

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

CHAPTER 335-6-6
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

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335-6-6-.01	<u>Purpose.</u>

Section 402(b) of the Federal Water Pollution Control Act (FWPCA) provides that a state may administer its own permit program for discharges into the navigable waters within its jurisdiction. Such

permit program, however, must be comparable to the National Pollutant Discharge Elimination System (NPDES) permit program. It is the purpose of this chapter to establish rules and procedures which will enable the state to administer an NPDES-type permit system for this state and to enforce the provisions of the Alabama Water Pollution Control Act (AWPCA).

Author: John Poole

Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14 and §§22-22A-1 to 22-22A-16.

History: October 19, 1979. **Amended:** Filed January 24, 1989; April 29, 1991. **Amended:** Filed August 25, 2015; effective September 29, 2015.

335-6-6-.02 Definitions.

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

[NOTE: Due to the chronology of the adoption of the following definitions, a definition may not appear in alphabetical order. Please review the entire list before concluding that a term is not defined.]

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

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

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

2, and less than the ML the average monthly discharge is equal to $1 + 2 + 0$ divided by 3 which would equal 1.

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

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

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

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

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

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

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

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

2. Entered into a binding contractual obligation for the purpose of placement, assembly, or installation of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design

studies do not constitute a contractual obligation under this paragraph.

- (i) "Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.
- (j) "Continuous discharge" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.
- (k) "Daily discharge" means the discharge of a pollutant measured during any consecutive 24 hour period in accordance with the sample type and analytical methodology specified by the discharge permit.
- (l) "Department" means the Alabama Department of Environmental Management, established by the Alabama Environmental Management Act, Code of Ala. 1975, §§22-22A-1 to 22-22A-16.
- (m) "Director" means the Director of the Department or an authorized representative.
- (n) "Discharge" means the addition, introduction, leaking, spilling, or emitting of any sewage, industrial wastes, pollutant or other wastes into waters of the state.
- (o) "Discharge limitation" means any restriction imposed by the Director on quantities, discharge rates, concentrations or other characteristics of "pollutants" which are "discharged" into "waters of the state."
- (p) "Discharge monitoring report" or "DMR" means the form approved by the Director to accomplish reporting requirements of an NPDES permit.
- (q) "Discharger" means a "person" who discharges a "pollutant(s)" into a "water of the state."
- (r) "Domestic discharger" means a "person" who discharges only "domestic wastewater."
- (s) "Domestic wastewater" means wastewater from residences and other wastewaters of similar composition and strength and does not mean wastewater generated by industrial processes.
- (t) "Draft permit" means a document indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of "draft permits." A denial of a request for

modification, revocation and reissuance, or termination is not a "draft permit." A "proposed permit" is not a "draft permit."

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

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

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

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

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

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

(aa) "Maximum daily discharge limitation" means the highest allowable "daily discharge."

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

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

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

(ee) "National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying,

revoking and reissuing, terminating, monitoring and enforcing permits for the discharge of pollutants into waters of the state.

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

1. Is discharging a pollutant(s) or may discharge a pollutant(s),
2. Who did not commence the discharge of pollutants at a particular site prior to August 13, 1979 and which is not a new source, and
3. Who has never received a final effective NPDES permit for discharges at that site.

(gg) "New source" means:

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

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

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

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

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

1. Reaches a surface water of the State; or
2. May imminently and substantially endanger human health based on potential for public exposure including but not limited to close proximity to public or private water supply wells or in areas where human contact would be likely to occur.

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

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

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

(ll) "Person" means any and all persons, natural or artificial, including, but not limited to, any individual, partnership, association, society, joint stock company, firm, company, corporation, institution, trust, other legal entity, business organization or any governmental entity and any successor, representative, responsible corporate officer, agent or agency of the foregoing.

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

1. Sewage from vessels or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ggg) "Zone of initial dilution" or "ZID" means that area extending from the port openings of a high rate diffuser to the initial edge of the mixing zone where due to great turbulence a constant instream waste concentration (IWC) cannot be determined. For purposes of this definition a high rate diffuser is a submerged outfall in the form of a single pipe outlet or of multiport design giving rise to one or several submerged discharge jets designed to induce mixing between the effluent and receiving stream. The diffuser will protect against surface impingement and bottom attachment of the submerged jet(s) and in general a minimum exit velocity of ten feet per second shall be provided. The length of the ZID and thereby the distance to the initial edge of the mixing zone shall not exceed the more stringent of the following requirements:

1. Fifty times the discharge length scale (DLS) in any spatial direction, where the DLS is the square root of the cross-sectional area of any discharge outlet,
2. Five times the water depth in any horizontal direction from the discharge outlet, or
3. No more than ten percent of the distance from the edge of the outfall structure to the leading edge of the mixing zone in any spatial direction.

(hhh) Pesticide discharges to waters of the State from pesticide application means the discharges that result from the application of biological pesticides, and the application of chemical pesticides that leave a residue, from point sources to waters of the State. In the context of this definition of pesticide discharges to waters of the State from pesticide application, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by paragraphs 335-6-6-.03(1) (d) and (e).

(iii) Pesticide residue for the purpose of determining whether an NPDES permit is needed for discharges to waters of the State from pesticide application, means that portion of a pesticide application that is discharged from a point source to waters of the State and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

Author: John Poole, Ed Hughes, Glenda Dean, Chip Crockett

Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14 and §§22-22A-1 to 22-22A-16.

History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991. **Amended:** Filed August 8, 1995; effective September 12, 1995. **Amended:** Filed June 26, 2002; effective July 31, 2002.

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

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

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

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

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

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

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

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

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

- (e) A return flow from irrigated agriculture.
- (f) A discharge to a publicly owned treatment works or a privately owned treatment works that has been approved and granted a State Indirect Discharge Permit by the Department.
- (g) A discharge to an injection well that has been permitted by the Department or the State Oil and Gas Board.

(2) No person, required to apply for a storm water discharge permit by 40 CFR 122.26 (2016), shall discharge pollutants into waters of the state without first having applied for a valid NPDES permit, coverage under a valid General NPDES Permit, or coverage under a valid NPDES Registration. New dischargers shall obtain a valid NPDES permit, coverage under a valid General Permit, or coverage under a valid NPDES Registration prior to conducting any activity for which application for a storm water discharge permit is required by 40 CFR 122.26 (2016).

Author: John Poole, Richard Hulcher, Truman Green

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

History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991. **Amended:** Filed August 8, 1995; effective September 12, 1995. **Amended:** Filed February 24, 1999; effective March 31, 1999. **Amended:** Filed June 26, 2002; effective July 31, 2002.

Amended: Filed December 19, 2002; effective January 23, 2003.

Amended: Filed August 25, 2015; effective September 29, 2015.

Amended: Filed December 20, 2016; effective February 3, 2017.

