ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER QUALITY PROGRAM - FIELD OPERATIONS DIVISION
ADMINISTRATIVE CODE

CHAPTER 335-6-12
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) CONSTRUCTION, NONCOAL/NONMETALLIC MINING AND DRY PROCESSING LESS THAN FIVE ACRES, OTHER LAND DISTURBANCE ACTIVITIES, AND AREAS ASSOCIATED WITH THESE ACTIVITIES

TABLE OF CONTENTS

335-6-12-.01	Purpose
335-6-12-.02	Definitions
335-6-12-.03	Applicability
335-6-12-.04	Chapter Modification And Public Participation
335-6-12-.05	General Provisions
335-6-12-.06	Compliance With NPDES Rules
335-6-12-.07	Requirement To Update Registration And Apply For And Obtain Coverage Under An NPDES General Or Individual Permit, Termination And/Or Denial Of Registration
335-6-12-.08	Activities Not Authorized By This Chapter
335-6-12-.09	Reserved
335-6-12-.10	Notice Of Registration (NOR)
335-6-12-.11	Registration Requirements For NPDES Construction Sites
335-6-12-.12	Reserved
335-6-12-.13	Registration Fees
335-6-12-.14	Reserved
335-6-12-.15	Routine Reporting, Notification, And Record Keeping Requirements
335-6-12-.16	Reserved
335-6-12-.17	Reserved
335-6-12-.18	Entry And Inspection Of Sites/Facilities
335-6-12-.19	Continuing Educational And Training Requirements
335-6-12-.20	Reserved
335-6-12-.21	CBMPPs, Other Plans, Specifications, BMPs, And Technical Requirements
335-6-12-.22	Reserved
335-6-12-.23	Reserved
335-6-12-.24	Alternative Or Innovative Technology
335-6-12-.25	Site Completion, Reclamation, Effective Stormwater Quality Remediation, And Termination Of Registration

335-6-12-.26 Discharge And Receiving Water Evaluation Requirements
335-6-12-.27 Reserved
335-6-12-.28 Inspection Requirements
335-6-12-.29 Reserved
335-6-12-.30 Pollution Prevention For NPDES Construction Sites
335-6-12-.31 Reserved
335-6-12-.32 Reserved
335-6-12-.33 Ineffective BMPs, Discharge Prohibitions, And Noncompliance Notification
335-6-12-.34 Reserved
335-6-12-.35 Other Requirements
335-6-12-.36 Reserved
335-6-12-.37 Severability

335-6-12-.01 Purpose .

(1) The purpose of this Chapter is to establish a comprehensive Statewide program for stormwater management pursuant to the requirements of the National Pollutant Discharge Elimination System (NPDES).

(2) Registration for NPDES permit coverage under this Chapter establishes requirements, including but not limited to, Best Management Practices (BMPs), Construction Best Management Practices Plans (CBMPPs), registration requirements, technical standards and guidelines, operational requirements, stormwater storage, transport, treatment, and discharge management requirements for construction activity, noncoal mining sites less than five (5) acres in size, and areas associated with these activities described in this Chapter.

Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: **New Rule:** Filed December 19, 2002; effective January 23, 2003.

335-6-12-.02 Definitions.

The following words and terms, when used for the purposes of this Chapter, shall have the following meanings unless the context clearly indicates otherwise or unless a different meaning is stated in a definition applicable to only a portion of this Chapter. Unless inconsistent with this Chapter as determined by the Director, other words and phrases used in this Chapter shall have the same meaning as used in Chapters 335-6-3, 335-6-6, 335-6-7, 335-6-9, 335-6-10, 335-6-11, and the Alabama Water Pollution Control Act (AWPCA), as amended.

(a) "Alabama Handbook" means the Introduction through Appendix A7, inclusive, of the Alabama Handbook For Erosion Control, Sediment Control, And Stormwater Management On Constructions Sites And Urban Areas, Alabama Soil and Water Conservation Committee (ASWCC) (2002).

(b) "Associated Areas" means other onsite or adjacent support activities, including but not limited, to construction site temporary office space, parking areas, employee work areas, material stockpiles, waste or material storage, disposal, equipment storage, chemical/fuel storage and staging areas.

(c) "Best Management Practices" (BMPs)

1. BMPs mean planning, project phasing, schedules of activities, implementation, operating, and maintenance procedures, management strategies, effective treatment practices, and to the extent necessary, post-construction follow-up continuing maintenance, that meet or exceed recognized effective industry standard practices, that meet or exceed the technical standards and guidelines of the Alabama Handbook, and that meet or exceed the requirements of this Chapter, that are implemented to prevent/minimize pollutant discharges to the maximum extent practicable. BMPs also include effective practices to control pollutant discharges from land disturbance activities associated with pre-construction testing, site assessment, surveying, and other pre-construction development support activities. BMPs also include effective practices to control pollutant discharges from spillage or leakage, stormwater transport, storage, treatment, or disposal.

2. BMPs also mean full implementation and continued maintenance of effective structural and non-structural practices and planning/management strategies to ensure effective erosion and sediment control, and prevent/ minimize the introduction of pollutants to stormwater and to treat stormwater to remove pollutants to the maximum extent practicable prior to discharge. BMPs also mean the treatment of construction associated de minimus non-stormwater or process wastewater discharges authorized pursuant to the requirements of this Chapter, including but not limited to, pit dewatering, drilling fluids (augering), and the proper handling and disposal of construction wastes, and prevention of the discharge of petroleum products, solvents, and other chemicals. BMPs also mean implementation of effective construction site nutrient management practices, temporary, annual, or perennial vegetation management, minimally disturbed natural riparian buffer area, fully vegetated filter strips, and streambank management practices. A BMP can be

a single practice or more than one practice that combined will provide continuing effective treatment.

3. Any management practice, structure, or procedure, that is not recognized by the Department as a BMP based on performance, not installed/implemented correctly, not maintained, not adequately or properly located/sited, not suitable for the specific site conditions, not designed or configured to control potential or existing site conditions where the BMP is located, including but not limited to, steep slopes or grades, soils, potential precipitation and size of drainage area, which is not consistent with effective erosion and sediment control, that does not meet or exceed recognized effective industry standard practices, or not in accordance with the Alabama Handbook or other ADEM recognized BMP documents, is not considered or recognized as a BMP under this Chapter.

(d) "Chronic And Catastrophic Precipitation" means precipitation events which may result in failure of the properly designed, located, implemented, and maintained BMPs or other structure/practices required by this Chapter. Catastrophic precipitation conditions means any single event of significant total volume, or of increased intensity and shortened duration, that exceeds normally expected or predicted precipitation over the time period that the disturbance is planned or is ongoing, as determined by the Department. Catastrophic conditions could also include tornadoes, hurricanes, or other climatic conditions which could cause failure due to winds or mechanical damage. Chronic precipitation is also that series of wet-weather conditions over a limited time-period which does not provide any opportunity for emergency maintenance, reinstallation, and corrective actions and which equals or exceeds the volume of normally expected or predicted precipitation for the time period that the disturbance is planned or is ongoing.

(e) "Construction" means any land disturbance or discharges of pollutants associated with, or the result of building, excavation, land clearing, grubbing, placement of fill, grading, blasting, reclamation, areas in which construction materials are stored in association with a land disturbance or handled above ground, and other associated areas including, but not limited to, construction site vehicle parking, equipment or supply storage areas, material stockpiles, temporary office areas, and access roads. Construction also means significant pre-construction land disturbance activities performed in support or in advance of NPDES construction activity including, but not limited to, land clearing, dewatering and geological testing. Construction does not include de minimus pre-construction or other minor land disturbing activities, such as, but not limited to, the

installation of auger holes, bore holes, or small excavations, unless such activities cause discharges which present a reasonable potential for significant contribution of pollutants to State waters or reasonable potential to cause or contribute to a violation of applicable water quality standards. For the purposes of this Chapter, construction does not include mining, wet preparation, beneficiation, recovery, storage, handling, and transloading of coal or metallic ores/ minerals, and any mining or mineral processing, beneficiation, storage, handling, and associated activity/disturbance equal to or greater than five (5) acres in size.

(f) "Construction Best Management Practices Plan" (CBMPP) means any research, planning considerations, systems, procedures, processes, activities, and practices implemented for the prevention and/or minimization of pollutants in stormwater to the maximum extent practicable, and collection, storage, treatment, handling, transport, distribution, land application, or disposal of construction stormwater and onsite management of construction waste generated by the construction activity, and to comply with the requirements of this Chapter. This includes any required component plans and other pertinent information requested by the Department. The CBMPP shall be prepared/ certified, and when necessary updated/certified, by a qualified credentialed professional (QCP) in accordance with the requirements of this Chapter.

(g) "Construction Site" means any site regardless of size where construction or construction associated activity has commenced, or is continuing, and associated areas, including sites where active work is suspended or has ceased, until the activity is completed and effective reclamation and/or stormwater quality remediation has been achieved.

(h) "Construction Waste" means construction and land disturbance generated materials, including but not limited to, waste chemicals, sediment, trash, debris, litter, garbage, construction demolition debris, land clearing and logging slash or other materials or pollutants located or buried at the site prior to disturbance activity or that is generated at a construction site.

(i) "Director" means the Director of the Alabama Department of Environmental Management (ADEM) or the Director's designee.

(j) "Maximum Extent Practicable" means full implementation and regular maintenance of available industry standard technology and effective management practices, such as those contained in the Alabama Handbook, designed to prevent and/or minimize discharges of pollutants and ensure protection of groundwater and surface water quality.

(k) "Noncoal Mining Site" means an area, on or beneath land, less than five (5) total unreclaimed acres in size, used or disturbed in activity, including but not limited to, advance prospecting, noncoal mining site development, extraction, removal, mining, borrowing, remining, storing, transloading, dry processing, transportation, and/or recovery of any noncoal and nonmetallic mineral, ore, or mineral/ore product, including but not limited to, overburden, dirt, chert, soil, clay, rock, stone, aggregate, sand, gravel, tailings, and refuse from natural or artificial deposits. Pre-mining construction and land preparation, including but not limited to, clearing, grubbing, testing and advance prospecting in advance of mining activity is considered part of the noncoal mining activity which is required to register under this Chapter prior to commencement. For the purposes of this Chapter, noncoal mining does not mean any mining or recovery site, or associated product processing, recovery, storing, handling or transloading operations equal to or greater than five (5) acres in size, any mineral or ore wet processing or beneficiation regardless of size, and any metal ore/mineral, coal or associated product, mining, recovery, remining, processing, storing, handling or transloading operations, regardless of size.

(l) "Notice of Registration" (NOR) means an application, including all applicable fees imposed by Chapter 335-1-6, filed by the operator requesting National Pollutant Discharge Elimination System (NPDES) registration under this Chapter on a form or via electronic means as approved by the Department.

(m) "NPDES Construction Site" means construction activities that are required to obtain NPDES permit coverage under this Chapter. An NPDES Construction Site is construction that disturbs 1 acre or greater or will disturb less than 1 acre but is part of a larger common plan of development or sale whose total land disturbing activities total 1 acre or greater. An NPDES construction site also includes construction sites, irrespective of size, whose stormwater discharges have a reasonable potential to be a significant contributor of pollutants to a water of the State, or whose stormwater discharges have a reasonable potential to cause or contribute to a violation of an applicable Alabama water quality standard as determined by the Department.

