

#### **335-6-1-.04 Electronic Reporting Requirements.**

(1) Purpose and Applicability.

(a) This rule, in conjunction with the reporting requirements specified in chapters 335-6-5 and 335-6-6, specifies the requirements for the electronic reporting of the information specified in paragraph (2) of this rule.

(b) This rule applies to any person who:

1. Is required to apply for or has obtained a State Indirect Discharge (SID permit under chapter 335-6-5;

2. Is required to apply for or has obtained an individual NPDES permit or coverage under a general NPDES permit under chapter 335-6-6; or

3. Submits a stormwater no exposure certification (NEC) or has an approved stormwater no exposure certification (NEC) in lieu of an individual or general permit under chapter 335-6-6.

(2) Reports, Notices, and Certifications Subject to Electronic Reporting.

(a) Beginning on the applicable compliance date specified in paragraph (3) of this rule, regulated persons shall electronically submit the following reports, as applicable, with the minimum set of data required for those reports as specified in Appendix A to 40 CFR part 127 (2016):

1. Discharge Monitoring Reports [subparagraphs 335-6-5-.15(12)(e)1. and 335-6-6-.12(l)5.(i)];

2. Municipal Separate Storm Sewer System (MS4) Program Reports [rule 335-6-6-.11, 40 CFR §§122.34(g)(3) and 122.42(c)];

3. Sewer Overflow and Bypass Incident Event Reports [subparagraphs 335-6-6-.12(l)6.(ii), 335-6-6-.12(m)2.(i), and 335-6-6-.12(m)2.(ii)]; and

4. Clean Water Act (CWA) Section 316(b) Annual Reports [paragraph 335-6-6-.10(g) and 40 CFR part 125, subparts I, J, and N].

(b) Beginning on the applicable compliance date specified in paragraph (3) of this rule, persons seeking coverage under NPDES general permits or termination of coverage under NPDES general permits, and persons submitting stormwater certifications for exclusion from NPDES permit requirements shall electronically submit the following notices and certifications with the minimum set of data required for those notices and certifications as specified in Appendix A to 40 CFR part 127 (2016):

1. Notice of intent (NOI) to discharge by persons seeking coverage under a general NPDES permit (rather than an individual NPDES permit), as described in paragraph 335-6-6-.23(15);

2. Notice of termination (NOT), as described in subparagraph 335-6-6-.23(7)(d); and

3. No exposure certification (NEC), as described in rule 335-6-6-.03 and 40 CFR §122.26(g)(1)(iii).

(3) Compliance Dates. Persons subject to this rule, with the exception of those covered by waivers under paragraph (6) of this rule, shall electronically submit the following reports, notices, and certifications beginning on the dates specified in Table 1 of this paragraph:

**Table 1. Compliance Date for Electronic Submissions**

<b><u>Information</u></b>	<b><u>Start Date of Electronic Submissions</u></b>
<u>Discharge Monitoring Reports [subparagraphs 335-6-5-.15(12)(e)1. and 335-6-6-.12(l)5.(i)]</u>	<u>December 21, 2016</u>
<u>Municipal Separate Storm Sewer System (MS4) Program Reports [rule 335-6-6-.11, 40 CFR §§122.34(g)(3) and 122.42(c)]</u>	<u>December 21, 2020</u>
<u>Sewer Overflow and Bypass Incident Event Reports [335-6-6-.12(l)6.(ii), 335-6-6-.12(m)2.(i), and 335-6-6-.12(m)2.(ii)]</u>	<u>December 21, 2020</u>
<u>CWA Section 316(b) Annual Reports [paragraph 335-6-6-.10(g) and 40 CFR part 125, subparts I, J, and N]</u>	<u>December 21, 2020</u>
<u>Notice of intent (NOI) to discharge by persons seeking coverage under a general NPDES permit (rather than an individual NPDES permit), as described in paragraph 335-6-6-.23(15)</u>	<u>December 21, 2020</u>
<u>Notice of termination (NOT), as described in subparagraph 335-6-6-.23(7)(d)</u>	<u>December 21, 2020</u>
<u>No exposure certification (NEC), as described in rule 335-6-6-.03 and 40 CFR §122.26(g)(1)(iii)</u>	<u>December 21, 2020</u>

(4) Signatory and Certification Standards for Electronic Reporting. The applicable signatory and certification requirements identified in 40 CFR part 3

(2016) and rule 335-6-5-.14 or 335-6-6-.09 shall apply to the electronic submission of the reports, notices, and certifications specified in paragraph (2) of this rule.