335-6-6-.04 Prohibited Discharges.

An NPDES permit shall not be issued to a person proposing any of the following discharges:

- (a) A discharge containing a radiological, chemical or biological warfare agent or a high-level radioactive waste;
- (b) A discharge which, as determined by the Secretary of the Army, would substantially impair anchorage or navigation;
- (c) A discharge in conflict with an Area Wide Waste Treatment Management Plan or amendment thereto, certified by the state and approved by EPA pursuant to Section 208(b) of the FWPCA;
- (d) A discharge for which the applicant is required to obtain a certification under Section 401 of the FWPCA and that certification has not been obtained or waived;
- (e) A discharge to waters of the territorial seas or the contiguous zone in the following circumstances:

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

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

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

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

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

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

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

Author: John Poole, Richard Hulcher

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

History: October 19, 1979. **Amended:** January 24, 1989. **Amended:** Filed June 26, 2002; effective July 31, 2002.

335-6-6-.05 Duration Of Permits.

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

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

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

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

Author: John Poole, Richard Hulcher, Glenda Dean, Chip Crockett

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

History: October 19, 1979. **Amended:** January 24, 1989. **Amended:** Filed August 8, 1995; effective September 12, 1995. **Amended:** Filed June 26, 2002; effective July 31, 2002. **Amended:** Filed February 28, 2012; effective April 3, 2012. **Amended:** Filed August 25, 2015; effective September 29, 2015.

335-6-6-.06 Continuation Of Expiring Permits.

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

Author: John Poole, Ed Hughes

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

History: October 19, 1979. **Amended:** January 24, 1989. **Amended:** Filed August 8, 1995; effective September 12, 1995. **Amended:** Filed June 26, 2002; effective July 31, 2002. **Amended:** Filed August 25, 2015; effective September 29, 2015.

335-6-6-.07 Confidentiality Of Information.

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

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

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

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

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

(4) A request for confidentiality shall include:

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

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

Author: John Poole

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

History: October 19, 1979. **Amended:** January 24, 1989. **Amended:** Filed August 8, 1995; effective September 12, 1995.

335-6-6-.08 Application Format And Procedures For New Permits And For Permit Reissuance.

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

- (a) Information required under 40 CFR Part 122 Subpart B (2019) and 40 CFR 125 [2005] where applicable to the particular discharges;
- (b) Trade name and chemical composition of all biocides and corrosion inhibitors used;
- (c) Type of business entity, whether corporation, general or limited partnership, sole proprietorship or other;
- (d) If applicable, name of applicant's parent corporation or subsidiary corporations;
- (e) If a corporation, location of incorporation;
- (f) A listing of corporate officers and their names and addresses; and the name and address of the agent designated by the corporation for purposes of service. If a partnership, the names and addresses of the general partners and, if a proprietorship, the name and address of the proprietor;
- (g) Permit numbers for applicant's previously issued NPDES permits and identification of any other state environmental permits presently held by the applicant or its parent corporation or subsidiary corporations within the state;
- (h) Identification of administrative complaints, notices of violation, directives, or administrative orders, or litigation concerning water pollution, if any, against the applicant, its parent-corporation or subsidiary corporations within the state;
- (i) if the discharge is to be from a new processing facility or new waste treatment facility, the Department may require the submittal of a preliminary engineering report and/or preliminary plans and specifications prior to permitting or the Department may elect to require one or more of these documents prior to discharge or the Department may waive the requirement for one or all of these documents. This requirement applies whether or not an existing facility is present at the same location which may possess an NPDES permit, but does not apply to mining operations regulated pursuant to the Alabama Surface Mining Control and Reclamation Act of 1981; and
- (j) A best management practices (BMP) plan if required by the Director prior to permitting. BMP plans shall be developed in accordance with good engineering practices and may be required to:
 - 1. Be documented in narrative form and shall include any necessary plot plans, drawings or maps;

2. Examine each facility component or system with respect to its potential for causing a release of significant amounts of pollutants into waters due to equipment failure, improper operation, natural phenomena such as rain, freezing temperatures, etc.;
3. Include a prediction of the direction, rate of flow and total quantity of pollutants which could be discharged from the facility as a result of equipment failure, natural phenomena or other circumstances;
4. Establish best management practices addressing each system capable of causing a release of significant amounts of pollutants into waters of the state;
5. Reflect applicable requirements for Spill Prevention Control and Countermeasure (SPCC) plans under Section 311 of the FWPCA and 40 CFR Part 112 (1994), and may incorporate such plans into the BMP plan by reference;
6. Assure the proper management of solid and hazardous waste;
7. Address the following points for materials storage areas, process and material handling areas, loading and unloading areas, plant site runoff, and sludge and waste disposal areas: statement of policy, employee training, inspections, preventative maintenance, and housekeeping; and
8. Provide impervious liners, dikes, or other structures sufficient to prevent the discharge of a pollutant to groundwater.

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

1. Applicable fees as required by chapter 335-1-6.
2. Signatory requirements for permit applications shall comply with the requirements of Rule 335-6-6-.09.
3. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this chapter for a period of at least three years from the date the application is signed or if the applicant is involved in litigation with

the Department until such time that the litigation is resolved.

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

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

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

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

8. Applications for new sources, new dischargers, permit reissuance and for permit modifications (except as in subparagraph 335-6-6-.08(k)9.) shall be submitted at least 180 days prior to the applicant's desired date for commencement of the new discharge and for permit reissuance at least 180 days prior to expiration of the current permit.

9. Applications for individual NPDES permits for storm water discharge shall contain the information required by

40 CFR 122 (2000) and shall be submitted in accordance with the requirements of 40 CFR 122 (2000).

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

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

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

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

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

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

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

select a method consistent with subparagraph 335-6-6-.08(1)(1)2.

Author: John Poole, Truman Green, Glenda Dean

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

History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991. **Amended:** Filed August 8, 1995; effective September 12, 1995. **Amended:** Filed June 26, 2002; effective July 31, 2002.

Amended: Filed December 19, 2002; effective January 23, 2003.

Amended: Filed August 17, 2005; effective September 21, 2005.

Amended: Filed August 25, 2015; effective September 29, 2015.

Amended: Filed August 20, 2019; effective October 4, 2019.

335-6-6-.09 Signatories To Permit Applications And Reports.

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

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

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

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

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

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

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

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

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

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

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

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

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

Author: John Poole, Ed Hughes, Christy Monk

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

History: October 19, 1979. **Amended:** January 24, 1989. **Amended:** Filed June 26, 2002; effective July 31, 2002. **Amended:** Filed December 20, 2016; effective February 3, 2017.

335-6-6-.10 Requirements Applicable To Particular Discharges.