(n) "Operator" means any person, registrant, or other entity, that owns, operates, directs, conducts, controls, authorizes, approves, determines, or otherwise has responsibility for, or exerts financial control over the commencement, continuation, or daily operation of activity regulated by this Chapter. An operator includes any person who treats and discharges stormwater or in the absence of treatment, the person who generates and/or discharges stormwater, or pollutants. An operator may include but may not be limited to, property

owners, agents, general partners, LLP partners, LLC members, leaseholders, developers, builders, contractors, or other responsible or controlling entities. An operator does not include passive financial investors that do not have control over activities regulated by this Chapter.

(o) "Plan or Sale" as included in the phrase "larger common plan of development or sale" is broadly defined to mean any announcement or documentation, sales program, permit application, presentation, zoning request, physical demarcation, surveying marks, etc., associated with or indicating construction activities may occur in an area.

(p) "Qualified Credentialed Inspector (QCI) means an operator, operator employee, or operator designated qualified person who has successfully completed initial training and annual refresher Qualified Credentialed Inspection Program (QCIP) training, and holds a valid certification from a Department approved cooperating training entity.

(q) "Qualified Credentialed Inspection Program (QCIP)" means a Department approved program conducted by a cooperating training entity. Approved programs provide training in the requirements of the Alabama NPDES rules, the Department's construction stormwater management program, evaluation of construction sites to ensure that QCP designed and certified BMPs detailed in a CBMPP are effectively implemented and maintained, and evaluation of conveyance structures, receiving waters and adjacent impacted offsite areas to ensure the protection of water quality and compliance with the requirements of this Chapter.

(r) "Qualified Credentialed Professional" (QCP) means any staff member of the Department designated by the Director, a Professional Engineer, an Alabama Natural Resources Conservation Service professional designated by the State Conservationist, or a Certified Professional In Erosion And Sediment Control (CPESC). A QCP includes a registered landscape architect, a registered land surveyor, a Professional Geologist, a registered forester, a Registered Environmental Manager as determined by the National Registry of Environmental Professionals (NREP), and a Certified Professional Soil Scientist (CPSSc) as determined by ARCPACS, and other Department accepted professional designations, certifications, and/or accredited university programs that can document requirements regarding proven training, relevant experience, and continuing education, that enable recognized individuals to prepare CBMPPs, to make sound professional judgments regarding Alabama NPDES rules, the requirements of this Chapter, planning, design, implementation, maintenance, and inspection of construction sites, receiving waters, BMPs, remediation/cleanup of accumulated offsite pollutants from the regulated site, and reclamation or effective stormwater

quality remediation of construction associated land disturbances, that meet or exceed recognized technical standards and guidelines, effective industry standard practices, and the requirements of this Chapter. The QCP shall be in good standing with the authority granting the registration or designation.

(s) "Reclaimed" means that all disturbed areas are permanently covered by completed buildings, other structures, pavement/ concrete, other acceptable impervious materials, or other effective permanent non-vegetative structures and practices. Reclaimed also means that all disturbed areas have been graded, slopes effectively stabilized, and perennial vegetation has been fully established with the ability to survive in the future if properly maintained, to prevent/ minimize to the maximum extent practicable exposure of disturbed soils to erosion as necessary to protect water quality.

(t) "Registered Forester" means a person who is registered and holds a valid license by the Alabama Board of Registration for Foresters (Code of Ala. 1975, §§34-12-1 through 34-12-37, as amended).

(u) "Stormwater" means runoff, accumulated precipitation, process water, and other wastewater generated directly or indirectly as a result of construction activity, the operation of a construction material management site, or the operation of a noncoal mining site, including but not limited to, precipitation, upgradient or offsite water that cannot be diverted away from the site, and wash down water associated with normal construction activities. Stormwater does not mean discharges authorized by the Department via other permits or regulations.

(v) "Stormwater Quality Remediation" means effective permanent structural or non-structural management practices implemented at a construction or noncoal mining site that will prevent or ensure continuing effective minimization of pollutants in stormwater discharges to groundwater and surface waters to the maximum extent practicable, and to prevent a contravention of applicable water quality standards. Stormwater quality remediation also means that the active total unreclaimed construction disturbance and any potential future construction activity at the site/development have been reduced to less than one (1) acre and there is no potential for adverse impacts to water quality provided the operator maintains compliance with BMP and performance requirements of this Chapter.

Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.

History: New Rule: Filed December 19, 2002; effective January 23, 2003.

335-6-12-.03 Applicability.

(1) The provisions of this Chapter are applicable to all new and existing construction activity, noncoal mining activity, construction materials management activity and associated activities, described in this Chapter, located wholly or partially within the State of Alabama.

(2) While the requirements of this Chapter do not modify or supercede the requirements of Chapter 335-6-9, any requirement contained in Chapter 335-6-9 shall apply to a noncoal mining site to the extent necessary to protect water quality.

(3) Unless specifically required by this Chapter or required in writing by the Director, construction sites and associated areas that are less than one (1) acre in size that are not otherwise considered a defined or designated NPDES construction site, are not required to register under this Chapter.

(4) Unless required in writing by the Director, maintenance and repair activities at existing roads, utility infrastructure, bridges, other facilities or structures, including but not limited to, repaving, painting, bridge repair, vegetation maintenance, tree replacement, normal maintenance of existing unimproved roads, that are not associated with new or additional defined or designated NPDES construction disturbance activity are not required to register under this Chapter.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; §§22-22A-1 to 22-22A-16 et seq., as amended.
History: New Rule: Filed December 19, 2002; effective January 23, 2003.

335-6-12-.04 Chapter Modification And Public Participation.

(1) The Department shall cause to be published a Public Notice with a comment period of not less than thirty (30) days to solicit public participation and comment and to schedule a Public Hearing, if necessary, according to procedures described in Rule 335-6-6-.21 regarding the content of, implementation of, and compliance with provisions herein, prior to the completion of the first five-year term beginning with the effective date of this Chapter, and at least once every five years after the Public Notice referenced above or each subsequent Public Notice is held. After review of comments received during the public participation process, and no later than one-hundred and twenty (120) days after the close of

the public comment period, the Department shall prepare a written Response to Comments addressing comments received during the public participation process and shall make a determination in writing regarding the status of this Chapter and of the need, if any, to initiate procedures pursuant to Code of Ala. 1975, §§41-22-1 through 41-22-27, as amended, to modify this Chapter to ensure that the requirements of this Chapter are in accordance with the requirements of the Alabama Water Pollution Control Act (AWPCA), Clean Water Act (CWA), and regulations promulgated pursuant thereto. Where the Department has initiated procedures to modify this Chapter as set forth in this Rule, the Department shall provide the proposed modifications to the EPA Regional Administrator for comment consistent with NPDES regulations.

(2) The Department shall cause to be published a Public Notice with a comment period of not less than thirty (30) days according to procedures described in Rule 335-6-6-.21 to inform the public regarding the Response To Comments and the Department's determination regarding the need, if any, to initiate rulemaking procedures to modify this Chapter as described in paragraph (1) of this rule. The Public Notice shall include information to inform the public how to obtain in writing the procedures for the public to petition the Department to initiate procedures in accordance with Chapter 335-2-2 to modify this Chapter if the Director determines, after consideration of comments or other information received during the public participation process, that modification of this Chapter by the Department is not necessary.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: **New Rule:** Filed December 19, 2002; effective January 23, 2003.

335-6-12-.05 General Provisions.

(1) The operator, registrant, developer, onsite contractors, home builder(s), utility installers, or property owners association, separately or collectively, shall maintain valid registration for an NPDES construction site/activity, including subdivision developments or other linear or phased projects, until disturbance activity is complete and all disturbed areas have been reclaimed or effective stormwater quality remediation has been achieved in accordance with the requirements of this Chapter or another operator(s) has registered.

(2) The operator of construction activity defined or designated as NPDES construction under this Chapter shall maintain adequate records to document compliance with this Chapter and shall fully implement and regularly maintain effective BMPs to the maximum extent practicable, and in accordance with the operator's CBMPP. Appropriate, effective pollution abatement/prevention facilities,

structural and nonstructural BMPs, and management strategies shall be fully implemented prior to and concurrent with commencement of regulated activities and regularly maintained during construction as needed at the site to meet or exceed the requirements of this Chapter until construction is complete, effective reclamation and/or stormwater quality remediation is achieved, and if registration is required, the registration is terminated. Failure to fully implement and regularly maintain effective BMPs for the protection of water quality to the maximum extent practicable is a violation of this Chapter.

(3) Operators shall ensure that their construction activities are regularly evaluated to ensure compliance with the provisions of this Chapter. All NPDES construction site operators shall ensure that their construction activities are regularly inspected by a QCI, QCP, or a qualified person under the direct supervision of a QCP, as applicable, to ensure compliance with the provisions of this Chapter. Each NPDES construction site operator shall implement and maintain a comprehensive CBMPP in accordance with the requirements of this Chapter and submit reports and certifications as required by this Chapter.

(4) The NOR and CBMPP, prepared in accordance with the Alabama Handbook and the requirements of this Chapter by the QCP prior to commencing construction at a new NPDES construction site, and prior to continued construction at an existing NPDES construction site, or as otherwise required by the Director, are incorporated into the requirements of any NPDES registration under this Chapter.

(5) The operator shall post and maintain sign(s) at the front gate/entrance, and if utility installation, where project crosses paved county, State, or federal highways/roads, and/or at other easily accessible location(s) to adequately identify the site prior to commencement of and during NPDES construction until registration is properly terminated. Such sign shall display the name of the registrant, "ADEM Registration" followed by the ADEM NPDES registration number, and facility or site name.

(6) The operator retains full responsibility for the design, construction, operation and maintenance of BMPs to protect water quality to the maximum extent practicable. In recognition that construction activities and noncoal mining activities are site specific in nature and conditions can change as the site develops, the Department may require the submission of additional information or require additional management measures to be implemented, as necessary.

(7) The Director may require the operator to modify existing registrations, require any CBMPP to be updated, require additional BMPs, and/or restrict discharges, if needed, based on implementation of an applicable, approved total maximum daily load.

Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: **New Rule:** Filed December 19, 2002; effective January 23, 2003.

335-6-12-.06 Compliance With NPDES Rules.

(1) Registration under this Chapter constitutes NPDES permit coverage as provided in Chapter 335-6-6. Operators shall comply with all provisions of this Chapter, applicable provisions of the NPDES permit program as described in Chapter 335-6-6, and other applicable provisions of ADEM Administrative Code Division 335-6.

(2) Any noncompliance with this Chapter constitutes a violation of this Chapter, Alabama NPDES rules, and the AWPCA, and is grounds for enforcement action, including termination or denial of registration, and/or for requiring the operator or registrant to apply for and obtain an individual NPDES permit.

(3) It shall not be a defense for an operator subject to an enforcement action that it would have been necessary to halt or reduce construction/disturbance activity or the permitted activity in order to maintain compliance with the conditions of this Chapter. Upon reduction in effectiveness, loss, or failure of a treatment facility or BMP, the operator shall, to the extent necessary to maintain compliance with this Chapter, control/ suspend/cease construction/discharge until the construction BMP/ control is restored or an effective alternative BMP or method of effective treatment is provided.

