the terms of the bond, the surety will become liable on the bond obligation when the principal (i.e., the owner or operator) fails to perform as guaranteed by the bond.

5. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the principal and to the Department 120 days in advance of cancellation.

(b) The owner or operator shall retain a duplicate copy of the bond in the waste treatment facility's record and shall submit the original copy of the bond to the Department, as specified in rule 335-6-13-.06(1).

(c) The owner or operator shall establish a standby trust fund. 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. If the bond is forfeited, the surety shall deposit the payments made under the terms of the bond directly into the standby trust fund in accordance with instructions from the Department. Payments from the trust fund shall be approved by the Department.

(d) The owner or operator shall retain a duplicate copy of the trust agreement in the waste treatment facility's record and shall submit the original copy to the Department, as specified in rule 335-6-13-.06(1).

(e) If the surety cancels the bond, the owner or operator shall obtain an alternate allowable financial assurance mechanism within 90 days of the notice of cancellation.

(f) The owner or operator may cancel the bond only if an alternate allowable financial assurance mechanism is demonstrated or if the owner or operator is released from the financial assurance requirements in accordance with rule 335-6-13-.08.

(3) Letter of Credit.

(a) An owner or operator may demonstrate financial assurance by obtaining an irrevocable standby letter of credit that conforms to the requirements of subparagraphs (3)(a)1. through (3)(a)3. of this rule.

1. The letter of credit shall be effective before the initial start-up of operations for new centralized waste treatment facilities or before the reissuance or modification of a permit for existing facilities.

2. 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.

3. 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 closure cost estimate except as provided in paragraph (6) of this rule. 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 letter of credit applicant (i.e., the owner or operator) and to the Department 120 days in advance of cancellation.

(b) The owner or operator shall submit the original copy of the letter of credit to the Department, as specified in rule 335-6-13-.06(1). The submittal shall be accompanied by a transmittal letter that refers to the letter of credit by number, issuing institution, and date and that provides the name and address of the centralized waste treatment facility, name and address of the owner/operator, and the amount of funds assured.

(c) The owner or operator shall retain a duplicate copy of the letter of credit and a copy of the transmittal letter required by subparagraph (3)(b) of this rule in the centralized waste treatment facility's record.

(d) If the issuing institution cancels the letter of credit, the owner or operator shall obtain an alternate allowable financial assurance mechanism within 90 days of the notice of cancellation.

(e) The owner or operator may cancel the letter of credit only if an alternate allowable financial assurance mechanism is demonstrated or if the owner or operator is released from the financial assurance requirements in accordance with rule 335-6-13-.08.

(4) Insurance.

(a) An owner or operator may demonstrate financial assurance by

obtaining insurance that conforms to the requirements of subparagraphs (4)(a)1. through (4)(a)6. of this rule.

1. The insurance shall be effective before the initial start-up of operations for new centralized waste treatment facilities or before the reissuance or modification of a permit for existing facilities.

2. At a minimum, the insurer shall be licensed to transact the business of insurance, or shall be eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

3. The insurance policy shall guarantee that funds will be available for closure of the waste treatment 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 insured (i.e., the owner or operator) or to other person(s) authorized to conduct closure up to an amount equal to the face amount of the policy upon the direction of the Department.

4. The insurance policy shall be issued for a face amount at least equal to the current closure cost estimate except as provided in paragraph (6) of this rule. 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.

5. 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.

6. 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 insured and to the Department 120 days in advance of cancellation.

(b) The owner or operator shall retain a duplicate copy of the insurance policy in the facility's record and shall submit the original copy of the insurance policy to the Department, as specified in rule 335-6-13-.06(1) .

(c) An owner or operator, or other person(s) 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. Any person seeking reimbursement for closure costs shall provide justification and documentation of the closure costs to the Department for approval prior to requesting reimbursement from the insurer. Persons receiving reimbursement shall notify the Department of the reimbursement within 30 days of receipt. Persons receiving reimbursement shall

retain the documentation of the justification for reimbursement and confirmation of receipt of reimbursement in the waste treatment facility's record or other record, as applicable.

(d) If the insurer cancels the policy, the owner or operator shall obtain an alternate allowable financial assurance mechanism within 90 days of the notice of cancellation.

(e) The owner or operator may cancel the insurance policy only if an alternate allowable financial assurance mechanism is demonstrated or if the owner or operator is released from the financial assurance requirements in accordance with rule 335-6-13-.08.

(5) State-Approved Mechanism. An owner or operator may demonstrate financial assurance by obtaining other mechanisms that meet the criteria of this rule and that are approved by the Department.

(6) Use of Multiple Mechanisms. An owner or operator may demonstrate financial assurance by obtaining more than one financial mechanism per centralized waste treatment facility. The mechanisms used shall meet the applicable criteria specified in paragraphs (2) through (5) of this rule except that financial assurance for an amount at least equal to the current closure cost estimate may be provided by multiple mechanisms, rather than a single mechanism.