(5) Other Requirements.

(a) Persons subject to this rule shall comply with the applicable requirements for quality assurance and quality control specified in 40 CFR §127.13 (2016).

(b) Persons subject to this rule shall comply with the applicable requirements for timeliness, accuracy, completeness, and consistency specified in 40 CFR §127.14 (2016).

(6) Waivers from Electronic Reporting.

(a) Persons subject to this rule shall electronically submit to the Director the minimum set of data in compliance with this rule, 40 CFR part 3 (2016), and rule 335-6-5-.14 or 335-6-6-.09, as applicable, unless a waiver from electronic reporting is granted in compliance with this paragraph.

(b) Temporary Waivers. Temporary waivers from electronic reporting may be granted by the Director to persons subject to this rule.

1. Each temporary waiver from electronic reporting shall not extend beyond five years; however, persons subject to this rule may re-apply for a temporary waiver from electronic reporting. It is the duty of the person subject to this rule to re-apply for a new temporary waiver from electronic reporting. The Director cannot grant a temporary waiver from electronic reporting to a person subject to this rule without first receiving such a request from that person.

2. To apply for a temporary waiver from electronic reporting, the person subject to this rule shall submit the following information to the Director:

(i) Permittee and/or facility name;

(ii) NPDES or SID permit number (if applicable);

(iii) Facility address;

(iv) Name, address and contact information for the owner, operator, or duly authorized facility representative;

(v) Brief written statement regarding the basis for requesting the temporary waiver; and

(vi) Any other information required by the Department.

3. The Director shall determine whether to grant or deny a temporary waiver from electronic reporting. The Director shall provide notice of his/her

determination to the person submitting a request for a temporary waiver from electronic reporting as specified in subparagraph (6)(e) of this rule.

4. Persons subject to this rule who have been granted a temporary waiver from electronic reporting shall continue to provide to the Director the minimum set of data required as specified in Appendix A to 40 CFR part 127 (as well as other required information in compliance with statutes, regulations, the NPDES or SID permit, another control mechanism, or an enforcement order) in hard-copy format.

5. A temporary waiver from electronic reporting is not transferrable.

(c) Permanent Waivers. Permanent waivers from electronic reporting may be granted by the Director to persons subject to this rule.

1. Permanent waivers from electronic reporting are available only to facilities and entities owned and/or operated by members of religious communities that choose not to use certain modern technologies (e.g., computers, electricity). The Director cannot grant a permanent waiver from electronic reporting to a person subject to this rule without first receiving such a request from that person.

2. To apply for a permanent waiver from electronic reporting, the person subject to this rule shall submit the information listed in subparagraph (6)(b)2. of this rule to the Director.

3. The Director shall determine whether to grant or deny a permanent waiver from electronic reporting. The Director shall provide notice of his/her determination to the person submitting a request for a permanent waiver from electronic reporting as specified in subparagraph (6)(e) of this rule.

4. Persons subject to this rule that have been granted a permanent waiver from electronic reporting shall continue to provide to the Director the minimum set of data required as specified in Appendix A to 40 CFR part 127 (as well as other required information in compliance with statutes, regulations, the NPDES or SID permit, another control mechanism, or an enforcement order) in hard-copy format.

5. A permanent waiver from electronic reporting is not transferrable.

(d) Episodic Waivers. Episodic waivers from electronic reporting may be granted by the Director to persons subject to this rule. The following conditions apply to episodic waivers.