(4) The operator shall take all reasonable steps to prevent and/or minimize, to the maximum extent practicable, any discharge in violation of this Chapter or which has a reasonable likelihood of adversely affecting the quality of groundwater or surface water receiving the discharge(s).

(5) This Chapter may be both greater in scope and more stringent than required by federal law. Enforcement authority for conditions in this Chapter which constitute greater scope of coverage than required by Federal law are not part of the federally approved NPDES program and therefore are not subject to EPA oversight. The Director retains final authority regarding questions or disputes related to administrative procedures, technical determinations, and interpretation or meaning of the requirements of this Chapter, and as otherwise provided by law.

(6) Any person who knowingly omits or ignores required or pertinent information, or makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this Chapter,

including monitoring reports or reports of compliance or noncompliance, shall be subject to penalties as provided by the AWPCA.

(7) Except as provided by the bypass and upset conditions contained in this Chapter, nothing in this Chapter shall be construed to relieve the operator of civil or criminal liability under the AWPCA for noncompliance with any term or condition of this Chapter.

(8) The filing of a request by the operator for any action such as a request for termination, submittal deadline extension, or application for an individual permit, or any other action, does not stay any requirement of this Chapter.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: **New Rule:** Filed December 19, 2002; effective January 23, 2003.

335-6-12-.07 **Requirement To Update Registration And Apply For And Obtain Coverage Under An NPDES General Or Individual Permit, Termination And/Or Denial Of Registration.**

(1) The Department may require any operator of a construction site required to be registered under this Chapter to apply for and obtain coverage under an NPDES individual permit or general permit pursuant to the requirements of Chapter 335-6-6. The Department shall notify the operator in writing that an individual permit or general permit application, including the correct fee, is required. If an operator fails to submit a complete and correct individual NPDES or general permit application with applicable fee as required by Chapter 335-1-6 or by a reasonable deadline specified by the Director, then any previous registration granted to the operator is automatically terminated at the end of the day specified for application submittal and the operator may be subject to enforcement action.

(2) When either NPDES individual permit is issued or general permit coverage is extended to an operator authorizing discharges otherwise subject to this Chapter, the applicability of this Chapter to the operator is automatically terminated on the effective date of the individual/general permit coverage. When an NPDES individual permit or general permit coverage is terminated, or an application is denied to an operator otherwise subject to this Chapter, the operator and the NPDES Construction Site continues to be subject to the requirements of this Chapter on and after the date of such termination or denial, and shall immediately cease the regulated activity and complete all measures necessary to permanently halt discharges of pollutants until

registration or other permit coverage is obtained from the Department.

(3) Registration Administration, Duration, And Limitations

(a) Registration under this Chapter may be granted on an annual (12 month) basis, in annual increments, or any length of time determined appropriate by the Director, provided registration does not exceed five (5) years from the date of the last registration or re-registration. Unless registration is extended by the Director, continued construction activity is prohibited after the expiration date of registration unless the operator submits a complete and correct NOR requesting re-registration. NORs submitted for re-registration shall be subject to the requirements of Rule 335-6-12-.11(3) and Rule 335-6-12-.11(4). All requirements of this Chapter continue in effect regardless of the operator's registration status.

(b) Any registration under this Chapter may be limited in size, scope or geographical area at the reasonable discretion of the Director to facilitate efficient and effective administration of the registration program or compliance with the requirements of this Chapter.

(c) Multiple small construction sites may be allowed to be grouped under a single registration, at the reasonable discretion of the Director to facilitate efficient/effective administration of the registration program or compliance with the requirements of this Chapter.

(d) Registration under this Chapter is conditionally granted, and the requirement to submit an NOR, information contained or required in the NOR, or submittal of the registration fee under this Chapter is suspended for governmental agencies and utilities to allow for immediate and effective emergency repairs and response to natural disasters, human health or environmental emergencies, or to avert/avoid imminent, probable, or irreparable harm to the environment or severe property damage. The operator or controlling/ participating federal, State, or local government agencies/ entities conducting emergency construction activity shall document the emergency condition, ensure compliance with the BMP requirements of this Chapter to the extent possible, and shall notify the Department as promptly as possible regarding the occurrence of the emergency construction disturbance and measures that have been implemented and are being implemented to protect water quality. Unless the requirement to register pursuant to the requirements of this Chapter are suspended or voided by the Director on a categorical or individual emergency basis, the operator shall submit the appropriate project information, NOR, and the required registration fee for construction or reconstruction activity after emergency

repairs have been accomplished, according to a schedule acceptable to the Department.

(4) Termination Or Denial Of Registration

(a) If cause exists for denial or termination of registration or under this Rule, the Director may determine that termination or denial of registration is appropriate. The following may be causes for terminating a registration during its term, for denying a request for registration, or denying a request for re-registration:

1. Substantial noncompliance by the operator with any registration requirement or the requirements of this Chapter;

2. Failure by the operator to disclose fully all relevant facts or the operator's misrepresentation of any relevant facts, at any time;

3. A change in any condition that results in either a temporary or a permanent reduction or elimination of any discharge controlled by the registration, including but not limited to, completion of construction, or termination of a discharge by connection to a publicly/ privately owned treatment works;

4. The compliance history of the operator; or

5. Any other relevant factors the Director reasonably determines to be appropriate.

(b) If the Director determines that a registration that results in compliance with applicable water quality standards could not be issued or, if issued, could not be complied with, such registration shall be terminated or denied.

(c) Any operator whose registration is denied or terminated pursuant to the provisions of this Rule shall comply with the AWPCA and applicable requirements of Division 335-6.

(5) The Director may, for cause, require any operator regulated under this Chapter to apply for and obtain registration modification or to apply for and obtain NPDES individual or general permit coverage for those causes set forth in Rule 335-6-6-.17.

(6) If the operator determines that any past activity regulated by this Chapter should have obtained registration or registration modification under this Chapter, issuance of an individual NPDES permit, or coverage under a general permit, under Rule 335-6-6-. 03, the operator shall report such information to the Director.
Author: Richard Hulcher

Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: New Rule: Filed December 19, 2002; effective January 23, 2003.

335-6-12-.08 Activities Not Authorized By This Chapter.

(1) Discharge(s) from wet preparation, processing, or beneficiation, of coal, mineral, or ore, are not authorized by this Chapter. Discharge(s) from metal ore/mineral and coal, or associated product, mining, remining, recovery, storing, handling, or transloading, are not authorized by this Chapter.

(2) Discharge(s) from any mining operation that at any time has a total area of land disturbance that equals or exceeds five (5) acres in size that has not been fully reclaimed, including but not limited to, access roads, spoil areas, and mineral storage, handling, loading, and transloading areas, excavation areas, operation support areas, and vehicle maintenance areas, are not authorized by this Chapter, but are regulated pursuant to the applicable provisions of 335-6-9 and 335-6-6.

(3) Discharge(s) from any mining operations where the planned or proposed area of total land disturbance, including but not limited to, access roads, spoil areas, mineral storage areas, loading areas, excavation areas, and vehicle maintenance areas, equals, exceeds, will equal or exceed, or is predicted to equal or exceed five (5) acres, that has not been fully reclaimed, are not authorized by this Chapter.

(4) Discharge(s) from instream and within-bank mining are not authorized by this Chapter.

(5) Discharge(s) from the operation or closure of a landfill as described in ADEM Administrative Code Division 335-13 are not authorized by this Chapter. Construction disturbance associated with pre-construction testing, initial development, continuing operation, and/or expansion of a landfill is not required to register under this Chapter provided the landfill operator has obtained applicable permit coverage pursuant to the requirements of Division 335-13 prior to commencement of initial construction of the landfill. Compliance with valid permit coverage issued to the landfill operator pursuant to the requirements of Division 335-13 constitutes compliance with the provisions of this Chapter.

(6) Discharge(s) from manufacturing/industrial process or produced waste or wastewaters are not authorized by this Chapter.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.

History: New Rule: Filed December 19, 2002; effective January 23, 2003.

335-6-12-.09 Reserved.
Author:
Statutory Authority:
History:

335-6-12-.10 Notice Of Registration (NOR).

(1) A complete and correct Notice of Registration (NOR) shall be submitted to the Department for all NPDES construction sites in a format acceptable to the Department. The NOR shall include the following information and/or attachments:

(a) A copy of the CBMPP for the site, if required to be submitted by the requirements of this Chapter or the Department.

(b) A copy of the CBMPP shall be submitted for NPDES construction sites discharging to a Tier 1 waterbody segment, as described in Rule 335-6-10-.12, due to a construction activity pollutant of concern, or a waterbody designated as ONRW, pursuant to the requirements of Chapter 335-6-10, and for the relocation, diversion, or realignment of any water of the State;

(c) Portions or copies of 7.5' Series U.S. Geological Survey maps, or other maps acceptable to the Department, showing the site location;

(d) Any other relevant information that may be required by this Chapter or the Department.

(2) The NOR shall be delivered or mailed in such a manner that date of receipt by the Department is confirmed by the operator using means such as certified mail, overnight mail or otherwise submitted/transmitted via electronic means to the Department.

(3) Registration Modification

(a) Operators shall notify the Department in writing whenever there is a change in the information contained within the NOR, including a change in control/responsibility for the registered construction site.

(b) If the operator becomes aware that it submitted incomplete information, failed to submit any relevant facts in the NOR, or submitted incorrect information in the NOR, it shall

promptly submit such facts, corrections, or information with a written explanation for the mistake and/or omission.

(c) Operators shall make such notifications by submitting a revised NOR.

(4) Change in Discharge

(a) The operator shall give advance notice to the Department of any proposed facility expansion, increase in disturbed acreage, new disturbance or the addition of a new receiving water not identified in the NOR requesting registration, construction change, or other activity or action, including but not limited to, the discharge of additional or different pollutants in stormwater discharges which could result in noncompliance with the requirements of this Chapter.

(b) Major Modification. The operator shall request modification of the registration from the Department by submission of a revised NOR, including the correct registration fee prior to any proposed major modification including but not limited to, the following:

1. At any time that there is an increase in the size of the project or number of unreclaimed or disturbed acres that is sufficient to place the construction site in a higher fee category as provided in Chapter 335-1-6;

2. Addition of a new receiving water or waterbody segment that was not identified in the NOR requesting registration;

3. Significant change in the CBMPP or BMPs; or

4. Any other significant change at the construction site that may have an impact on water quality.

(c) Transfer of Registration. An operator shall request transfer of the registration from the Department in writing with a copy of a formal transfer agreement. Submittal of the correct registration transfer fee is required prior to any proposed change in responsible operators or change in responsibility/control for the registered site. Instances where transfer or registration is required include, without limitation, the following:

1. A change of ownership or name of registrant; or

2. A change in operational control of the construction site.

(d) Minor Modification. The operator shall document in his file no later than fifteen (15) days after any minor change,

that the CBMPP and BMPs have been properly updated to reflect any minor change in construction activity as it relates to this Chapter or operational procedures at the registered site or a change in the NOR submitted to the Department, including but not limited to, the following:

1. A minor change or update of information submitted in the NOR to provide more complete information including a change in contractors, submittal of a revised site map, etc;

2. A minor change in the CBMPP or BMPs, or other pollution control activities;

3. Any other minor change at the construction site that is needed to ensure compliance with the requirements of this Chapter or ensure the protection of water quality; or

4. A change in responsible offices or other controlling entity(s).

(5) After registration or re-registration, the Department may require the operator to provide additional or updated construction plans, data, designs, drawings, photographs, maps, or any other information to document compliance with the requirements of this Chapter.