NPDES permits for the following categories of discharges shall comply with and be governed by pertinent regulations as specified below:

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

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

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

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

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

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

(g) Facilities that employ a cooling water intake structure designed to withdraw water from waters of the state for cooling water purposes; applicable provisions of 40 CFR §§122.21(r), 122.44(b)(3), 123.25(a)(4), 123.25(a)(36), 1245.10(d)(1)(ix), and Part 125 Subparts I and J [2005].

Author: John Poole, Richard Hulcher, Eric Sanderson

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

History: October 19, 1979. **Amended:** January 24, 1989. **Amended:** Filed February 24, 1999; effective March 31, 1999. **Amended:** Filed December 19, 2002; effective January 23, 2003. **Amended:** Filed August 17, 2005; effective September 21, 2005. **Amended:** Filed August 25, 2015; effective September 29, 2015.

335-6-6-.11 Conditions Applicable To Storm Water Discharges By Operators of Municipal Storm Sewers.

NPDES permits issued to operators of large or medium municipal separate storm sewer systems (MS4s) shall include the applicable requirements of 40 CFR §122.42(c) (2016). NPDES permits issued to operators of small MS4's shall include the applicable requirements of 40 CFR §§122.30 - 122.37 (2016).

Author: John Poole, Truman Green

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

History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991. **Amended:** Filed December 19, 2003; effective January 23, 2003. **Amended:** Filed December 20, 2016; effective February 3, 2017.

335-6-6-.12 Conditions Applicable To All NPDES Permits.

The following requirements apply to all NPDES permits. Provisions implementing these requirements shall be incorporated into each permit.

(a) Duty to Comply.

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

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

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

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

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

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

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

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

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

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

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

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the AWPCA, any substances or parameters at any location.

(j) Monitoring and Records.

1. All permits shall specify:

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

(ii) Required monitoring, including type, intervals, and frequency sufficient to yield data

which are representative of the monitored activity including, when appropriate, continuous monitoring; and

(iii) Applicable reporting requirements based upon the impact of the regulated activity and as provided by rules 335-6-1-.04 and 335-6-6-.12. Reporting shall be no less frequent than as specified in rule 335-6-6-.12.

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

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

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

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

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

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

5. Records of monitoring information shall include:

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

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

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

- (iv) The individual(s) who performed the analyses;
- (v) The analytical techniques or methods used; and
- (vi) The results of such analyses.

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

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

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

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

(l) Reporting Requirements.

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

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

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

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

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

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

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

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

5. Monitoring Reports.

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

(ii) Except as allowed under subparagraph (1)5.(v) of this rule, monitoring reports shall be submitted

with a frequency dependent on the nature and effect of the discharge, but in no case less than once per year, and as required by the NPDES permit.

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

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

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

(I) The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a best management practices plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

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

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

(IV) Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification

once every three years by a Registered Professional Engineer licensed to practice in the State of Alabama that the facility is in compliance with the permit, or alternative requirements; and

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

6. Noncompliance Reporting.

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

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

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

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

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

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

(ii) In addition to the report required by subparagraph 335-6-6-.12(1)6.(i), the permittee shall submit a report shall also be submitted to the Director no later than five days after becoming aware

of the circumstances identified in subparagraph 335-6-6-.12(1)6.(i). The report shall contain the applicable information required by subparagraph 335-6-6-.12(1)6.(iv) and shall be submitted in a format approved by the Director. Beginning December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted pursuant to this subparagraph shall be submitted electronically in compliance with rules 335-6-1-.04 and 335-6-6-.09, with the exception of any period during which the permittee has been granted an electronic reporting waiver for such reports in accordance with paragraph 335-6-1-.04(6).

(iii) The permittee shall report all instances of noncompliance not reported under subparagraphs 335-6-6-.12(1)6.(i) and 335-6-6-.12(1)6.(ii), at the time monitoring reports are submitted.

(iv) Written reports required by subparagraph 335-6-6-.12(1)6.(ii) or (iii) shall include the following information:

(I) Description of the noncompliance and its cause;

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

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

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

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

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

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

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

V. Whether the noncompliance was related to wet weather.

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

(m) Bypass.

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

2. Notice.

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

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

3. Prohibition of Bypass.

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

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

(II) There were no feasible alternatives to the bypass, such as the use of auxiliary waste treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied

if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

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

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

(n) Upset.

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

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

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

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

(iii) The permittee submitted notice of the upset as required in subparagraph 335-6-6-.12(1)6.; and

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

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

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

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

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

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

Author: John Poole, Ed Hughes, Christy Monk

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

History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991. **Amended:** Filed August 8, 1995; effective September 12, 1995. **Amended:** Filed June 26, 2002; effective July 31, 2002.

Amended: Filed August 25, 2015; effective September 29, 2015.

Amended: Filed December 20, 2016; effective February 3, 2017.

335-6-6-.13 Conditions Applicable To Specific Categories Of NPDES Permits.

The following conditions apply to all NPDES permits within the categories specified below and shall be incorporated into NPDES permits as applicable.

(a) Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under paragraph 335-6-6-.12(1), all existing manufacturing, commercial, mining, and silvicultural permittees must notify the Director as soon as they know or have reason to believe:

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

- (i) One hundred micrograms per liter;
- (ii) Two hundred micrograms per liter for acrolein and acrylonitrile; five hundred micrograms per liter for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter for antimony;
- (iii) Five times the maximum concentration value reported for that pollutant in the permit application; or
- (iv) A level established by the Director under subparagraph 335-6-6-.14(3) (g);

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

- (i) Five hundred micrograms per liter;
- (ii) One milligram per liter for antimony;
- (iii) Ten times the maximum concentration value reported for that pollutant in the permit application; or
- (iv) A level established by the Director under subparagraph 335-6-6-.14(3) (g).

(b) Publicly and Privately Owned Treatment Works.

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

2. Publicly owned treatment works and privately owned treatment works shall not allow an existing indirect discharger to increase the quantity or change the

character of its non-domestic wastewater discharge prior to the approval and permitting, if applicable, of the discharge by the Department (permits for indirect discharges to privately owned treatment works shall be issued in accordance with the procedures for issuance of permits to indirect dischargers to POTWs found in chapter 335-6-5).

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

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

Author: John Poole

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

History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991. **Amended:** Filed June 26, 2002; effective July 31, 2002.

Amended: Filed August 25, 2015; effective September 29, 2015.

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

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

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

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

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

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

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

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

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

1. Achieve water quality standards established under Section 303 of the FWPCA and (AWPCA) Code of Ala. 1975, §22-22-9(g) (1984);

- (i) Limitations must be applied to control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, have reasonable potential to cause, or

contribute to an exceedance of a narrative or numerical water quality standard;

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

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

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

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

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

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

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

6. Incorporate Section 403(c) (FWPCA) criteria under 40 CFR Part 125 (1994), Subpart M, for ocean discharges; and

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

8. Incorporate effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, consistent with the requirements of any applicable total maximum daily load allocation established pursuant to section 303(d) of the FWPCA and 40 CFR Part 130.7(2007).

