

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

CHAPTER 335-6-12

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

**335-6-12-.35      Other Requirements.**

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

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

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

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

(5) Property Rights, and Other Rights and Responsibilities

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

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

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

(6) Groundwater. Unless specifically authorized by this Chapter, other laws or rules or the Director, the discharge of pollutants to groundwater is not authorized. Should a threat of groundwater contamination occur, the Director may require groundwater evaluation and/or monitoring to properly assess the degree of the problem and the Director may require that any operator undertake measures to mitigate, remediate, and/or abate any such discharge and/or contamination. Groundwater investigation/evaluation, monitoring, mitigation, remediation, and other activities performed voluntarily by the operator or required by the Director, shall be conducted in accordance with a plan accepted by the Department.

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

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

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

(10) Duty to Mitigate And Remediate Adverse Impacts

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

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

(11) Duty To Comply

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

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

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

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