(6) All NORs requesting initial registration, registration modification [other than minor modifications described in 335-6-12-.10(4)(d)], and re-registration under this Chapter shall be signed by a QCP and, as required by Rule 335-6-6-.09, the operator.

(7) All reports required by this Chapter and any other information required by the Department shall be signed by a qualified person described by this rule and, where required or allowed by this Chapter, a QCI or QCP. A person is an authorized representative only if:

(a) The authorization is made in writing and signed by a responsible official;

(b) The authorization specifies either an individual or a person having responsibility for the overall operation of the regulated construction site or activity, such as the position of site manager, superintendent, or position of equivalent responsibility for environmental matters for the operator. An authorized representative may be either an operator named individual or any individual occupying a named position; and

(c) The written authorization is submitted to the Department. This written authorization remains valid for signatures on all

subsequent submittals unless revoked by the authorizing responsible official.

(8) If a signatory authorization under this Chapter is no longer accurate because a different individual or position has responsibility for the overall operation of the construction site, a new signatory authorization satisfying the above requirements shall be submitted to the Department prior to, or submitted with, any reports, information, or NORs signed by the authorized individual.

(9) Any person signing an NOR, document, report, or other information required by this Chapter shall certify the document pursuant to Rule 335-6-6-.09(4).
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: New Rule: Filed December 19, 2002; effective January 23, 2003.

335-6-12-.11 Registration Requirements For NPDES Construction Sites.

(1) Except as provided otherwise by this Chapter, after March 1, 2003 or the effective date of this Chapter, whichever date occurs later, new or continued operation of NPDES construction sites that have not submitted a complete and correct Notice of Registration (NOR) or application requesting coverage under a valid NPDES general permit, or individual permit, is prohibited. Except as provided otherwise by this Chapter, after March 1, 2003 or the effective date of this Chapter, whichever date occurs later, commencement of construction at proposed NPDES construction sites that have not submitted a complete and correct NOR acceptable to the Department, or have not been granted NPDES permit coverage under a valid NPDES general permit, or individual permit, is prohibited.

(2) After March 1, 2003, or the effective date of this Chapter, whichever date occurs later, modification of an existing construction site/activity less than one (1) acre that would result in an increase in size or change in construction activity such that the construction site would become an NPDES construction site, is prohibited, unless the operator has first submitted a complete and correct Notice of Registration (NOR) to the Department.

(3) Except as provided by Rule 335-6-12-.11(4), upon submission to the Department of a complete and correct NOR, including the correct registration fee, CBMPP if required, and applicable QCP certifications, unless notified by the Department that the NOR is incorrect or incomplete, that additional time is needed by the

Department to review the NOR, or that the NOR has been denied, the operator is authorized to commence and/or continue construction disturbance provided the construction site remains in full compliance with all provisions of this Chapter.

(4) For NPDES construction sites/activity discharging and/or proposing to discharge to a Tier 1 waterbody segment, unless notified by the Department within thirty (30) days after receipt by the Department of a complete and correct NOR, including the correct registration fee, CBMPP, and applicable QCP certifications, that the NOR is incorrect or incomplete, that additional time is needed by the Department to properly process the NOR, or that the NOR has been denied, the operator is authorized to commence construction disturbance provided the construction site remains in full compliance with all provisions of this Chapter.

(5) As determined necessary by the Department, a new or existing construction site regardless of size, which discharges to a Tier 1 waterbody segment that has been listed for a pollutant that is likely to be discharged from the construction site including, but not limited to sediment, may also be required to register under this Chapter.

(6) Unless required by applicable federal law or State law, and provided the activity is not being conducted in support of, in conjunction with, or to prepare for NPDES construction activity as defined by this Chapter, the following construction activities are not required to register under this Chapter:

(a) Normal silvicultural harvesting and associated silvicultural construction practices conducted in accordance with Rule 335-6-6-.03 and Rule 335-6-6-.10 that are not planned or performed in immediate advance of, in support of, or as part of, a regulated construction activity or development.

1. For the purposes of this Chapter, silvicultural construction includes certain temporary nonmetallic/ noncoal material acquisition or borrow activity that is reasonably considered as an extension of forest road construction activity. Generally, small, temporary material borrow areas for silvicultural local road construction are considered part of the normal nonpoint source silvicultural activity, including but not limited to, timber harvesting, site preparation, tree planting, controlled burning, fertilization and are not required to register under this Chapter provided the duration of the disturbance is minimized to the extent possible, but in all cases is less than sixty (60) days, effective BMPs are fully implemented and regularly maintained to the maximum extent practicable prior to, during, and immediately after use of each completed increment of the

borrow area until the site is reclaimed or effective stormwater quality remediation is achieved, and the total active, unreclaimed land disturbance is less than five (5) acres in size at all times;

2. In addition, in order for temporary material borrow areas for silvicultural local road construction to be considered part of the normal nonpoint source silvicultural activity not required to register under this Chapter, the disturbance shall be conducted to ensure that borrow material is exclusively obtained for construction and periodic maintenance of forest roads utilized in silvicultural activities. The temporary disturbed area shall be continually graded and reclaimed to within a safe operating distance from any high-wall or steep slope and the temporary borrow area is used exclusively by a single operator within the scope of the operator's own operations. Re-establishment of permanent vegetative cover shall be accomplished immediately after active disturbance is completed for each disturbed increment, and the active non-graded, non-reclaimed area adjacent to the active high-wall shall not exceed one-half acre. The borrow area shall be located outside of streamside management zones and outside the designated 50-year flood plain and the site is located as close as practicable near scheduled road construction and maintenance activities to the extent that appropriate road fill material is available. Fuel storage tanks/ containers shall not remain onsite unattended dry/wet crushing/screening or other processing shall not be conducted, the borrow activity shall not result in a point source discharge to surface waters of the State, and the Department shall be notified immediately of any unpermitted discharges or non-compliant discharges in order to ensure the protection of water quality;

3. Road construction and maintenance shall be for support of normal nonpoint source silvicultural practices only. Material borrow activity for construction or maintenance of dual-use or multi-use roads used for silvicultural practices but which are also used incidentally for access to other types of activities or development is exempt. However, material borrow activity for construction or maintenance of dual-use or multi-use roads used primarily for access to other types of regulated non-silvicultural development, including but not limited to, marinas, barge/rail loading facilities, industrial/manufacturing facilities and subdivision developments, is not exempt and requires registration under this Chapter;

(b) Animal feeding operation (AFO) or concentrated animal feeding operation (CAFO) construction activity that has been granted NPDES registration pursuant to Chapter 335-6-7;

(c) Aquatic animal production facilities, concentrated aquatic animal production facilities, and aquaculture project construction associated activity that have been granted NPDES permit coverage in accordance with Rule 335-6-6-.03 and Rule 335-6-6-.10;

(d) Normal, on-farm non-AFO agricultural planting, harvesting and associated normal agricultural practices in accordance with Rule 335-6-6-.03 and Rule 335-6-6-.10. For the purposes of this Chapter, normal agricultural practices also means practices commensurate with the size of the farming operation that are implemented in a manner that meet or exceed Natural Resources Conservation Service technical standards and guidelines, including but not limited to, farm ponds that are constructed for the primary purpose of irrigation and/or watering of livestock, terraces, grassed waterways, vegetative filter strips, cropland grade stabilization measures, drainage tiles, underground outlets, land leveling, dike/diversion structures, and other grade stabilization structures;

(e) Discharges of treated stormwater from construction or land disturbance activity regulated by this Chapter that is specifically authorized by a valid individual NPDES permit, valid State Indirect Discharge (SID) permit, or other valid ADEM permit, provided the valid ADEM permit contains specific, detailed BMP requirements and other provisions to effectively treat/control construction stormwater runoff consistent with the requirements of this Chapter, or requires compliance with the requirements of the this Chapter, or requires compliance with the Department’s construction stormwater management program;

(f) Surface mining operations and associated activities, coalbed methane exploration, development, production and associated activities, and construction bulk materials management, including but not limited to, storage, transloading, and/or dry processing, that has valid NPDES individual permit coverage, or valid State Indirect Discharge (SID) permit coverage that contains specific, detailed BMP requirements and other provisions to effectively treat/control construction stormwater runoff; or

(g) Construction bulk materials management, including but not limited to, storage, transloading, and/or dry processing, conducted entirely under roof without any exposure or contact with precipitation and without stormwater discharges of any kind consistent with the requirements of Rule 335-6-6-.03. This includes the requirement to submit a No Exposure Certification Form.

(7) Unless the registration is properly terminated pursuant to the requirements of this Chapter, failure by the operator to submit a complete and correct NOR requesting re-registration under this

Chapter prior to the expiration of registration, unless extended in writing by the Director, shall void the automatic continuation of registration to discharge under this Chapter as provided by Rule 335-6-6-.06.

(8) The Director may condition registration(s) as needed to ensure compliance with the requirements of the AWPCA, ADEM regulations, and the requirements of this Chapter, to ensure the protection of water quality.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: **New Rule:** Filed December 19, 2002; effective January 23, 2003.

335-6-12-.12 Reserved.
Author:
Statutory Authority:
History:

335-6-12-.13 Registration Fees.

(1) The operator shall pay fees according to Chapter 335-1-6.

(2) A continuing education Greenfield fee required by Chapter 335-1-6 for NPDES construction sites shall not be required provided the operator certifies that required continuing education has been accomplished pursuant to Rule 335-6-12-.19 with the initial registration and/or each subsequent or annual registration. Alternatively, the operator may certify it will solely retain or has solely retained a QCP or a person under the direct supervision of a QCP to carry out the inspection requirements of this Chapter.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: **New Rule:** Filed December 19, 2002; effective January 23, 2003.

335-6-12-.14 Reserved.
Author:
Statutory Authority:
History:

335-6-12-.15 Routine Reporting, Notification, And Record Keeping Requirements.

(1) Construction site operators shall cooperate fully with inspections, monitoring, records review, and testing conducted by the Department as well as requests for submission of available documents, or technical data, and any testing/monitoring performed by the operator.

(2) Construction site operators shall keep all records required either:

(a) At the construction site and immediately available for inspection by the Department; or

(b) At an alternative site previously identified to the Department, provided they are readily available for inspection upon request.

(3) The operator shall document the names of individual(s) that perform inspections.

(4) All discharge information, data, records, and other information required to be maintained by the operator shall be made available to the Department upon request. Signed copies of monitoring reports or other information shall be submitted to the Department upon request. The operator shall retain records of all inspections and monitoring required to be maintained by this Chapter, including all certification reports, noncompliance reports, calibration and maintenance records, all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Chapter, and records of all data used to complete the above reports or the NOR requesting registration under this Chapter until after construction is complete and any disturbance reclaimed or effective stormwater quality remediation achieved. Operators of NPDES construction sites shall retain copies of all records required by this Chapter for a period of at least three (3) years after proper termination of registration pursuant to the requirements of this Chapter. This period may be extended by the Director at any time during the 3 year record retention period for reasonable cause. If litigation or other enforcement action is ongoing which involves any of the above records, the records shall be kept until the litigation or other enforcement action is resolved.