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

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

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

(i) Limitations on those pollutants;

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

(iii) Whole effluent toxicity limits.

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

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

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

(iii) Scientific information available to the permit writer,

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

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

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

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

(h) Twenty-four Hour Reporting. Pollutants for which the permittee must report violations of discharge limitations under subparagraph 335-6-6-.12(1)6.(i) shall be listed in the permit. This list shall include any toxic pollutant, hazardous substance, any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance, or any other pollutant specified by the Director.

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

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

2. The volume of effluent discharged from each outfall, except when the volume is not required to evaluate the discharge's impact on water quality or compliance with effluent or treatment standards;

3. The determination of the toxicity of the effluent by whole effluent biological testing, as necessary;

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

5. According to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 for the analysis of pollutants or pollutant parameters or required under 40 CFR chapter I, subchapter N.

(i) For the purposes of subparagraph 335-6-6-.14(3)(i)5., a method is "sufficiently sensitive" when:

(I) The method minimum level (ML) is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or

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

(ii) In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136 or methods are not otherwise required under 40 CFR chapter I, subchapter N, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters.

(iii) With respect to subparagraph 335-6-6-.14(3)(i)5.(i), applicants or permittees have the option of providing matrix or sample specific minimum levels rather than the levels published in 40 CFR Part 136. Further, where an applicant or permittee can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of "sufficiently sensitive", the analytical results are not consistent with the QA/QC specifications for that method, then the Director may determine that the method is not performing adequately, and the Director shall select a different method from the remaining EPA-approved methods that is sufficiently sensitive consistent with subparagraph 335-6-6-.14(3)(i)5.(i). Where no other EPA-approved methods exist, the Director should select a method consistent with subparagraph 335-6-6-.14(3)(i)5.(ii).

(j) Pretreatment Program for POTW's. Requirement for POTW's to:

1. Comply with the provisions of paragraph 335-6-6-.13(b);

2. Identify, in terms of character and volume of pollutants, any indirect discharges into the POTW subject to pretreatment standards under Section 307(b) of the FWPCA, general and specific prohibitions under 40 CFR Part 403 (2007), and subject to permitting requirements under chapter 335-6-5;

3. Submit a local program, when required by and in accordance with 40 CFR Part 403 (2007), and chapter 335-6-5 of these regulations, to ensure compliance with pretreatment standards as applicable under Section 307(b) of the FWPCA. The local program shall be incorporated into the permit as described in 40 CFR Part 403 (2007). The Department may choose to assume responsibility for any or all of these requirements. When the Department assumes partial responsibility, the local program shall address those requirements not assumed by the Department.

(k) Best Management Practices: to control or abate the discharge of pollutants when:

1. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the FWPCA and the AWPCA or;

2. Numeric discharge limitations are infeasible;

(l) Reissued Permits.

1. Except as provided in subparagraph 335-6-6-.14(3)(e)2., when a permit is renewed, modified, or reissued, limitations, standards or conditions shall be included which are at least as stringent as the final limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under Rule 335-6-6-.17.

2. When effluent limitations were imposed under Section 402 (a) (1) of the FWPCA in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, subparagraph 335-6-6-.14(3)(e)1. shall apply unless:

(i) The permittee has installed the waste treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been

unable to achieve the previous effluent limitations. In this case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved, but shall not be less stringent than required by the subsequently promulgated effluent limitation guidelines;

(ii) The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under Rule 335-6-6-.17;

(iii) There is increased production at the facility which results in significant reduction in treatment efficiency, in which case the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads, but in no event shall permit limitations be less stringent than those required by subsequently promulgated standards and limitations;

(iv) The Director determines that technical mistakes or mistaken interpretations of the law were made in issuing the permit; or

(v) The permittee has received permit modification under Clean Water Act Sections 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a).

3. In any case, discharge limitations shall not be less stringent than required to meet water quality standards.

(m) Grants. Any conditions imposed in grants made by the Administrator to POTW's under Sections 201 and 204 of the FWPCA which are reasonably necessary for the achievement of effluent limitations under Section 301 of the FWPCA.

(n) Sewage Sludge. Requirements under Section 405 of the FWPCA governing the disposal of sewage sludge from publicly owned treatment works and privately owned treatment works, in accordance with any applicable regulations and requirements of 40 CFR Parts 122, 123, 124, 501, and 503 (2007).

(o) Other Sludge. Requirements under appropriate state and federal laws governing solid waste disposal or other requirements to ensure that sludges are disposed of in an environmentally acceptable manner.

Author: John Poole, Glenda Dean, Daphne Lutz

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

History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991. **Amended:** Filed August 8, 1995; effective September 12, 1995. **Amended:** Filed June 26, 2002; effective July 31, 2002.

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335-6-6-.15 Calculating NPDES Permit Limitations.

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

(2) Production Based Limitations.

(a) In the case of POTW's, permit limitations, standards, or prohibitions shall be calculated based on design flow, the Department's Water Quality Criteria, Section IV, chapter 335-6-10, 40 CFR Part 133 (1994) secondary treatment requirements, and criteria necessary to achieve or maintain water quality standards for the particular receiving stream.

(b) Except, in the case of POTW's or as provided in subparagraph 335-6-6-.15(2)(c) or (d), calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall not be based upon the designed production capacity but shall be based upon a reasonable measure of actual production of the facility; for example, the production during the high month of the previous year, or the monthly average for the highest of the previous five years. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitation; [for example, monthly production shall be used to calculate average monthly discharge limitations].

(c) The Director may include a condition establishing alternate permit limitations, standards, or prohibitions based upon an anticipated increase, not to exceed maximum production capability, or decrease in production levels. Such anticipated increases or decreases in production must be reasonably projected to occur during the duration of the permit.

(d) If the Director establishes permit conditions under subparagraph 335-6-6-.15(2)(c):

1. The permit shall require the permittee to notify the Director at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more

than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the facility does not in fact meet the higher level designated in the notice;

2. The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Director under subparagraph 335-6-6-.15(2)(d)1., in which case the permittee shall comply with the level specified in the notice; and

3. The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as specified in 40 CFR Part 136 unless:

(a) An applicable effluent standard or limitation has been promulgated under the FWPCA and specifies the limitation for the metal in the dissolved or valent or total form;

(b) In establishing discharge limitations on a case by case basis, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the FWPCA; or

(c) All approved analytical methods for the metal inherently measure only its dissolved form.

(4) Continuous Discharges. For continuous discharges all permit discharge limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works or privately owned treatment facilities which treat domestic wastewater and

(b) Average weekly and average monthly discharge limitations for POTWs and privately owned treatment works which treat domestic wastewater.