1. No waiver request is required for a person to obtain an episodic waiver from electronic reporting.

2. Episodic waivers from electronic reporting are not transferrable.

3. An episodic waiver from electronic reporting shall not extend beyond sixty days.

4. The Director shall decide if the episodic waiver provision allows persons to delay their electronic submissions for a short time (i.e., no more than forty days) or to submit in hard-copy format. Episodic waivers from electronic reporting are available to persons in the following circumstances:

(i) Large scale emergencies involving catastrophic circumstances beyond the control of the person, such as forces of nature (e.g., hurricanes, floods, fires, earthquakes) or other disasters.

(ii) Prolonged electronic reporting system outages (i.e., outages longer than ninety-six hours).

5. The Director shall provide notice, individually or through means of mass communication, when such an episodic waiver is available, to include: the persons that may use the episodic waiver; the likely duration of the episodic waiver; and any other directions regarding how those persons should provide the minimum set of data required as specified in Appendix A to 40 CFR part 127 (as well as other required information in compliance with statutes, regulations, the NPDES or SID permit, another control mechanism, or an enforcement order) to the Director.

(e) Review of requests for temporary and permanent waivers from electronic reporting.

1. The Director shall review requests for temporary and permanent waivers from electronic reporting and shall either grant or deny those requests within 120 days of receipt.

2. The Director shall provide the person requesting a temporary or permanent waiver from electronic reporting with notice that the request has been granted or denied.

**Author:** Christy Monk.

**Statutory Authority:** Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.

**History:** Effective XXXX XX, 2017.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Electronic Reporting. If documents described in this chapter are required to be submitted electronically by this chapter or rule 335-6-1-.04, any

person providing the electronic signature for such documents shall meet all relevant requirements of this rule and shall ensure that all of the relevant requirements of rule 335-6-1-.04 are met for that submission.

**Author:** John Poole, Christy Monk.

**Statutory Authority:** Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.

**History:** April 29, 1991.

**Amended:** XXXX XX, 2017.

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

(1) Duty to comply with a SID Permit.

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

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

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

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

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

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

(5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities only when necessary to achieve compliance with the conditions of the permit.

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

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

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

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

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

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

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

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

(10) Monitoring and records keeping requirements.

(a) All permits shall specify:

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

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

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

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

1. The mass and/or other measurement for each pollutant limited in the permit;
2. The volume of effluent discharged from each outfall;
3. Whole effluent toxicity determinations;
4. Other measurements as appropriate; including pollutants in internal waste streams, pollutants in intake water for net limitations, pollutants subject to notification requirements, frequency, and rate of discharge; and
5. To determine the impact on the treatment works, any of the preceding measurements of influent and effluent from the treatment works.

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

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

(e) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The individual(s) who performed the analyses or under whose direct supervision the analyses were performed;
5. The analytical techniques or methods used; and
6. The results of such analyses.

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

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

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

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

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

(12) Reporting Requirements.

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

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

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

(d) The permit is not transferable to any person except by modification or revocation and re-issuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the AWPCA or FWPCA. The Director may require the submittal of a

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

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

2. This application shall include a written agreement between the existing and new permittees containing the specific date for transfer of permit responsibilities, coverage and liability. This application shall be signed by a representative of both the existing and new permittee, both representatives shall meet the requirements of a signatory to permit applications set forth in rule 335-6-5-.14 and shall be accompanied by the appropriate fee required under chapter 335-1-6.

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

1. Monitoring results shall be summarized for each month on a Discharge Monitoring Report ~~form~~ (DMR), ~~approved by the Department and~~ The DMR shall be submitted so that the DMR is received by the Department Director no later than the 28th-twenty-eighth day of the month following the reporting period specified in the permit, unless otherwise expressed by the Director. DMRs shall be submitted electronically by the permittee to the Director in compliance with rules 335-6-1-.04 and 335-6-5-.14, with the exception of any period during which the permittee has been granted an electronic reporting waiver for such reports in accordance with paragraph 335-6-1-.04(6).

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

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

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

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

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

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

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

3. Written noncompliance reports shall include the following information:

(i) Description of the noncompliance and its cause;

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

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

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

(g) Bypass.

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

2. Notice.

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

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

3. Prohibition of bypass.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) The SID Permit shall require the permittee to comply with the requirements of any categorical pretreatment standard not later than three years after its effective date, unless another compliance date is specified by the standard.