(5) Except for data determined to be confidential under Code of Ala. 1975, §22-22-9(c), as amended, under Rule 335-6-6-.07, all reports prepared and submitted in accordance with the terms of this Chapter shall be available for public inspection at the

Department's Central Montgomery Office, or through alternative procedures implemented by the Department.

(6) The operator shall furnish to the Department any information which the Director may request to determine whether cause exists for modifying, revoking, and requiring coverage under an NPDES individual permit, or terminating the construction site's registration under this Chapter, or to determine compliance with this Chapter.

(7) Failure to record and maintain adequate records documenting the operation of a construction site shall not be a defense to the Department determining that the construction activity is an NPDES construction site requiring registration under Rule 335-6-12-.11.

(8) Summary annual reports for the previous year shall be submitted in a format acceptable to the Department and with submittal of an NOR requesting re-registration:

(a) For construction projects granted a multi-year registration, the report shall summarize all inspection information every twelfth (12th) month after initial registration, regardless of the status of the site, until construction is finished, reclamation of disturbed areas is complete, or effective stormwater quality remediation is achieved, and the registration is properly terminated;

(b) With a request by the operator to re-register or terminate registration under this Chapter after completion of all disturbance, reclamation, and stormwater remediation activities. Documentation summarizing all inspection and monitoring data and other relevant information and, for requests for termination of registration, a demonstration that appropriate, effective actions have been taken for the survival of permanent vegetative cover shall be included with this request; and

(c) Results of all required inspections shall be summarized in a format acceptable to the Department, and shall be available for inspection no later than fifteen (15) days following the date of the inspection, monitoring, or sampling. Reports shall be legible and bear an original signature or, in the case of electronic reports, an electronic signature.

(9) Construction site operators shall furnish to the Department upon reasonable request and in a timely manner, available information, including but not limited to, the name, phone number, address, county, site location, and directions to the site, which identifies offsite sources of material, natural resources used or stored at the construction site, and the acquisition, usage, storage, handling, and transport of construction site related regulated chemicals, compounds, and pollutants.

(10) The operator shall notify the Department as soon as it is known, or there is reason to believe, that any activity has occurred or will occur which would result in the discharge on a routine or frequent basis of any toxic pollutant which is not effectively limited/controlled by the requirements of this Chapter, or if that discharge will exceed the highest of any notification levels pursuant to Rule 335-6-6-.13.

(11) Recording of Results

(a) For each inspection, measurement, sample taken, laboratory or field measurement, parameter, or analysis performed, observed, or recorded pursuant to the requirements of this Chapter, the operator shall record the following minimum information:

1. The site/facility name and location, registration number, source location, date, time and exact place of sampling, if conducted. If sampling is not conducted, a written explanation why sampling was not conducted or did not need to be conducted to ensure compliance with the requirements of this Chapter;

2. The name of those persons who performed the inspection or obtained the samples or measurements; the dates and times the inspection or the analyses were performed; the name(s) of the person(s) who performed the analyses; the analytical techniques or methods used, including source of method and method number; the equipment used, methods used, and calibration procedures; the results of all samples and analyses; and

3. Any deficiencies noted during the inspection, any corrective action or mitigation needed to correct the deficiencies, and a proposed compliance schedule not to exceed seven (7) days for temporary, nonstructural BMP implementation, fifteen (15) days for implementation of structural controls, or an alternative schedule acceptable to the Department.

(b) The operator shall maintain records regarding chemical use, storage, and including a copy of all Material Safety Data Sheet(s) (MSDS).

(12) If the operator becomes aware that it submitted incomplete information, failed to submit any relevant facts or submitted incorrect information in any report to the Department, it shall promptly submit such facts, corrections, or information with a written explanation for the mistake and/or omission.

Author: Richard Hulcher

Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.

History: New Rule: Filed December 19, 2002; effective January 23, 2003.

335-6-12-.16 Reserved.
Author:
Statutory Authority:
History:

335-6-12-.17 Reserved.
Author:
Statutory Authority:
History:

335-6-12-.18 Entry And Inspection Of Sites/Facilities.

(1) Any operator of a construction site shall upon the presentation of credentials, permit authorized representatives of the Department to enter, at all reasonable times, the construction project area and property and buildings at the construction site, and allow the representative to inspect facilities and equipment, review records, to conduct monitoring and sampling, and to:

(a) Have vehicle and equipment access to inspect at reasonable times, any facilities, or equipment, including but not limited to, monitoring and control equipment, BMPs, other practices, or activities regulated or required under this Chapter; and

(b) Sample, inspect, take photographs, or monitor, the site at reasonable times for the purposes of assuring compliance with this Chapter or as otherwise authorized by the AWPCA or CWA, any area, BMPs, equipment, disposal site, regulated by this Chapter.

Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: New Rule: Filed December 19, 2002; effective January 23, 2003.

335-6-12-.19 Continuing Educational And Training Requirements.

(1) Unless the operator has employed or contracted with a QCP that performs duties as required by this Chapter, and the QCP, or a qualified person under the direct supervision of a QCP, is readily available and able to be present onsite as often as is necessary

to ensure full compliance with the requirements of this Chapter, the operator shall ensure that:

(a) Effective January 1, 2004, at least one onsite employee shall maintain valid QCI Certification. The employee(s) holding QCI Certification need not be on-site continuously and they may represent multiple sites.

(b) Effective January 1, 2004, the employee QCI of existing NPDES construction sites shall obtain annual certification of satisfactory completion of formal refresher education or training regarding general BMPs, Alabama NPDES construction stormwater management requirements, and Department recognized QCI training. The refresher training requirements, including but not limited to, appropriate curricula, course content, course length, minimum/maximum training/contact hours, any participant testing, and evaluation of the effectiveness/ applicability of the training shall be subject to acceptance by the Director prior to use.

(2) An operator shall submit the continuing education greenfield fee with each NOR as provided in Chapter 335-1-6, if any QCI employed by the operator as set forth in Rule 335-6-12-.19(1), does not maintain required QCIP training.

(3) Failure to comply with Rule 335-6-12-.19(1), and if required, obtain and submit certification of the prerequisite initial and annual refresher training and education, or alternatively submit the continuing education greenfield fee as provided in Rule 335-6-12-.19(2), shall be deemed a violation of this Chapter.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: **New Rule:** Filed December 19, 2002; effective January 23, 2003.

335-6-12-.20 Reserved.
Author:
Statutory Authority:
History:

335-6-12-.21 CBMPPs, Other Plans, Specifications, BMPs, And Technical Requirements.

(1) Commencement and/or continuation of NPDES construction activity is prohibited after March 1, 2003, or the effective date of this Chapter, whichever date occurs later, unless effective BMPs are implemented and maintained in accordance with a CBMPP prepared/certified by a QCP as adequate to meet the requirements

of this Chapter and applicable requirements of ADEM Administrative Code Division 335-6. The CBMPP and any BMPs shall meet or exceed following the technical standards and guidelines:

(a) The Alabama Handbook; and

(b) In accordance with the requirements of this Chapter.

(2) Construction Best Management Practices Plan (CBMPP)

(a) The operator of an NPDES construction site shall implement a comprehensive CBMPP appropriate for site specific conditions that has been prepared and certified by a QCP. The CBMPP shall describe in detail the structural and/or non-structural practices and management strategies which will be implemented and continually maintained to prevent/minimize the discharge of all sources of pollutants, including but not limited to, sediment, construction waste, oil and grease, chemicals, and other pollutants. The CBMPP shall be updated as necessary to address any potential or observed deficiencies.

(b) The CBMPP shall include a description of appropriate, effective water quality BMPs to be implemented at the site as needed to ensure compliance with this Chapter, including but not limited to:

1. Maximum diversion of upgradient or offsite water from the site and minimum duration of disturbed area exposure;

2. Minimization of surface area that is disturbed at any one time (project phasing); Minimize introduction, and facilitate removal, of sediment, nutrients, and other pollutants in the stormwater;

3. Proper cleanup/removal or effective stabilization of sediment deposited offsite, in the event of such an occurrence and effective remediation of sediment or other pollutant instream impacts to the maximum extent practicable;

4. Measure(s) to ensure that dilution water is not used as a BMP to achieve compliance with the requirements of this Chapter unless the Director has granted prior written authorization;

5. Measures to be implemented on all areas not undergoing active disturbance or active construction and progressive construction for longer than thirteen (13) days to prevent/minimize erosion and ensure timely temporary vegetative cover, and permanent revegetation or cover of all disturbed areas when disturbance is complete;

6. A system for the proper collection, storage, treatment, and disposal of construction site sanitary wastes, sewage, gray-water, and putrescible wastes;

7. Construction waste and sediment contaminated as a result of construction activities shall be removed and disposed of in accordance with applicable regulatory requirements in a timely manner. The operator shall perform regular cleanup and proper disposal of any floating, submerged, or offsite deposited construction waste resulting from construction activities;

8. BMPs addressing water, stormwater, and fluid acquisition operations, dewatering, and pre-disturbance discharges that are, or may be, associated with construction regulated by this Chapter. These CBMPP shall specify the method of withdrawal or dewatering and describe BMPs for activities, including, but not limited to, pump priming/maintenance discharges, dewatering of existing ponded or impounded water, dewatering of groundwater, and removal of natural obstructions or earthen structures to drain existing ponded or impounded water prior to or during construction. The CBMPP shall detail effective BMPs to protect groundwater and surface waters of the State as a result of discharges associated with the fluids acquisition and dewatering sites;

9. A detailed description of the site and the nature of the construction activity, including site design plans if required by the Department; A description of the intended sequence of major activities which disturb soils, including but not limited to, grubbing, excavation, and/or grading; Existing data describing the surface soils as well as subsoils;

10. Estimates of the total area of the property and the total site area that is expected to be disturbed by excavation, grading, or other activities, including off-site temporary borrow and fill areas; Estimates, including any calculations of the runoff coefficient(s) of the site before and after construction activities are completed;

11. Identification of the receiving water(s) from the United States Geological Survey 7.5-minute series topographical map(s) or equivalent;

12. Description of temporary and permanent stabilization practices, including a schedule and/or sequence for implementation. Operators shall ensure that site plans provide for the stabilization of disturbed portions of the site; Description of structural and nonstructural practices to divert flow from exposed soils, store

stormwater flows, or otherwise limit runoff and the discharge of pollutants;

13. Management of any overland flow not otherwise controlled by effective BMPs; Trapping of any sediment in channelized flow to the extent possible; Staging construction to limit bare areas subject to erosion; Protection of down slope drainage inlets where they occur; Minimization of offsite sediment/mud tracking by vehicles or equipment; Stabilization of drainage ways or channels; Installation of permanent stabilization practices as soon as possible after final grading; and

14. Use of energy or flow velocity dissipation devices at discharge locations and along the length of any outfall channel to provide a stable, non-erosive flow velocity from the structure and prevent waterbody scouring, streambank erosion, and sedimentation, during and after construction.

(c) Appropriate detailed map(s), drawings or descriptions as part of the CBMPP shall include:

1. Existing topography and drainage patterns and features, existing structures, proposed structures, roads, utilities, ROWs, and waterbody(s); Property ownership and lease boundaries of the site; Drainage patterns and approximate slopes anticipated after major grading activities; Boundaries of the site/activity and areas of soil disturbance; and

2. Locations of major structural and nonstructural BMPs proposed to be implemented; Locations where permanent stabilization practices will be employed including areas stabilized by buildings, other structures, other acceptable impervious surfaces; Areas which will be permanently vegetated following construction.