(5) Non-continuous Discharges. Discharges which are not continuous, as defined in Rule 335-6-6-.02, shall be particularly

described and limited, considering the following factors, as appropriate:

(a) Frequency (for example, a batch discharge shall not occur more than once every three weeks);

(b) Total mass (for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

(c) Maximum rate of discharge of pollutants during the discharge (for example, not to exceed two kilograms of zinc per minute or not to exceed a specified discharge rate); and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 milligrams per liter zinc or more than 250 grams of zinc in any discharge).

(6) Mass Limitations.

(a) All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

1. For pH, temperature, or other pollutants which cannot appropriately be expressed by mass;

2. When applicable standards and limitations are expressed in terms of other units of measurement;

3. When concentration limits are required to comply with water quality standards; or

4. If in establishing permit limitations on a case by case basis, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

(7) Pollutants in Intake Water.

(a) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

1. The applicable effluent limitations and standards contained in 40 CFR Subchapter N (1994) specifically provide that they shall be applied on a net basis; or

2. The discharger demonstrates that the control system it proposes or uses to meet applicable technology based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as biochemical oxygen demand or total suspended solids should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the point of discharge or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Director may waive this requirement if he finds that no significant environmental degradation will result.

(e) This paragraph does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(f) In no case shall the application of credits for pollutants in intake waters be allowed to result in the violation of water quality standards.

(g) When wastewater is treated by a system which removes a pollutant for which credit is granted, the credit granted shall be no greater than the limit of treatability of the pollutant by the treatment system.

(8) Internal Waste Streams.

(a) Limitations on internal waste streams may be imposed:

1. When permit limitations or standards imposed at the point of discharge are impractical or infeasible;

2. Prior to mixing with other waste streams or cooling water streams;

3. When the wastes at the final point of discharge are so diluted that monitoring would be impracticable;

4. When interferences among pollutants at the point of discharge would make detection or analysis infeasible.

(b) When monitoring of internal waste streams is required, the monitoring requirements of subparagraph 335-6-6-.14(3)(i) shall be applicable.

(c) When monitoring of internal waste streams is required, the permit rationale and fact sheet, where required, shall set forth the circumstances which make such limitations necessary.

(9) Disposal of Pollutants Into Wells, Into Publicly Owned Treatment Works or by Land Application.

(a) When part of a discharger's process wastewater is not being discharged into surface waters of the state because it is disposed into a well, into a POTW, private treatment facility, or by land application thereby reducing the flow or level of pollutants being discharged into surface waters of the state, applicable technology based effluent standards and limitations for the discharge in an NPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal.

(b) If none of the waste from a particular process is discharged into waters of the state, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocation for wastes from that process shall be eliminated from calculation of permit effluent limitations or standards.

(c) In all cases other than those described in subparagraph (b) of this rule, effluent limitations shall at least be no less stringent than the limitation derived by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the state, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 40 CFR Part 125 (1994), Subpart D to make them more or less stringent if discharges to wells, publicly owned treatment works, private treatment facilities, or by land application change the character or treatability of the pollutants being discharged to surface waters. This method may be algebraically expressed as:

$$P = (E (N)) / T$$

Where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total wastestream, N is the wastewater flow to be treated and discharged to waters of the state, and T is the total wastewater flow.

(d) Subparagraph 335-6-6-.15(9) (a) does not apply to the extent that promulgated effluent limitations guidelines:

1. Control concentrations of pollutants discharged but not mass; or

2. Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into publicly or privately owned treatment works.

(e) Subparagraph 335-6-6-.15(9) (a) does not alter a discharger's obligation to meet any more stringent permit requirements established under the AWPCA.

(10) Mixing Zones. Limits calculated to comply with water quality standards may allow an opportunity for mixing with the receiving waters in accordance with Rule 335-6-10-.05. Determination of mixing zones shall be in accordance with the following requirements.

(a) Whole effluent acute toxicity limitations shall be applied at the perimeter of the zone of initial dilution (ZID), when the discharge is mixed with the receiving stream by a high rate diffuser, in the absence of a high rate diffuser, acute limitations shall be applied based on best professional judgment and may be applied at the end of the pipe.

(b) Whole effluent chronic toxicity limitations shall be applied at the perimeter of a mixing zone developed using best professional judgment and, in instances where the discharge is to a lake or other water body having zero or near zero flow, limitations developed to meet chronic toxicity water quality standards and human health criteria for substances classified as non-carcinogens shall be applied at the perimeter of a mixing zone developed using best professional judgment. A mixing zone may be developed using isopleth studies, diffuser models, or other methods that are appropriate to the particular situation being evaluated. For discharges to waters of the coastal area, the mixing zone for whole effluent toxicity limitations and for limitations developed to meet chronic toxicity water quality standards and human health criteria for substances classified as non-carcinogens shall be the discharge information zone as defined by subparagraph 335-8-2-.12(1) (a).

(c) When developing permit limits for discharge to flowing streams to comply with human health water quality criteria for pollutants classified as carcinogens the wastewater discharge shall be assumed to be completely mixed in the receiving water at the moment of discharge. When the discharge is to an impoundment or estuary, the allowable mixing zone shall be based on best professional judgment.

(d) Mixing zone prohibitions.

1. Mixing zones in streams shall not preclude passage of aquatic life up or down stream, shall not exceed a width of 50 percent of the stream width, shall not exceed a length of five times the width of the mixing zone, and shall not exceed an area of 25 percent of the stream cross-sectional area, and a mixing zone shall not encompass drinking water intakes.

2. The total area of all mixing zones in a lake shall not encompass more than ten percent of the surface area of the lake, the radius of any one zone shall not be greater than 750 feet, and a mixing zone shall not encompass water intakes.

(11) Receiving Water Flow. The calculation of permit limitations to meet water quality standards shall be based on following statistical flows:

(a) Permit limitations to comply with chronic aquatic life criteria for toxic substances listed in Rule 335-6-10-.07 shall be calculated using the minimum 7-day low flow that occurs once in 10 years (7Q10) or a base flow higher than the 7Q10, in which case discharge when the stream flow is less than the base flow shall be prohibited.

(b) Permit limitations to comply with acute aquatic life criteria for toxic substances listed in Rule 335-6-10-.07 shall be calculated using the minimum 1-day low flow that occurs once in 10 years (1Q10) or a base flow higher than the 1Q10, in which case discharge when the stream flow is less than the base flow shall be prohibited.

(c) Permit limitations to comply with human health criteria for substances classified as non-carcinogens and listed in Rule 335-6-10-.07 shall be calculated using the minimum 7-day low flow that occurs once in 10 years (7Q10) or a base flow higher than the 7Q10, in which case discharge when the stream flow is less than the base flow shall be prohibited.

(d) Permit limitations to comply with human health criteria for substances classified as carcinogens and listed in Rule 335-6-10-.07 shall be calculated using the mean annual flow.