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

**Author:** John Poole, Christy Monk.

**Statutory Authority:** Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.

**History:** April 29, 1991.

**Amended:** XXXX XX, 2017

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

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

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

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

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

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

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

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

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

(e) A return flow from irrigated agriculture;

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

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

(2) No person, required to apply for a storm water discharge permit by 40 CFR §122.26 (~~2000~~2016), shall discharge pollutants into waters of the state without first having applied for a valid NPDES permit, coverage under a valid General NPDES Permit, or coverage under a valid NPDES Registration. New

dischargers shall obtain a valid NPDES permit, coverage under a valid General Permit, or coverage under a valid NPDES Registration prior to conducting any activity for which application for a storm water discharge permit is required by 40 CFR §122.26 (~~2000~~2016).

**Author:** John Poole; Richard Hulcher; Truman Green.

**Statutory Authority:** Code of Alabama 1975, § 22-22-1, § 22-22-9, § 22-22A-5.

**History:** October 19, 1979. **Amended:** January 24, 1989; April 29, 1991, July 12, 1995, March 31, 1999, August 1, 2002, January 23, 2003; September 29, 2015; ~~XXXX XX~~, 2017.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Electronic reporting. If documents described in this chapter are required to be submitted electronically by this chapter or rule 335-6-1-.04, any person providing the electronic signature for such documents shall meet all relevant requirements of this rule and shall ensure that all of the relevant requirements of rule 335-6-1-.04 are met for that submission.

**Author:** John Poole, Ed Hughes, Christy Monk.

**Statutory Authority:** Code of Alabama 1975, § 22-22-9, § 22-22-14, § 22-22A-5.

**History:** October 19, 1979.

**Amended:** January 24, 1989; August 1, 2002; XXXX XX, 2017.

**335-6-6-.11 Conditions Applicable to Storm Water Discharges by Operators of Municipal Storm Sewers.** NPDES permits issued to operators of large or medium municipal separate storm sewer systems (MS4s) shall include the applicable requirements of 40 CFR ~~Part §~~122.42(c) (~~2000~~2016). NPDES permits issued to operators of small MS4s shall include the applicable requirements of 40 CFR ~~Parts §§~~122.30 – 122.37 (~~2000~~2016).

**Author:** John Poole, Truman Green.

**Statutory Authority:** Code of Alabama 1975, § 22-22-9, § 22-22A-5.

**History:** October 19, 1979. **Amended:** January 24, 1989; April 29, 1991; January 23, 2003; ~~XXXX XX~~, 2017.

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

(a) Duty to Comply.

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

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

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

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

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

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

(e) Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities only when necessary to achieve compliance with the conditions of the permit.

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

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

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

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

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

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

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

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

(j) Monitoring and Records.

1. All permits shall specify:

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

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

(iii) Applicable reporting requirements based upon the impact of the regulated activity and as provided by rules 335-6-1-.04 and 335-6-6-

.12. Reporting shall be no less frequent than as specified in rule 335-6-6-.12.

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

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

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

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

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

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

5. Records of monitoring information shall include:

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

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

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

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

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

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

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

analyses, only a laboratory certified by the state may be used for contracting wastewater analyses used for NPDES reporting.

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

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

(l) Reporting Requirements.

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

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

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

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

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

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

under the AWPCA or FWPCA are necessary, accomplish transfer of the NPDES permit by the following procedure:

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

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

#### 5. Monitoring Reports.

(i) Monitoring results shall be summarized for each monitoring period on a Discharge Monitoring Report ~~form~~ (DMR) ~~approved by the Department~~. The DMR and shall be submitted so that the DMR is received by the Department Director no later than the 28th twenty-eighth day of the month following the reporting period specified in the permit, unless otherwise expressed by the Director. DMRs shall be submitted electronically by the permittee to the Director in compliance with rules 335-6-1-.04 and 335-6-6-.09, with the exception of any period during which the permittee has been granted an electronic reporting waiver for such reports in accordance with paragraph 335-6-1-.04(6).

(ii) Except as allowed under subparagraph (1)5.(v) below of this rule, monitoring reports shall be submitted with a frequency dependent on the nature and effect of the discharge, but in no case less than once per year, and as required by the NPDES permit.

