

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management  
Rule No. 335-6-6-.12  
Rule Title: Conditions Applicable to all NPDES Permits  
 New  Amend  Repeal  Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? YES

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NO

Are all facts of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

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Does the proposed rule have an economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

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Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer 

Date April 20, 2015

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
WATER DIVISION

NOTICE OF INTENDED ACTION

**Agency Name:** Alabama Department of Environmental Management  
**Rule No. & Title:** 335-6-6-.12 Conditions Applicable to all NPDES Permits (Amend)  
**Intended Action:** The Alabama Department of Environmental Management proposes to amend rule 335-6-6-.12.

**Substance of Proposed Action:**

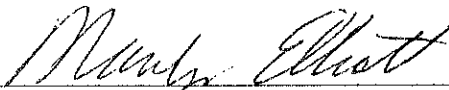
The Department proposes to update this rule for consistency with a federal rule. The Department also proposes to make administrative corrections and revisions in this rule.

**Time, Place, Manner of Presenting Views:**

Comments may be submitted in writing or orally at a public hearing to be held at 2:00 P.M., June 15, 2015, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

**Final Date for Comment and Completion of Notice:** June 15, 2015

**Contact Person at Agency:** Christy Monk, (334) 394-4364

  
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Lance R. LeFleur  
Director

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

(a) Duty to Comply.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) Monitoring and Records.

1. All permits shall specify:

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

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

- (iii) Applicable reporting requirements based upon the impact of the regulated activity.

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 ~~approved under~~ 40 CFR Part 136 ~~(1994)~~, unless other test procedures have been approved by the Director or specified in the permit. Upon the establishment of a program for certifying 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 ~~paragraph~~ 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 ~~rule-chapter~~ 335-1-6.

5. Monitoring Reports.

(i) Monitoring results shall be summarized for each monitoring period on a Discharge Monitoring Report form (DMR) approved by the Department and shall be submitted so that the DMR is received by the Department no later than the 28th day of the month following the reporting period specified in the permit.

(ii) Except as allowed under (v) below, 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 ~~approved under~~ 40 CFR Part 136-~~(1994)~~ or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

(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 ~~rule-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 ~~ADEM Admin. Code, rule 335-6-6~~this chapter, at least annually.

6. Noncompliance Reporting.

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

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

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

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

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

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

(ii) In addition to the oral report, a written submission shall also be submitted to the Director no later than five days after becoming aware of the circumstances identified in subparagraph 335-6-6-.12(l)6.(i) above.

(iii) The permittee shall report all instances of noncompliance not reported under subparagraphs 335-6-6.12(l)6.(i) and subparagraph ~~335-6-6-.12(l)6.(ii)~~; at the time monitoring reports are submitted.

(iv) Written reports required by subparagraph 335-6-6-.12(l)6.(ii) or subparagraph ~~335-6-6-.12(l)6.(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;

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

(m) Bypass.

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

2. Notice.

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

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

3. Prohibition of Bypass.

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

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

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

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

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

(n) Upset.

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

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

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

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

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

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

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

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

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

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

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

groundwater and shall be capable of retaining 110 percent of the volume of the largest container of pollutants for which the containment system is provided.

**Author:** John Poole, Ed Hughes, Daphne Lutz.

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

**History:** October 19, 1979. **Amended:** January 24, 1989; April 29, 1991; July 12, 1995, August 1, 2002; XXXX XX, 2015.