(e) Calculation of permit limitations to comply with water quality requirements, other than those listed in subparagraphs 335-6-6-.15(11) (a), (b), (c) and (d) and substances which in the concentrations found in the discharged wastewater can be reasonably expected to violate the narrative toxicity standards of chapter 335-6-10, shall be based on the assimilative capacity of the receiving water and shall not result in degradation of water quality. Permit limits

recognizing the variability of receiving stream flows shall be allowable and may be based on statistical seasonal low flows or actual stream flow measurements taken at the time of discharge. Permit limits which require the instream measurement of the substance or parameter being regulated and require that the instream concentration not exceed the applicable water quality requirement may be imposed in conjunction with a discharge limit.

(12) Quantitation.

(a) For the purpose of reporting and compliance, permittees shall use the Minimum Level (ML) as established by EPA. All analytical values at or above the ML shall be reported as the measured value. Values below the ML shall be reported as "0" (zero).

(b) For pollutant parameters without an established ML, an interim ML shall be utilized. The interim ML shall be calculated as 3.18 times the Method Detection Level (MDL) calculated in accordance with the procedure in Appendix B of 40 CFR Part 136.

(c) Permittees may develop an effluent matrix-specific ML, where an effluent matrix prevents attainment of the established ML. However, a matrix specific ML shall be based upon proper laboratory method and technique. Matrix-specific MLs must be approved by the Department, and may be developed by the permittee during permit issuance, reissuance, modification, or during a compliance schedule.

Author: John Poole, Ed Hughes, Daphne Lutz

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335-6-6-.16 **Schedules Of Compliance.**

The permit may, when appropriate, specify a schedule of compliance leading to compliance with the FWPCA and the AWPCA.

(a) Time for Compliance. Any schedules of compliance shall require compliance as soon as possible and in accordance with the following:

1. Not later than the applicable statutory deadline under the FWPCA;

2. Within three years of adoption of a new water quality standard or within the timeframe determined by the Director for implementation of an applicable TMDL established pursuant to section 303(d) of the FWPCA and 40 CFR Part 130.7 (2007).

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

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

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

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

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

(iii) Initiation of construction;

(iv) Attainment of operational status; and

(v) Attainment of compliance with permit limitations;

3. Reporting.

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

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

with requirements issued or revised less than three years before recommencement of discharge.

(c) Compliance schedules for storm water discharges shall not exceed three years from the effective date of the storm water discharge permit.

Author: John Poole

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

History: October 19, 1979. **Amended:** January 24, 1989. **Amended:** Filed August 8, 1995; effective September 12, 1995. **Amended:** Filed April 22, 2008; effective May 27, 2008.

335-6-6-.17 **Transfer, Modification, Revocation And Reissuance, And Termination Of Permits.**

Subject to notice, hearing, and appeal rights of the permittee, the Department may transfer, modify, or revoke and reissue any NPDES permit during its term for cause, including but not limited to, the causes listed in this rule. All applicable fees required by chapter 335-1-6 shall be paid prior to permit transfer, modification, or revocation and reissuance.

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

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

2. If there are to be changes in the facility which would result in new, different, altered, or increased discharges from the facility, the transfer of ownership or operational obligations may be accomplished by complying with the reporting requirements of paragraph 335-6-6-.12(a), but no new, different, altered, or increased discharges may commence until a new application and, if required by the Department, an engineering report describing such discharges have been submitted to the Department and the permit has been modified accordingly.

3. If the entity to which a permit is requested to be transferred, owns or operates facilities within the state which are in substantial noncompliance, as determined by

the Director, the Director may refuse to transfer the permit until noncompliance is corrected or significant progress is made to achieve compliance.

(b) Modification or Revocation and Reissuance of Permits.

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

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

(ii) If cause exists for termination under paragraph 335-6-6-.17(c), the Director may determine that modification or revocation and reissuance is appropriate.

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

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

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

(ii) Information. Permits may be modified during their terms if the Director has received new

information that was not available at the time of permit issuance and that would have justified the application of different permit conditions at the time of issuance.

(iii) New Regulations. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only when:

(I) the permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under 40 CFR Part 133 (1994), and

(II) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based.

(iv) Compliance Schedules. Permits may be modified to change compliance schedules:

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

(II) to modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under Section 202(a)(3) of the FWPCA for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under Section 202(a)(2) of the FWPCA; however, in no case shall the compliance schedule be modified to extend beyond an applicable FWPCA statutory deadline for compliance.

(v) When the permittee has filed a request for a variance under 301(c), 301(g), 301(h), 301(k), or

316(a) of the FWPCA or for fundamentally different factors within the time specified in the applicable federal regulations, and has been granted the variance, a permit may be modified to agree with the variance.

(vi) A permit may be modified to incorporate an applicable 307(a) FWPCA toxic effluent standard or prohibition.

(vii) Reopener. A permit shall be modified, when required by the reopener conditions in a permit, which are established in the permit under subparagraph 335-6-6-.14(3) (d).

(viii) Net Limits. A permit may be modified:

(I) Upon request of a permittee who qualifies for effluent limitations on a net basis under paragraph 335-6-6-.15(7) and

(II) When a discharger is no longer eligible for net limitations, as provided in paragraph 335-6-6-.15(7).

(ix) Pretreatment. A permit shall be modified as necessary under 40 CFR 403.8(e) (1994) (compliance schedule for development of pretreatment program).

(x) Failure to Notify. A permit may be modified upon failure of state to notify, as required by Section 402(b) (3) (1994) of the FWPCA, another state whose waters may be affected by a discharge.

(xi) Notification Levels. A permit may be modified to establish a notification level as provided in subparagraph 335-6-6-.14(3) (g).

(xii) Non-Limited Pollutants. A permit may be modified when the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology based treatment requirements appropriate to the permittee under 40 CFR 125.3(c) (1994).

(xiii) A permit may be modified if the permittee's effluent limitations were imposed under Section 402(a) (1) of the FWPCA and the permittee demonstrates operation and maintenance costs that are totally disproportionate from the operation and maintenance costs considered in the development of a subsequently promulgated effluent limitations guideline and EPA approves the demonstration, but in no case may the

limitations be made less stringent than the subsequent guideline or less stringent than required to meet water quality standards.

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

(xv) A permit may be modified when the discharger has installed the treatment technology considered sufficient by the Director in setting effluent limitations imposed under Section 402(a)(1) of the FWPCA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline and shall not be less stringent than required to meet water quality standards).

3. Minor Modifications of Permits. Upon consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this subparagraph, without following the requirements of Rule 335-6-6-.21. Any permit modification not processed as a minor modification under this subparagraph must be made for cause and all applicable requirements of Rule 335-6-6-.21 must be satisfied. Minor modifications may only:

(i) Correct administrative and typographical errors;

(ii) Increase the frequency of monitoring or reporting by the permittee;

(iii) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(iv) Allow for a change in name or operational control of the facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director as required by subparagraph 335-6-6-.12(1)4;

(v) Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge; or

(vi) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

(c) Termination of Permits.