(d) Each CBMPP shall include, as appropriate, component plans as needed that address pre-construction project planning and design, project phasing, BMP implementation and maintenance, inspection and sampling efforts, record keeping, emergency response, construction site nutrient management, pollution prevention efforts, preventive and continuing maintenance efforts, spill prevention control and countermeasures, remediation, mitigation, and restoration efforts, post-construction stormwater flow and quality, training and continuing education, runoff coefficients and infiltration rates, streambank protection, and pre-construction site assessment information such as soils characteristics and maps, site hydrology, geology, land use, site topography, receiving water quality, slope stability, precipitation patterns, climate, survival of temporary vegetative cover, site specific

effective erosion control, site specific effective sediment control, location of waterbody(s), sinkholes, wetlands, and wells, and other relevant information or component plans identified by the operator, QCP, or the Department.

(e) CBMPP revisions or additions shall be documented, to include, as appropriate, updated site maps, photographs, history of the location, description of implemented BMPs, basis for the use of specific BMPs, analysis of any BMP deficiencies, and other information produced by the operator, QCP, and QCI, including but not limited to, inspection reports, logs, checklists and project diaries. The CBMPP, and all components of the CBMPP, as updated/amended in compliance with this Chapter, shall become a part of the operator's registration.

(3) If full implementation and regular maintenance of BMPs are not, or will not be, protective of water quality, the operator shall immediately update the CBMPP and implement additional effective structural and nonstructural BMPs as necessary to protect water quality.

(4) BMPs shall be designed, implemented, and regularly maintained to provide effective treatment of discharges of pollutants in stormwater resulting from runoff generated by probable storm events expected/predicted during construction disturbance based on historic precipitation information, and during extended periods of adverse weather and seasonal conditions.

(5) The operator shall ensure that:

(a) BMPs shall be fully implemented and regularly maintained in accordance with the Alabama Handbook, recognized practices, effective industry standard pollution control practices, requirements of the CBMPP, the requirements of this Chapter, and consistent with the requirements of the AWPCA and regulations promulgated pursuant thereto;

(b) Effective BMPs shall be implemented to the maximum extent practicable to prevent offsite sedimentation and deposition of construction site wastes;

(c) Any BMPs located in a floodplain shall be designed, implemented, and maintained to provide effective treatment to the maximum extent practicable in response to the occurrence of a flood event;

(d) BMPs shall not result in the contamination of drinking water and shall not cause or contribute to a violation of any State water quality standard;

(e) Diversion structures, including but not limited to, berms, ditches, and swales created in order to re-route upgradient

stormwater runoff from the proposed project location shall be constructed, stabilized, and vegetated as necessary, consistent with recognized effective industry standard practices, prior to or concurrent with the commencement of construction activities;

(f) Proper management and disposal of solid, toxic, or hazardous wastes resulting from activities authorized by this Chapter are performed as required by Departmental rules; and

(g) Effective measures are taken to prevent/minimize the deposition of airborne pollutants, including but not limited to, sand blasting particles, spray paint, herbicides, excessive road or other airborne dust, from entering any waterbody.

(6) The operator is responsible for remediation of any offsite deposition or discharge of sediment and other pollutants and shall, if required by the Department, implement measures to remediate any impacts to the maximum extent practicable.

(7) Unless specifically detailed in a CBMPP submitted with an NOR to the Department, instream or within-bank NPDES construction and noncoal mining disturbance, including but not limited to, trenching, ditching, digging, excavation, blasting, drilling, and placement of fill, within a Tier 1 waterbody segment due to a construction activity pollutant of concern, or in any water segment designated as ONRW, pursuant to the requirements of Chapter 335-6-10, is not authorized by this Chapter, unless specifically approved in writing by the Department. The Department may require the implementation of additional BMPs when necessary to protect water quality for construction disturbance discharging to a Tier 1 waterbody segment.

(8) BMPs shall not be installed in a water of the State except as provided in the Alabama Handbook, or unless authorized by the Department.

(9) Effective measures shall be taken to prevent, to the maximum extent possible, the deposition/disposal, and to effect the removal as necessary, of materials, waste, debris/litter, or liquids resulting from bridge/culvert NPDES construction. Examples of these materials include, but are not limited to, waste concrete/cement, wash water, surfactants, sand blasting particles and paint, from falling or being placed into any waterbody.

(10) The installation or use of instream or within-bank sediment storage traps or deposition areas, or other sediment storage/ detention BMPs, in waters of the State is not authorized.

(11) Unless alternate or innovative practices acceptable to the Department are implemented and maintained to protect water quality

in any State water during NPDES construction disturbance, the operator shall ensure that:

(a) Permanent or temporary elevated waterbody crossings constructed in conjunction with the regulated activity shall safely pass expected water flow for the duration of use. Crossings shall be inspected as often as is necessary and any significant debris or blockage removed and properly disposed of to ensure unobstructed flow. During construction, placement of rock-fill without pipe(s) for passage of water is not authorized unless approved in writing by the Department;

(b) The bottom of any new or diverted channel is concave in shape or has a base-flow channel to ensure adequate concentrated and unobstructed flow of water during periods of low flow;

(c) Effective BMPs, including installation of floating turbidity screens, are implemented as necessary to minimize downstream turbidity;

(d) Disturbance is minimized to the extent practicable to ensure the protection of water quality and ensure the physical integrity of the waterbody;

(e) Temporary or permanent stockpiling and side-casting of excavated material within the banks of a waterbody, or disposal of material into waters of the State from dredging/ disturbance does not occur, unless specifically approved in writing by the Department;

(f) The width of any access through a streambank is minimized to the extent practicable, and a continuous program of effective erosion and sediment control measures is implemented prior to and concurrent with construction disturbance. When NPDES construction disturbance is completed, access through the streambank shall be restored to original contours, stabilized, and, unless structural forms of stabilization such as stone rip-rap are more appropriate, vegetated with annual and perennial vegetation consistent with pre-disturbance conditions or such alternate condition that provides an equal protection of water quality;

(g) Unless authorized otherwise by the Department, equipment, machinery, vehicles, or pollution prevention/abatement equipment, or other construction materials, shall not be left unattended within any watercourse;

(h) Potentially affected parties are notified, as appropriate, of the intent to conduct NPDES construction disturbance in a watercourse within one-half mile upstream or one-quarter mile downstream of any existing municipal or public water intake;

(i) Permanent revegetation or stabilization and restoration at each streambank is performed. Unless allowed otherwise by the Department, permanent revegetation or stabilization and restoration, certified by a QCP or QCI, shall be completed no later than thirty (30) days after permanent completion or cessation of the regulated disturbance.

Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: **New Rule:** Filed December 19, 2002; effective January 23, 2003.

335-6-12-.22 Reserved.
Author:
Statutory Authority:
History:

335-6-12-.23 Reserved.
Author:
Statutory Authority:
History:

335-6-12-.24 Alternative Or Innovative Technology.

(1) CBMPPs may include alternative or innovative technology, procedures, or BMPs not included in the Alabama Handbook, provided that:

(a) Use of an alternative technology or procedure is consistent with the requirements of this Chapter and is accepted by the Department prior to its use;

(b) Point source and nonpoint source pollutant discharges to waters of the State will be minimized to the maximum extent practicable from the use of the alternative technology or procedure; and

(c) Use of the alternative technology or procedure is protective of groundwater and surface water quality.

Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: **New Rule:** Filed December 19, 2002; effective January 23, 2003.

335-6-12-.25 Site Completion, Reclamation, Effective Stormwater Quality Remediation, And Termination Of Registration.

(1) Upon completion of construction, and reclamation or effective stormwater quality remediation at an NPDES construction site or noncoal mining site registered, or required to be registered, under this Chapter, the operator shall submit to the Department a complete and correct request for registration termination, including applicable QCP certifications and if required by the Department, photographs and monitoring data for the site. A request shall be prepared and certified by a QCP consistent with the requirements of this Chapter, the requirements of the regulations promulgated pursuant to the AWPCA, and any additional conditions required by the Department to ensure to the maximum extent practicable the continued protection of water quality. The request shall be submitted in a format acceptable to the Department.

(2) Unless the operator is notified by the Department within 30 days of receipt that the request has not been granted, in total or in part, the request for termination is considered granted provided the operator complies with, and the construction site remains in full compliance with, all provisions of this Chapter. It is the responsibility of the operator to ensure that information submitted in the request for termination, including any attachments, is true, complete, and accurate, and to verify receipt of a complete and correct request for termination by the Department. It remains the responsibility of the operator to submit and verify receipt by the Department any corrected or additional information to complete the request for termination, if required by the Department. Failure to submit a complete and correct request for termination and ensure that the construction site remains in full compliance with all provisions of this Chapter may result in denial of the request for termination.

(3) The request for termination shall be in a format acceptable to the Department, and shall include:

(a) Certification from the operator, and a QCP or a qualified person under the direct supervision of a QCP, including if needed, photographs, documenting that the site has in fact been properly completed in accordance with the requirements of this Chapter;

(b) Confirmation that the stormwater discharges associated with construction activity have been eliminated, effective reclamation or stormwater quality remediation has been achieved, permanent vegetation has been established, or the operator no longer has operational control of the site;

(c) If applicable, confirmation by the operator stating in detail the reason(s) that the operator may not have operational control, to include any information required by the Department, including but not limited to, property deeds, bill-of-sale, contracts, legal affidavits, correspondence and detailed information regarding the identified succeeding operator. It remains the responsibility of the operator to submit and verify receipt by the Department of required information. Loss of operational control does not relieve the operator from liability and responsibility for compliance with the provisions of this Chapter until the complete and correct request for termination is received by the Department. Failure to submit a complete and correct request for termination and ensure that the construction site remains in full compliance with all provisions of this Chapter may result in denial of the request for termination. Sale or transfer of operational responsibility for the site by the operator prior to the succeeding operator obtaining registration required by this Chapter, does not relieve the registrant from the responsibility to comply with the requirements of this Chapter;

(d) Certification, and documentation if required by the Department, that inspections required by this Chapter were performed by a QCI, QCP, or a qualified person under the direct supervision of a QCP.

(e) Certification, and documentation if required by the Department, that QCIP continuing education training was completed if required by this Chapter.

Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: New Rule: Filed December 19, 2002; effective January 23, 2003.

335-6-12-.26 Discharge And Receiving Water Evaluation Requirements.

(1) It is possible and allowable to achieve and maintain compliance with the requirements of this Chapter without conducting any discharge sampling provided a QCI, QCP or a qualified person under the direct supervision of a QCP documents and certifies on each inspection report or other report/log that sampling is not necessary to properly evaluate and document the effectiveness or deficiencies of BMP implementation to ensure compliance with this Chapter. It remains the responsibility of the operator to be continually aware of and to effectively evaluate the quality of the stormwater being discharged. Lack of knowledge regarding stormwater discharge quality or receiving water quality shall not constitute a valid defense with regard to deficiencies

in BMP implementation and maintenance, negative impacts to water quality, or other noncompliance with the requirements of this Chapter.