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

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

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

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

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

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

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

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

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

## 6. Noncompliance Reporting.

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

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

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

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

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

(V) A direct or indirect unpermitted discharge of a pollutant to a water of the state, regardless of the cause of the discharge. This requirement shall not apply to spills or releases that are properly

reported to the Department under any other state or federal requirement, if the report is made in accordance with the other requirement.

(ii) In addition to the ~~oral~~ report required by subparagraph 335-6-6-.12(l)6.(i), the permittee shall submit a ~~written submission report~~ shall also be submitted to the Director no later than five days after becoming aware of the circumstances identified in subparagraph 335-6-6-.12(l)6.(i) ~~above~~. The report shall contain the applicable information required by subparagraph 335-6-6-.12(l)6.(iv) and shall be submitted in a format approved by the Director. Beginning December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted pursuant to this subparagraph shall be submitted electronically<sup>[ESK1]</sup> in compliance with rules 335-6-1-.04 and 335-6-6-.09, with the exception of any period during which the permittee has been granted an electronic reporting waiver for such reports in accordance with paragraph 335-6-1-.04(6).

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

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

(I) Description of the noncompliance and its cause;

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

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

(IV) For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, the reports shall include:

I. Type of event (i.e. combined sewer overflow, sanitary sewer overflow, or bypass event);

II. Type of sewer overflow structure (e.g., manhole, combine sewer overflow outfall);

III. Discharge volume untreated by the treatment works treating domestic sewage;

IV. Type(s) of human health and environmental impacts of the event;  
and

V. Whether the noncompliance was related to wet weather.

(v) Immediate notification. The permittee shall report to the Director, the public, the county health department, and any other affected entity such as

public water systems, as soon as possible upon becoming aware of any notifiable sanitary sewer overflow.

(m) Bypass.

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

2. Notice.

(i) Anticipated Bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the Department Director, if possible at least ten days before the date of the bypass. Beginning December 21, 2020, all notices submitted pursuant to this subparagraph shall be submitted electronically in compliance with rules 335-6-1-.04 and 335-6-6-.09, with the exception of any period during which the permittee has been granted an electronic reporting waiver for such notices in accordance with paragraph 335-6-1-.04(6).

(ii) Unanticipated Bypass. The permittee shall submit notice of an unanticipated bypass as required in subparagraph 335-6-6-.12(l)6. Beginning December 21, 2020, all notices submitted pursuant to this subparagraph shall be submitted electronically in compliance with rules 335-6-1-.04 and 335-6-6-.09, with the exception of any period during which the permittee has been granted an electronic reporting waiver for such notices in accordance with paragraph 335-6-1-.04(6).

3. Prohibition of Bypass.

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

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

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

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

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

(n) Upset.

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

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

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

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

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

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

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

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

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

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

(r) The permittee shall provide spill prevention, control and/or management for any stored pollutant(s) that may, if spilled, be reasonably expected to enter a water of the state or the collection system for a publicly or privately owned treatment works. Any containment system used for spill control

and management shall be constructed of materials compatible with the substance(s) stored and of materials which shall prevent the pollution of groundwater and shall be capable of retaining 110 percent of the volume of the largest container of pollutants for which the containment system is provided.

**Author:** John Poole, Ed Hughes, Christy Monk.

**Statutory Authority:** Code of Alabama 1975, § 22-22-9, § 22-22-14, § 22-22A-5.

**History:** October 19, 1979.

**Amended:** January 24, 1989; April 29, 1991; July 12, 1995; August 1, 2002; September 29, 2015; XXXX XX, 2017.

**335-6-6-.23 General Permits.**

(1) Category. A general permit may be written to regulate:

(a) Storm water discharges or

(b) A category of discharges that all:

1. Involve the same or substantially similar types of discharges;

2. Discharge the same types of pollutants;

3. Require the same effluent limitations or operating conditions;

4. Require the same or similar monitoring; and

5. In the opinion of the Director are more appropriately controlled under a general permit than under individual permits.

(2) Prohibitions.