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

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

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

(iii) A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure or termination of a discharge by connection to a POTW); and

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

(v) The discharge endangers human health or the environment.

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

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

Author: John Poole

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

History: October 19, 1979. **Amended:** January 24, 1989. **Amended:** Filed June 26, 2002; effective July 31, 2002. **Amended:** Filed August 25, 2015; effective September 29, 2015.

335-6-6-.18 **Enforcement Under NPDES.**

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

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

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

(b) An action for damages;

(c) An action for injunctive relief; or

(d) An action for penalties.

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

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

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

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

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

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

Author: John Poole

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

History: October 19, 1979. **Amended:** January 24, 1989. **Amended:** Filed August 25, 2015; effective September 29, 2015.

335-6-6-.19 Tentative Determinations And Draft NPDES Permits.

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

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

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

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

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

(3) Draft Permits

(a) If the tentative determination is to issue, reissue, or modify an NPDES permit, the Department shall prepare a draft NPDES permit based upon the tentative determinations made pursuant to paragraph 335-6-6-.19(1) for the NPDES permit application.

(b) All effluent limitations, monitoring requirements, schedules of compliance, or other conditions determined necessary by the Director to be included in the draft permit

shall be in accordance with the provisions of Rules 335-6-6-.10 through 335-6-6-.16 where applicable.

(c) For every draft NPDES permit for which a fact sheet is not required in accordance with Rule 335-6-6-.20, the Department shall prepare a statement (rationale) of the basis of the conditions in the draft NPDES permit. The rationale shall be available to the public.

Author: John Poole

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

History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991. **Amended:** Filed August 25, 2015; effective September 29, 2015.

335-6-6-.20 **Fact Sheets.**

(1) A fact sheet shall be prepared for every draft NPDES permit for a major NPDES facility, for every NPDES draft permit that incorporates a variance, for any permit that a fact sheet is required by 40 CFR 124.8 (1994), and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

(2) The fact sheet shall include, when applicable;

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) The type and quantity of wastes, or pollutants which are proposed to be treated or discharged;

(c) A summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) Any calculations or other necessary explanation of the derivation of specific discharge limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard provisions and reasons why they are applicable or an explanation of how alternate effluent limitations were developed;

(f) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

1. Limitations to control toxic pollutants;
2. Limitations on internal waste streams;
3. Limitations on indicator pollutants;
4. Limitations for a new source or new discharger whose discharge has the potential to cause or contribute to the violation of a water quality standard;
5. Limitations set on a case by case basis in accordance with 40 CFR Part 125.3 (1989);
6. Waivers from monitoring requirements granted under 40 CFR Part 122.44(a) (2000).

(g) When appropriate, sketch or detailed description of the location of the discharge described in the application;

(h) W description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the public notice period and the address where comments will be received;
2. Procedures for requesting a hearing and the nature of that hearing; and
3. Any other procedures by which the public may participate in the final decision.

(i) Name and telephone number of a person to contact for additional information; and

(j) Permit rationales, permit applications and draft permits that contain information required to be included in a fact sheet may be referenced and attached to the fact sheet.

Author: John Poole, Ed Hughes

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

History: October 19, 1979. **Amended:** January 24, 1989. **Amended:** Filed June 26, 2002; effective July 31, 2002.

335-6-6-.21 Public Notice Requirements.

(1) Actions Requiring Public Notice. The Director shall give public notice that the following actions have occurred:

(a) A NPDES Permit application has been received and a draft NPDES permit or draft modification to an NPDES permit has been prepared and a tentative determination made to issue or reissue the permit or modification;

(b) A NPDES Permit application has been received and a tentative determination to deny a permit application has been made;

(c) A tentative determination has been made to revoke and reissue an NPDES permit;

(d) A tentative determination has been made to terminate an NPDES permit (except that if the determination results from the permanent termination of the flow or by connection to the POTW, the Director may terminate the permit by providing 30-day notice to the permittee); or

(e) A public hearing has been scheduled.

(2) Duration of Public Notice Periods

(a) Public notice of the receipt of an application and the preparation of a draft permit or draft modification to a permit, including a notice of intent to deny a permit application or termination of a permit shall allow at least 30 days for public comment.

(b) Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the application and draft permit and the two notices may be combined.

(3) Methods of Public Notice. Public notice of activities described in paragraph 335-6-6-.21(1) above shall be given by the methods listed below:

(a) By mailing a copy of a notice to the persons listed below. Any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits:

1. The permit applicant.

2. Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit for the same facility or activity.

3. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and

other appropriate government authorities, including any affected states.

4. Any state agency responsible for plan development under the FWPCA Section 208(b)(2), 208(b)(4) or 303(e) and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

5. Any indirect discharger identified in the permit application of a publicly or privately owned treatment works.

6. Persons on a mailing list developed by:

(i) Including those who request in writing to be on the list;

(ii) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals (the Director may update the mailing list from time to time by requesting written indication of continued interest from those listed and may delete from the list the name of any person who fails to respond to such a request);

7. To any unit of local government having jurisdiction over the area where the facility is or is proposed to be located.

8. To each state agency having any authority under state law with respect to the construction or operation of such facility.

(b) By publication of a notice to the Department's website. The draft permit and fact sheet, if applicable, shall be posted on the website for the duration of the public comment period.

(4) Content of Public Notices

(a) All public notices issued under this Rule shall contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated

by the permit (when an address is not applicable to the regulated entity a general location shall be given);

3. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application;

4. A general description of the public comment procedures required by Rule 335-6-6-.21 and the time and place of any hearing that will be held, (if applicable) including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

5. A general description of the location of each existing or proposed discharge point and the name of the receiving water; and

6. A general description of the activity or business conducted at the facility generating the wastewater.

(b) Public Notices for Hearings. In addition to the general public notice requirements, the public notice of a hearing shall contain the following information:

1. A reference to the date of previous public notices relating to the permit;

2. Date, time, and place of the hearing; and

3. A description of the nature and purpose of the hearing, including a citation of the applicable rules and procedures.

(5) Public comments and Requests for Public Hearings. During the public comment period, any interested person may submit written comments on the permit application and draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph 335-6-6-.21(7).

(6) Public Hearings

(a) The Director shall hold a public hearing whenever it is found, on the basis of hearing requests, that there exists a significant degree of public interest in a permit application or a draft permit.

(b) The Director may also hold a public hearing at his or her discretion whenever such a hearing might clarify one or more issues involved in the permit decision;

(c) Any person may submit oral or written statements and data concerning the permit application or the draft permit. Reasonable limits may be set upon the time allowed for oral statement, and the submission of statements in writing may be required. The public comment period shall automatically be extended to the close of any public hearing under this RULE. The hearing officer may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public.