(2) It remains the responsibility of the operator to document and ensure that effective BMPs are properly designed, implemented, and consistently maintained utilizing recognized effective industry standard practices to prevent/minimize to the maximum extent practicable discharges of pollutants in stormwater runoff.

(3) Stormwater discharge flow can be determined by direct measurement, calculation, or other generally accepted scientific method by a QCI, QCP or a qualified person under the direct supervision of a QCP.

(4) Precipitation shall be measured and recorded in tenths of an inch by the operator or an individual under the direction of the operator, using continuous recorders, daily readings of an onsite precipitation gauge, or daily readings of an offsite precipitation gauge located adjacent to or in close proximity to the facility.

(5) Receiving Water Turbidity Monitoring And Limitations

(a) A QCI, QCP, or a qualified person under the direct supervision of a QCP shall inspect as necessary, and if needed, conduct sampling, during NPDES construction activity, monitoring upstream and downstream turbidity after reasonable opportunity for mixing has been afforded of all affected watercourse(s) to ensure protection of water quality.

(b) It is possible and allowable to achieve and maintain compliance with the requirements of this Chapter without conducting any instream turbidity or other instream sampling provided a QCI, QCP, or a qualified person under the direct supervision of a QCP documents and certifies on any inspection report or other report/log that instream sampling is not necessary to properly evaluate and document the effectiveness or deficiencies of BMP implementation and that discharges are not causing or contributing to a contravention of Alabama water quality standards. It remains the responsibility of the operator to be continually aware of and to effectively evaluate instream water quality.

(c) Background or upstream turbidity for discharges to a municipal separate storm sewer system (MS4) or where the NPDES construction site is the headwater of the receiving water shall be determined from offsite drainage entering the site and/or from drainage areas or waters near the site which do not receive discharges from the facility, or are not impacted by the facility or a similarly situated or type facility, acceptable to the Department.

(6) Samples, if collected, and measurements taken for purposes of determining compliance with this Chapter shall be representative of the volume and nature of the monitored discharge and shall be in accordance with the provisions of this Chapter.

(7) Test procedures for the preservation and analysis of samples shall conform to Rule 335-6-6-.14 and guidelines published pursuant to §304(h) of the FWPCA, 33 U.S.C. §1314(h). If more than one method for analysis of a substance is approved for use, the method having a lower detection limit shall be used.

(8) All equipment and instrumentation used to determine compliance with the requirements of this Chapter must be installed, used, maintained, and calibrated in accordance with the manufacturer's instructions. If used, flow measurement devices shall be calibrated in accordance with the manufacturer's instructions if available, or at least once every six (6) months.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: New Rule: Filed December 19, 2002; effective January 23, 2003.

335-6-12-.27 Reserved.
Author:
Statutory Authority:
History:

335-6-12-.28 Inspection Requirements.

(1) The operator shall ensure that regular, comprehensive site and receiving water(s) inspections are conducted to ensure that effective BMPs are properly designed, implemented, and consistently maintained in accordance with the requirements of this Chapter.

(2) Comprehensive inspections of NPDES construction sites and areas impacted by the construction site, including affected ditches and other stormwater conveyances, perennial and intermittent waterbody(s), streambanks, and floodplains, shall be performed by a QCI, QCP, or a qualified person under the direct supervision of a QCP as often as is needed to ensure, document, and certify continuing compliance with the requirements of this Chapter. The QCI, QCP, or a qualified person under the direct supervision of a QCP performing the inspection shall evaluate and document on the inspection report if the BMPs being implemented are adequate and if additional or improved control measures are needed. If the CBMPP plan is determined to be deficient, the CBMPP shall be revised and the revisions fully implemented within seven

(7) calendar days following the inspection unless an alternate scheduled is approved in writing by the Department.

(3) Each day there is activity at the site, the operator, a QCI, a QCP, a qualified person under the direct supervision of a QCP, other qualified consultant, or other qualified persons, shall visually observe that portion of the construction project where active disturbance, work, or construction occurred and report any apparent BMP deficiencies observed to the operator, QCP, or QCI.

(4) Complete and comprehensive inspections/ evaluations of defined or designated NPDES construction sites/activity shall be performed:

(a) A minimum of once a month, by a QCI, QCP, or a qualified person under the direct supervision of a QCP;

(b) A minimum of once every six (6) months, by a QCP or a qualified person under the direct supervision of a QCP;

(c) Except as provided in Rule 335-6-12-.28(4)(d), by a QCI, QCP, or a qualified person under the direct supervision of a QCP, after any precipitation of 0.75 inches or greater in any 24-hour period since the last inspection, commencing as promptly as possible, but no later than 48-hours after resuming or continuing active construction or disturbance, and completed no later than 72-hours following the qualifying precipitation event;

(d) On linear projects, including but not limited to, oil/gas, water, and sewer pipelines, conveyors, roads, highways, power lines, buried cables, or other energy or resource transmission right-of-way (ROW) or utility infrastructure, equal to or exceeding ten miles of disturbed length where active construction or areas where annual or perennial vegetation has not been fully established, by a QCI, QCP, or a qualified person under the direct supervision of a QCP, after any precipitation of 0.75 inches or greater in any 24-hour period since the last inspection, beginning as promptly as possible, but no later than 48-hours after resuming or continuing active construction or disturbance and completed no later than five (5) days after the qualifying precipitation event;

(e) At least once a week and as often as is necessary by a QCI, QCP, or a qualified person under the direct supervision of a QCP of all active disturbance, dredging, excavation, work, or construction undertaken or located within the banks of a waterbody, including but not limited to, equipment, vehicle crossing, pipelines, or other transmission line installation, conveyor structure installation, and waterbody relocation, streambank stabilization, or other alterations, until the disturbance/activity impacting the waterbody is

complete and reclamation or effective stormwater quality remediation is achieved; and

(f) As often as is necessary until any non-compliant BMPs, discharges, or any deficiencies observed during a prior inspection are corrected and documented as being in compliance with the requirements of this Chapter.

(5) Unless otherwise required by the Department, inspections or evaluations required by Rule 335-6-12-.28(4)(a), (b), (c), or (d), do not have to be conducted for noncoal mining sites regulated under this Chapter provided:

(a) The operator submits to the Department certification from a QCP, a minimum of once every three (3) months, with inspections at least two (2) months apart, that the noncoal mining site is designed and is being operated with significant freeboard due to incised mining excavation or incised storage basins to prevent all discharges resulting from groundwater intrusion, precipitation events less than the applicable 50-year, 24-hour precipitation event, or other stormwater sources to surface waters of the State, and;

(b) The noncoal mining site has been operated and is being operated in full compliance with the applicable requirements of this Chapter; and

(c) In the case of precipitation that equals or exceeds the 50-year, 24-hour storm event, the QCP conducts a comprehensive inspection of the noncoal mining site within 72-hours of said event and representative samples of any discharges are obtained, and a detailed report is submitted to the Department within seven (7) days of the inspection if non-compliant discharges, deficient BMPs, or other deficiencies or noncompliance with the requirements of this Chapter are observed.

(6) Suspension of applicable monitoring and inspection requirements for phased projects or developments such as transmission ROWs or subdivisions may be granted provided:

(a) The Department is notified in writing at least thirty (30) days prior to the requested suspension;

(b) The operator and QCP certify in the request that all disturbance has been graded, stabilized, and/or fully vegetated or otherwise permanently covered, and that appropriate, effective steps have been and will be taken by the operator to ensure compliance with the requirements of this Chapter, and commit that these measures will remain continually effective until registration is properly terminated;

(c) The operator notifies the Department prior to resumption of disturbance or commencement of the next phase of development and the operator complies with the requirements of this Chapter prior to commencement of additional disturbance;

(7) NPDES construction site inspection reports shall contain information and be in a format acceptable to the Department. The reports shall document facility/site conditions, describe any BMP deficiencies and maintenance needs. The reports shall detail any corrective action(s) that need to be implemented to ensure compliance with the requirements of this Chapter. Lack of knowledge by the operator of construction site conditions and compliance with this Chapter shall not be a valid defense in an enforcement action.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: **New Rule:** Filed December 19, 2002; effective January 23, 2003.

335-6-12-.29 Reserved.
Author:
Statutory Authority:
History:

335-6-12-.30 Pollution Prevention For NPDES Construction Sites.

(1) Requirements for a Pollution Prevention Plan (PPP) shall be considered to be met by NPDES construction site through activities and BMPs that have been properly planned, designed, implemented, and maintained under the terms of this Chapter.

(2) Spill Prevention, Control, and Management

(a) The operator shall prepare, implement, and maintain a Spill Prevention, Control and Countermeasures (SPCC) Plan, as a separate document or as a component of the CBMPP, for all tanks/containers storing onsite fuel, chemicals, or other pollutants consistent with the requirements of Rule 335-6-6-.12 and 40 CFR Part 112 (2002).

(b) Effective measures necessary to prevent spills and to clean up spills of any toxic pollutant, as documented in the facility's SPCC plan, shall be fully implemented. Soil contaminated by hazardous substances, paints, fuel, or chemical spills, shall be immediately cleaned-up, managed, and disposed of in an approved manner. Where potential spills can occur, materials handling procedures shall be specified and

procedures for immediate cleanup/remediation of spills shall be described in the SPCC plan or employee training plans. The equipment necessary to implement a cleanup shall be made available to facility personnel. The operator shall immediately notify the designated State and local government agencies after becoming aware of a visible oil sheen in stormwater runoff from its facility or in a water of the State in the project vicinity as a result of activities at the site. The caller should be prepared to report the name, address and telephone number of the person reporting spill, the exact location of the spill, company name and location, the material spilled, the estimated quantity, the source of spill, the cause of the spill, the nearest downstream water with the potential to receive the spill, and the actions being taken for containment and cleanup.

(3) The operator shall observe, and if those observations reasonably warrant, conduct analyses of excavated or dredged material in order to ensure that potential pollutants are not present in concentrations that could cause or contribute to a violation of applicable water quality standards. Information regarding the evaluation or detailed results of any analyses of excavated/dredged material shall be made available to the Department upon request.

(4) Solids, sludges, removed substances, or any other pollutant or other waste removed in the course of treatment or control of stormwater shall be disposed of in a manner that complies with applicable Department rules.

(5) The operator shall ensure that agents, employees, contractors, subcontractors, or other onsite persons with authorized access to the site, are informed of the pollution prevention and control requirements of this Chapter.

(6) Post-construction stormwater management is not required for projects that do not significantly alter runoff volumes or velocities from conditions existing prior to the NPDES construction activity. Said management, if required, shall be implemented to control the discharge of pollutants associated with significant hydrologic modifications to the site resulting from construction activities. Post-construction stormwater management is not required by the provisions of this Chapter to address stormwater quality from operation of the completed facility provided construction activity is complete, reclamation or effective stormwater quality remediation of the construction disturbance has been achieved.

Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: **New Rule:** Filed December 19, 2002; effective January 23, 2003.

335-6-12-.31 Reserved.
Author:
Statutory Authority:
History:

335-6-12-.32 Reserved.
Author:
Statutory Authority:
History:

335-6-12-.33 Ineffective BMPs, Discharge Prohibitions, And Noncompliance Notification.