(a) A discharger, classified as a major discharger by EPA, shall not receive coverage under a general permit. The identity of major dischargers may be obtained from EPA or the Department.

(b) A discharger, not in compliance with Department rules applicable to its wastewater discharges or not in compliance with an individual NPDES permit applicable to the discharge in question, shall not receive coverage under a general permit.

(3) Area. A general permit shall be written to cover a category of discharges described in the permit, within a geographical area. The area shall correspond to existing geographic or political boundaries, such as:

(a) Designated planning areas under Sections 208 and 303 of the CWA;

(b) Sewer districts or sewer authorities;

(c) City, county, or state political boundaries;

(d) State highway systems;

(e) Standard metropolitan statistical areas as defined by the Office of Management and Budget;

(f) Urbanized areas as designated by the Bureau of the Census; or

(g) Any other appropriate division or combination of boundaries.

(4) Applications.

(a) Any interested party may make application to the Director requesting the issuance or modification of a general permit. The Director may deny the application: if he determines that application does not meet the criteria set forth in this rule for the issuance of a general permit; if the application does not contain sufficient information upon which to make a decision; or if he determines that the issuance of a general permit for the discharges addressed by the application is prohibited by this rule or other applicable state or federal laws or rules. If the Director accepts the application, a general permit addressing the discharges described by the petition shall be developed and proposed in accordance with this rule.

(b) The Director may, on his own initiative, develop and propose for issuance a general permit for a category of wastewater dischargers meeting the criteria of this rule.

(5) Provisions and Limitations.

(a) With the exception of those provisions identified in subparagraph 335-6-6-.23(4)(b), the requirements of rules 335-6-6-.02, 335-6-6-.07, 335-6-6-.10, 335-6-6-.11, 335-6-6-.12, 335-6-6-.13, 335-6-6-.14, 335-6-6-.15 and 335-6-6-.16 concerning permit provisions and determination of permit limitations shall apply to general permits. Provisions implementing all applicable requirements of these rules shall be incorporated into each general permit, and permit limitations, determined in accordance with all applicable requirements of these rules, shall be incorporated into each general permit. In addition to the above listed requirements, any requirement of 40 CFR ~~Section §~~122.28(b) (~~1994~~2016) shall apply to general permits.

(b) The following requirements of rules 335-6-6-.12, 335-6-6-.13, and 335-6-6-.14 shall not apply to general permits:

1. Paragraph 335-6-6-.12(b);
2. Paragraph 335-6-6-.12(f);
3. Subparagraph 335-6-6-.12(l)1.;
4. Paragraph 335-6-6-.12(p);
5. Paragraph 335-6-6-.12(q);
6. Paragraph 335-6-6-.13(b); and
7. Subparagraph 335-6-6-.14(3)(j).

(c) Each general permit shall contain provisions implementing the requirements under paragraphs 335-6-6-.23(14) and (15).

(d) Each general permit may specify the appropriate public notice procedures required to be followed by each discharger prior to the coverage of any discharge under the general permit. Notice by individual dischargers shall not be required in instances where the Department can notice the dischargers with notice of the permit. For instance during renewal of a permit, those dischargers already covered may be noticed with the permit.

(e) The monitoring requirements of each general permit shall be in accordance with the requirements for individual permits referenced by this rule and shall be consistent with the requirements of 40 CFR Sections 122.42, 122.44, and 122.48 (1994).

(6) Compliance Schedules. A general permit may, when appropriate, specify a schedule of compliance leading to compliance with the FWPCA and the AWPCA. General permit compliance schedules shall comply with the requirements of rule 335-6-6-.16 and all dischargers covered under the general permit shall be subject to the same compliance schedule.

(7) Modification, Revocation and Reissuance, ~~and~~ Termination of General Permits, and Termination of Coverage under Permits.