(7) Response to Comments. At the time that any final permit decision is issued, the Department shall prepare a response to comments which shall be made available to the public. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed by the final permit decision, and the reasons for the change and

(b) Describe and respond to all significant comments (like comments may be grouped and one response written), concerning the draft permit, raised during the public comment period or during any hearing. A significant comment is a comment that offers information or suggestions of a technical, environmental, legal, or regulatory nature that are applicable to the proposed permit.

(8) Comments from Governmental Agencies

(a) If during the comment period for an NPDES draft permit, the District Engineer of the U.S. Army Corps of Engineers advises the Director in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall include the specified conditions in the permit. Review or appeal of a permit denial or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the NPDES permit for the duration of that appeal or review.

(b) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other

state or federal agency with jurisdiction over fish, wildlife, or public health advised the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, a public water supply, or wildlife resources, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the FWPCA.

(c) In appropriate cases the Director may consult with one or more of the agencies referred to in this Rule before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

Author: John Poole, Ed Hughes, Glenda Dean

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

History: October 19, 1979. **Amended:** January 24, 1989; April 29, 1991. **Amended:** Filed June 26, 2002; effective July 31, 2002.

Amended: Filed August 25, 2015; effective September 29, 2015.

Amended: Filed August 20, 2019; effective October 4, 2019.

335-6-6-.22 Variance Requests.

Requests for variances shall be submitted to the Director for action. The Director may deny the request. If the Director determines that the variance should be granted, he shall forward the request with a recommendation that the request be approved to the Administrator. A discharger may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in the pertinent regulations as given below:

(a) Fundamentally different factors - 40 CFR Part 122.21 (1994); and 40 CFR Part 125 (1994);

(b) 301(c) or (g) variance from best available technology economically achievable (BAT) for non-conventional pollutants - 40 CFR Part 122.21 (1994);

(c) 301(k) Extension for innovative technology - 40 CFR Part 122.21 (1994); and 40 CFR Part 125 (1994); and

(d) 301(h) Variance for discharge into marine waters - 40 CFR Part 122.21 (1994); and 40 CFR Part 125 (1994).

Author: Craig Kniesel

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

History: October 19, 1979. **Amended:** Filed August 8, 1995; effective September 12, 1995.

335-6-6-.23 General Permits.

- (1) Category. A general permit may be written to regulate:
 - (a) Storm water discharges; or
 - (b) A category of discharges that all:
 - 1. Involve the same or substantially similar types of discharges;
 - 2. Discharge the same types of pollutants;
 - 3. Require the same effluent limitations or operating conditions;
 - 4. Require the same or similar monitoring; and
 - 5. In the opinion of the Director are more appropriately controlled under a general permit than under individual permits.
- (2) Prohibitions
 - (a) A discharger, classified as a major discharger by EPA, shall not receive coverage under a general permit. The identity of major dischargers may be obtained from EPA or the Department.
 - (b) A discharger, not in compliance with Department Rules applicable to its wastewater discharges or not in compliance with an individual NPDES permit applicable to the discharge in question, shall not receive coverage under a general permit.
- (3) Area. A general permit shall be written to cover a category of discharges described in the permit, within a geographical area. The area shall correspond to existing geographic or political boundaries, such as:
 - (a) Designated planning areas under Sections 208 and 303 of the CWA;
 - (b) Sewer districts or sewer authorities;
 - (c) City, county, or state political boundaries;
 - (d) State highway systems;
 - (e) Standard metropolitan statistical areas as defined by the Office of Management and Budget;

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

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

(4) Applications

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

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

(5) Provisions and Limitations

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

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

1. Paragraph 335-6-6-.12(b);
2. Paragraph 335-6-6-.12(f);
3. Subparagraph, 335-6-6-.12(1)1;
4. Paragraph 335-6-6-.12(p);

5. Paragraph 335-6-6-.12(q);
6. Paragraph 335-6-6-.13(b); and
7. Subparagraph 335-6-6-.14(3)(j).

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

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

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

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

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

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

1. When the Director receives any information that was not available at the time of permit issuance and that would have justified the application of different permit conditions at the time of issuance,
2. When the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued,
3. Upon failure of the state to notify, as required by Section 402(b)(3) of the FWPCA, another state whose waters may be affected by a discharge,

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

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

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

7. For any applicable cause set forth in 40 §C.F.R. Sections 122.61, 122.62, 122.63, or 122.64 (1994).

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

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

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

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

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

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

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

1. Noncompliance with the general permit,
2. Noncompliance with Department Rules,
3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the wastewater being discharged,
4. Effluent guidelines are promulgated for a point source(s) covered by the general permit,
5. A Water Quality Management Plan applicable to the wastewater being discharged under the general permit,
6. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit or either a temporary reduction or permanent reduction or elimination of the authorized discharge is necessary,
7. Standards for sewage sludge use or disposal have been promulgated for the sludge use or disposal practice covered by the general permit,
8. The discharge(s) is a significant contributor of pollutants. In making this decision the Director may consider:
 - (i) The location of the waters with respect to waters of the state,
 - (ii) The size of the discharge,
 - (iii) The quantity and nature of the pollutants discharged to waters of the state, and

9. A determination that the water of the state receiving the discharge is not meeting applicable water quality standards.

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

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

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

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

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

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

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

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

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

(15) Notice of Intent

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

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

(c) Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Director, be authorized to discharge under a general permit without submitting a notice of intent where the Director finds that a notice of intent requirement would be inappropriate. In making such a finding, the Director shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Director shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

(d) A notice of intent shall include:

1. A description of the processes generating the wastewater for which coverage is desired, which description shall be in sufficient detail to allow the Department to determine that the wastewater discharge is included in the category permitted by the general permit;
2. The latitude and longitude of the discharge points for each wastewater discharge and the name of the waterbody receiving each wastewater discharge for which coverage under the general permit is desired;
3. A contact person, address and phone number for each location to be covered under the general permit; and
4. Any other information specified by the general permit.

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

(f) If required by a specific general permit, proof of public notice as required by the permit under which the applicant

seeks to discharge must be submitted with the notice of intent.

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

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

(17) Duration of General Permits

(a) General permits shall not be issued for a term longer than five years unless a longer term is allowed by 40 CFR Part 122 and is approved by the Director. The term of the permit does not mean that coverage for a discharger is for five years; coverage for a discharger, which begins after the effective date of the permit shall be determined by the Director or his designee and can be for the remaining term of the general permit.

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

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

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

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

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335-6-6-.24 Standards For The Use Or Disposal Of Sewage Sludge (Repealed 1/23/03).

(Repealed)

Author: Dennis Harrison

Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14 and §§22-22A-1 to 22-22A-16.

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