(1) The discharge of pollutants from NPDES construction sites/ activity not effectively treated to the maximum extent practicable by BMPs implemented and maintained pursuant to the requirements of this Chapter is prohibited. If, for any reason, there is a non-compliant discharge that causes or contributes to a violation of applicable water quality standards, the operator is required to visually monitor and notify the Department as soon as possible, but in no case later than 24-hours after becoming aware of such discharge.

(2) The operator shall document and submit the following information in a form acceptable to the Department within five (5) days of becoming aware of any BMP deficiency/failure or non-compliant discharge that causes or contributes to a violation of applicable water quality standards:

(a) A description, including any photographs, and the reason for the deficiency, including an estimate of the flow, discharge volume, and any analytical data associated with the noncompliant discharges;

(b) The period of noncompliant discharge, including beginning and ending times and dates, and, if not already corrected, the anticipated date the non-compliant discharge is expected to cease, and steps taken (or to be taken) to reduce, eliminate, mitigate, and prevent the recurrence of such discharge;

(c) If the non-compliant discharge was caused by chronic or catastrophic precipitation event(s), information from the on-site precipitation gauge or weather station in close proximity to the facility documenting the amount and duration of the precipitation event(s); and

(3) The Department may require testing deemed necessary to protect waters of the State or to determine continuing compliance with the requirements of this Chapter.

(4) The operator shall take all reasonable precautions to prevent the discharge of waters which have been, or could be, contaminated by pesticides, paints, solvents, preservatives, surfactants, surface blasting, pressure cleaning, excess coagulant, excess flocculent, or other chemicals, or activities. Termaticides, other pest and parasite controls, and water used to clean equipment used for the application of potentially hazardous or toxic chemicals shall be handled and disposed of and in a manner so as to prevent any pollutant from such material from entering the waters of the State according to applicable State and federal law.

(5) NPDES construction sites discharging through a municipal separate storm sewer system (MS4) shall comply with the requirements of this Chapter prior to discharging to the system receiving the NPDES construction stormwater discharge.

(6) The discharge of stormwater, generated by any process, facility, or by any other means not under the operational control of the operator, not identified in the NOR, or not identified specifically in the description of a source when requesting registration, is not authorized by this Chapter.

(7) Discharge Prohibitions

(a) Except as specifically provided otherwise by this Chapter, discharge of any untreated stormwater from a NPDES construction site to waters of the State at any time is prohibited, except as a direct result of periods of chronic or catastrophic precipitation or weather conditions as determined by the Department, provided:

1. The Department is notified as required by this Chapter;

2. Appropriate, effective BMPs that meet or exceed the requirements of this Chapter have been fully implemented and regularly maintained prior to the causative precipitation event;

3. The discharge is unavoidable after the operator has taken action to prevent discharge(s) to the maximum extent practicable;

4. The operator takes action to terminate discharge(s) to the maximum extent practicable and as soon as possible; and

5. The operator takes action to mitigate any impacts caused by the discharge(s) to the maximum extent practicable and as soon as possible.

(b) Uncontaminated drainage or runoff which does not come into contact with construction activity or other pollutants should be excluded from flowing onto the site to the extent practicable.

(8) The operator shall give the Department written advance notice of any anticipated noncompliance, planned changes, or other circumstances regarding disturbance activities which may result in noncompliance with the requirements of this Chapter.

(9) Noncompliance Notification

(a) If for any reason, the operator's discharge:

1. threatens human health or welfare, fish or aquatic life, or water quality standards;

2. does not comply with an applicable toxic pollutant effluent standard or prohibition established under §307(a) of the FWPCA, 33 U.S.C. §1317(a);

3. contains a quantity of a hazardous substance which has been determined may be harmful to public health or welfare under §311(b)(4) of the FWPCA, 33 U.S.C. §1321(b)(4);

4. exceeds any Chapter condition or discharge limitation for an effluent characteristic as a result of an unanticipated bypass and/or upset;

5. is an unpermitted direct or indirect discharge of a pollutant to a water of the state (unpermitted discharges properly reported to the Department under any other requirement are not required to be reported under this provision); or

6. if the operator is in significant noncompliance with the CBMPP and BMPs required by this Chapter, the operator shall report the occurrence and circumstances of such discharge to the Department with a written report with content and in a format acceptable to the Department no later than five (5) days after becoming aware of the occurrence of such discharge.

(b) If for any reason, the operator's discharge does not comply with any limitation or condition of this Chapter, the operator shall submit to the Department a written report as provided in Rule 335-6-12-.33(14)(c) below. Such report shall

be submitted no later than five (5) days after becoming aware of the occurrence of such noncompliance.

(c) Any written report required to be submitted to the Department by Rule 335-6-12-.33(14)(a) or (b) above shall be submitted using a copy of the Noncompliance Notification Form, and shall include the following information:

1. A description of the discharge and cause of noncompliance;

2. The period of noncompliance, including dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

3. A description of the steps taken and/or being taken to reduce or eliminate the non-complying discharge and to prevent its recurrence.

4. A description of the efforts taken to mitigate any adverse impacts of such noncomplying discharge.

Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: **New Rule:** Filed December 19, 2002; effective January 23, 2003.

335-6-12-.34 Reserved.
Author:
Statutory Authority:
History:

335-6-12-.35 Other Requirements.

(1) Operators of NPDES construction sites shall at all times properly operate and maintain all BMPs, facilities, systems of treatment and control, and associated appurtenances which are installed or used by the operator to achieve compliance with the conditions of this Chapter. Proper operation and maintenance includes effective performance, adequate funding, proper completion of logs/reports, maintenance of records, and adequate laboratory and process controls, including appropriate quality assurance procedures, adequate staff, and prerequisite and annual training requirements as described in Rule 335-6-12-.19. Proper operation and maintenance includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the requirements of this Chapter.

(2) Any person who falsifies, tampers with, or knowingly renders inaccurate or inoperable any equipment, monitoring device, record, method, or other activity, responsibility, or practice required to be performed or maintained under this Chapter may be punished by fines and/or imprisonment as provided by State and federal law.

(3) Bypass – Any bypass is subject to the requirements of Rule 335-6-6-.12(m).

(4) Upset – Any upset is subject to the requirements of Rule 335-6-6-.12(n).

(5) Property Rights, and Other Rights and Responsibilities

(a) Registration approval under this Chapter does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, or any infringement of federal, State, or local laws or regulations, nor does it authorize or approve the construction of any physical structures or facilities or the undertaking of any work in any waters of the State or waters of the United States.

(b) Except as expressly provided by this Chapter, liability and responsibility for compliance with the requirements of this Chapter are not delegable by contract or otherwise. The operator shall ensure that any partner, consultant, agent, contractor, subcontractor, or other person employed by, under contract, paid a salary by, or under the direction/control of the operator complies with the requirements of this Chapter. Failure of a QCI, QCP, qualified person under the direct supervision of a QCP, or any other person under contract to perform or inform the operator shall not be considered a valid defense in any enforcement action and shall not stay any requirement of this Chapter. Violations resulting from the actions of such person shall be considered violations of this Chapter and may subject the operator to enforcement action.

(c) Except as otherwise provided by Alabama law, issuance of registration under this Chapter does not modify in any way an operator’s legal responsibility or liability, to apply for, obtain, or comply with other applicable ADEM, federal, State, or local government permits, authorizations, registrations, ordinances, regulations, certifications, licenses, or other approvals, not regulated by this chapter prior to commencing or continuing construction disturbance regulated by this Chapter.

(6) Groundwater. Unless specifically authorized by this Chapter, other laws or rules or the Director, the discharge of pollutants to groundwater is not authorized. Should a threat of groundwater contamination occur, the Director may require groundwater

evaluation and/or monitoring to properly assess the degree of the problem and the Director may require that any operator undertake measures to mitigate, remediate, and/or abate any such discharge and/or contamination. Groundwater investigation/evaluation, monitoring, mitigation, remediation, and other activities performed voluntarily by the operator or required by the Director, shall be conducted in accordance with a plan accepted by the Department.

(7) Coastal Zone Management. Registration approval under this Chapter for construction projects subject to the Alabama Coastal Area Management Program (ACAMP) are conditionally certified under the ADEM Coastal Program requirements, contingent upon continued compliance with the requirements of this Chapter and ADEM Administrative Code Division 335-8. Registration approval under this Chapter does not modify, abrogate, or supercede the requirement for an operator to apply for and/or obtain, if applicable, Alabama Coastal Area Management Program (ACAMP) permits and/or certifications required by Division 335-8, including the requirement to obtain a Coastal Area Non-Regulated Use Permit for Commercial and Residential Developments in the Coastal Area that are, or will be greater than size thresholds established by Division 335-8.

(8) Registration or the requirements of this Chapter do not modify, abrogate, or supercede the requirement for an operator to apply for and/or otherwise obtain, if applicable, CWA §404 permit coverage or other approvals from the U.S. Army Corps of Engineers (COE) and CWA §401 Water Quality Certification from the Department.

(9) If any applicable effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is established under §307(a) of the FWPCA, 33 U.S.C. §1317(a), for a toxic pollutant discharged by the operator and such standard or prohibition is more stringent than any discharge limitation or requirement on a pollutant regulated or described in this Chapter, or controls a pollutant not limited/controlled by this Chapter, registration under this Chapter shall be modified to conform to the toxic pollutant effluent standard or prohibition and the operator shall be notified of such modification. If registration has not been modified to conform to the toxic pollutant effluent standard or prohibition before the effective date of such standard or prohibition, the operator shall attain compliance with the requirements of the standard or prohibition within the time period required by the standard or prohibition and shall continue to comply with the standard or prohibition until the registration is modified or a complete request for re-registration is received by the Department.

(10) Duty to Mitigate And Remediate Adverse Impacts

(a) The operator shall notify the Department and promptly take all reasonable steps to 1) mitigate and prevent/minimize any adverse impact resulting from noncompliance with any limitation or requirement of this Chapter, 2) determine the nature and impact of the non-complying discharge, and 3) remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody or stormwater conveyance structure. The necessity to suspend or cease construction or other activities authorized under this Chapter in order to effectively mitigate and remediate adverse impacts shall not be a defense in any enforcement action.

(b) After consultation initiated by the operator with the Department, if it is determined by the Department that removal of pollutants or other mitigation or remediation alternatives may not be protective of water quality, or are otherwise not appropriate or feasible, the operator may be required by the Department to design and implement additional and/or alternative measures to address or mitigate water quality impacts caused by the activity, BMP deficiency, upset or bypass condition, or non-complying discharge.

(11) Duty To Comply

(a) The operator shall take all reasonable steps, including cessation of construction, building, production, or other activities, to prevent/minimize any violation of this Chapter or to prevent/minimize any adverse impact of any violation of the requirements of this Chapter.

(b) Upon the loss or failure of any treatment facility or BMP, including but not limited to, the loss or failure of the primary source of power of any monitoring/ sampling equipment, the operator shall, where necessary to maintain compliance with the requirements of this Chapter, cease, suspend, reduce, or otherwise control construction or other activities until treatment is restored or effective BMPs have been repaired or installed.

Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: **New Rule:** Filed December 19, 2002; effective January 23, 2003.

335-6-12-.36 Reserved.
Author:
Statutory Authority:
History:

335-6-12-.37 Severability.

If any provision, requirement, or portion of this Chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter shall not be affected thereby.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: New Rule: Filed December 19, 2002; effective January 23, 2003.