(a) Subject to the public notice procedures of rule 335-6-6-.21, the Director may modify or revoke and reissue any general permit during its term for cause including, but not limited to, the causes listed below:

1. When the Director receives any information that was not available at the time of permit issuance and that would have justified the application of different permit conditions at the time of issuance,

2. When the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued,

3. Upon failure of the state to notify, as required by Section 402(b)(3) of the FWPCA, another state whose waters may be affected by a discharge,

4. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology based treatment requirements appropriate to the discharge under 40 CFR 125.3(c) (1994),

5. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions,

6. When the permit limitations are found not to be protective of water quality standards, or

7. For any applicable cause set forth in 40 CFR ~~Sections §§~~ 122.61, 122.62, 122.63, ~~and-or~~ 122.64 (1994).

(b) Subject to the public notice procedures of rule 335-6-6-.21, the Director may terminate any general permit during its term for any of the causes for modification listed in subparagraph 335-6-6-.23(7)(a).

(c) The Director may terminate coverage of a discharge under a general permit for cause. Cause shall include, but not be limited to: noncompliance with the permit; noncompliance with Department rules; or a finding that the general permit does not control the wastewater discharge sufficiently to protect water quality or comply with treatment based limits applicable to the discharge.

(d) Any person covered by a general permit may apply for termination of coverage by applying for an individual NPDES permit or by submitting a Notice of Termination (NOT), provided the criteria for termination specified in the general permit are met. Beginning December 21, 2020, Notices of Termination submitted pursuant to this rule shall be submitted electronically to the Director in compliance with the relevant requirements of rule 335-3-6-1-.04, with the exception of any period during which the permittee has been granted an electronic reporting waiver for Notices of Termination in accordance with paragraph 335-6-1-.04(6).

(e) Termination of coverage by a general permit shall be processed consistent with the rules of this chapter applicable to individual NPDES permits except a public notice period is not required for termination of coverage requested by the permittee, and a public notice is not required for termination if a public notice for coverage authorized by the Department is not required by the general permit.

(8) When an individual NPDES Permit is issued for a discharge otherwise subject to a general permit, the applicability of the general permit to that discharge is automatically terminated on the effective date of the individual permit.

(9) Issuance of an Individual NPDES Permit to a Person Eligible for Coverage or Covered by a General Permit.

(a) The Director may require any person with any discharges, otherwise eligible for coverage under a general permit, to apply for an individual NPDES Permit for any or all of the discharges at that facility by notifying that person that an application is required. Notification shall consist of a written description of the reason(s) for the decision, appropriate permit application forms and directions, a statement establishing the required date for submission of the application, and a statement informing the person that upon issuance of the individual permit coverage by the general permit for the applicable discharges shall automatically terminate. Reasons for requiring application for an individual permit may be:

1. Noncompliance with the general permit,

2. Noncompliance with Department rules,
3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the wastewater being discharged,
4. Effluent guidelines are promulgated for a point source(s) covered by the general permit,
5. A Water Quality Management Plan applicable to the wastewater being discharged under the general permit,
6. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit or either a temporary reduction or permanent reduction or elimination of the authorized discharge is necessary,
7. Standards for sewage sludge use or disposal have been promulgated for the sludge use or disposal practice covered by the general permit,
8. The discharge(s) is a significant contributor of pollutants. In making this decision the Director may consider:
  - (i) The location of the waters with respect to waters of the state,
  - (ii) The size of the discharge,
  - (iii) The quantity and nature of the pollutants discharged to waters of the state, and
9. A determination that the water of the state receiving the discharge is not meeting applicable water quality standards.

~~(b) Any person covered by a general permit may apply for termination of coverage by applying for an individual NPDES permit.~~

~~(c) Termination of coverage by a general permit shall be processed consistent with the rules found in this chapter applicable to individual NPDES Permits except a public notice period shall not be required for termination of coverage requested by the permittee, and a public notice shall not be required for termination if a public notice for coverage authorized by the Department is not required by the general permit.~~

~~(d)~~ Any person may petition the Director for withdrawal of general permit coverage from a discharger. The Director shall consider the information submitted by the petitioner and any other information he may be aware of and may obtain additional information from the discharger and through inspections by Department staff and shall decide if coverage should be withdrawn. The petitioner shall be informed of the Director's decision and shall be provided a summary of the information considered.

(10) Enforcement. Any general permit issued or reissued by the Department is a permit for the purposes of the AWPCA and the FWPCA, and any terms, conditions, or limitations of the permit are enforceable under state and federal law and as described under rule 335-6-6-.18.