(7) General Criteria for Financial Assurance Mechanisms.

(1) The language of the financial assurance mechanisms listed in paragraphs (2) through (5) of this rule shall ensure that the instruments satisfy the following criteria:

(a) The amount of funds assured is sufficient to cover the costs of closure.

(b) Funds will be available in a timely fashion if needed.

(c) The owner or operator is obtaining the mechanism by the required dates as indicated in this rule and is maintaining the mechanism until released from the financial assurance requirements under rule 335-6-13-.08.

(d) The financial assurance mechanism is legally valid, binding, and enforceable under State and federal law.

(8) Discounting. The Department may allow discounting of closure cost estimates obtained in accordance with paragraphs 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 waste treatment facility in significant compliance with applicable and appropriate permit conditions; and

(c) The owner or operator adjusts the discounted closure cost estimates annually to reflect inflation and years of remaining life.

(9) The owner or operator subject to the requirements of this chapter shall certify in writing to the Department that each mechanism used to demonstrate financial assurance as required by rule 335-6-13-.06 remains current and valid and that changes to the closure plan or waste treatment facility conditions have not occurred that would significantly increase the maximum cost of closure. If one or both conditions cannot be certified as true, the owner or operator shall so indicate and provide an explanation. The certification shall be submitted annually no later than the anniversary of the date the mechanism initially became effective.

Author: Chris Sasser; Daphne Lutz
Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.
History: Effective: March 26, 2013. **Amended:** Filed: August 21, 2018. Effective: October 5, 2018.

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 centralized waste treatment facility has been properly closed, the owner and operator shall be released from the financial assurance requirements of this chapter. This certification shall be submitted to the Director by registered mail and shall be signed by the owner or operator and by an engineer. Documentation supporting the engineer's certification shall be furnished to the Director upon request.

Author: Chris Sasser; Daphne Lutz
Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.
History: Effective: March 26, 2013. **Amended:** Filed: August 21, 2018. Effective: October 5, 2018.

Attachment 6

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the Matter of:	)	
	)	
Bobby Lewis, Michael Del Vecchio,	)	
David F. Del Vecchio, Peggy R. Del Vecchio,	)	
Charles Childree, Vicki Ammons, and	)	
Michael Lebleu,	)	
Petitioners,	)	
	)	
vs.	)	EMC Docket No. 18-01
	)	
Alabama Department of Environmental	)	
Management,	)	
Respondent,	)	
	)	
and	)	
	)	
City of Dothan, Alabama,	)	
Intervenor.	)	

ORDER

This cause having come before the Environmental Management Commission pursuant to the Recommendation of Hearing Officer and ADEM's Motion to Dismiss, without opposition from the Petitioners, for the above-styled appeal and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Recommendation of Hearing Officer is hereby adopted; and

2. That pursuant to the adoption of the Recommendation of Hearing Officer, ADEM's Motion to Dismiss is granted, and the request for hearing contesting ADEM's November 1, 2017, modification of Solid Waste Disposal Permit 35-06 issued to the City of Dothan is dismissed as moot; and

3. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and

4. That a copy of this Order, along with a copy of the Recommendation of Hearing Officer, attached hereto and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.

ISSUED this 17th day of August 2018.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 17th day of August 2018.

H. Lanier Brown, II, Chair
Environmental Management Commission
Certified this 17th day of August 2018

ATTACHMENT

BEFORE THE ALABAMA ENVIRONMENTAL
MANAGEMENT COMMISSION

BOBBY LEWIS, MICHAEL DEL VECCHIO, DAVID F. DEL VECCHIO, PEGGY R. DEL VECCHIO, CHARLES CHILDREE, VICKI AMMONS, and MICHAEL LEBLEU	)	
Petitioners,	)	
vs.	)	EMC Docket No. 18-01
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,	)	SOLIDWASTE DISPOSAL FACILITY PERMIT NO. 35-06
Respondent.	)	
CITY OF DOTHAN, ALABAMA,	)	
Intervenor,	)	

RECOMMENDATION OF HEARING OFFICER

This matter is before the undersigned for a Recommendation to the Alabama Environmental Management Commission. After receiving the Department's MOTION TO DISMISS without opposition from the Petitioners, the undersigned recommends that the Department's MOTION TO DISMISS be granted by the Commission.

Done this 27 day of April, 2018.

R. Rainer Cotter, III
Hearing Officer
PO Box 310910
Enterprise, Alabama 36331
Ph. 334-347-2626
Fax 334-393-1396
Email rrc@enterpriselawyers.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the following individual(s) by email or placing a copy of the same in the U.S. Mail, postage prepaid and properly addressed this 27 day of April, 2018:

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/s/ R. Rainer Cotter, III
HEARING OFFICER