(11) Permit Development. When the Department is satisfied that a general permit should be issued it shall develop a draft general permit in accordance with the procedures under rule 335-6-6-.19.

(12) Fact Sheets. A fact sheet shall be prepared for each draft general permit and shall be available to the public upon request. The fact sheet shall include, when applicable:

(a) A brief description of the category(s) of dischargers to be permitted by the general permit;

(b) A description of the geographic area to covered by the general permit; and

(c) The information required under rule 335-6-6-.20 to be included in fact sheets.

(13) Public Notice Requirements. Public notice of the Department's tentative decision to issue a general permit shall be accomplished in accordance with the requirements under rule 335-6-6-.21.

(14) EPA Review. Concurrent with issuance of public notice, the Department shall submit the draft general permit and fact sheet to EPA for review. EPA shall be allowed a review period of 90 days and a general permit shall not be issued over the specific written objection of the EPA.

(15) Notice of Intent.

(a) General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit.

(b) General permits shall specify whether a discharger that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, in accordance with the permit either upon receipt of the notice of intent by the Director, after a waiting period specified in the general permit, on a date specified in the general permit, or upon acknowledgment of the notice of intent by the Director.

(c) Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Director,

be authorized to discharge under a general permit without submitting a notice of intent where the Director finds that a notice of intent requirement would be inappropriate. In making such a finding, the Director shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Director shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

(d) A notice of intent shall include:

1. A description of the processes generating the wastewater for which coverage is desired, which description shall be in sufficient detail to allow the Department to determine that the wastewater discharge is included in the category permitted by the general permit;

2. The latitude and longitude of the discharge points for each wastewater discharge and the name of the waterbody receiving each wastewater discharge for which coverage under the general permit is desired;

3. A contact person, address and phone number for each location to be covered under the general permit; and

4. Any other information specified by the general permit.

(e) A notice of intent shall be signed by a person meeting the requirements for signatories to permit applications under rule 335-6-6-.09 and the person signing the notice of intent shall make the certification required for submission of documents under rule 335-6-6-.09.

(f) If required by a specific general permit, proof of public notice as required by the permit under which the applicant seeks to discharge must be submitted with the notice of intent.

(g) Beginning December 21, 2020, all Notices of Intent submitted in compliance with this rule shall be submitted electronically to the Department in compliance with the relevant requirements of rule 335-3-6-1-.04, with the exception of any period during which the permittee has been granted an electronic reporting waiver for Notices of Intent in accordance with paragraph 335-6-1-.04(6).

(16) Signatories to Reports. Discharge monitoring reports and any other submissions required by a general permit shall be signed in accordance with the requirements of rule 335-6-6-.09.

(17) Duration of General Permits.

(a) General permits shall not be issued for a term longer than five years unless a longer term is allowed by 40 CFR Part 122 and is approved by

the Director. The term of the permit does not mean that coverage for a discharger is for five years; coverage for a discharger, which begins after the effective date of the permit, shall be determined by the Director or his designee and can be for the remaining term of the general permit.

(b) Should a general permit expire prior to reissuance, the permit shall be extended administratively until the Department can complete reissuance of the permit.

(c) Should a general permit expire and the Director decide not to reissue the permit, the Director shall notify each discharger permitted by the general permit to submit an individual permit application and shall give the discharger at least 90 days to submit the application. The general permit shall be extended until the Department completes the permit decision process for individual NPDES permits for all persons covered under the general permit and who have submitted applications for an individual permit within the time period required by the Director.

(d) Should the Director revoke or terminate a general permit, the Director shall notify each discharger permitted by the general permit to submit an individual permit application and shall give the discharger at least 90 days to submit the application. The effective date of the action shall be the date on which the Department completes the permit decision process for individual NPDES permits for all persons covered under the general permit and who have submitted applications for an individual permit within the time period required by the Director.

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**Statutory Authority:** [Code of Alabama](#) 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16.

**History:** April 29, 1991.

**Amended:** July 12, 1995; August 1, 2002; August 3, 2010; September 29, 2015; [XXXX XX, 2017](#).