

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER DIVISION

NOTICE OF INTENDED ACTION

Agency Name: Alabama Department of Environmental Management

Rule No. & Title: 335-6-6-.17 Transfer, Modification, Revocation and Reissuance, and Termination of Permits (Amend)

Intended Action: The Alabama Department of Environmental Management proposes to amend rule 335-6-6-.17.

Substance of Proposed Action:

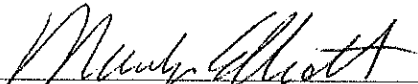
The Department also proposes to make administrative corrections in this rule.

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



Lance R. LePleur
Director

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 rule ~~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 ~~subparagraph~~ 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 ~~rule~~subparagraph, without following the requirements of rule 335-6-6-.21. Any permit modification not processed as a minor modification under this ~~section~~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(l)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.

(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 Alabama 1975, § 22-22-9, § 22-22A-5.

History: October 19, 1979. **Amended:** January 24, 1989, August 1, 2002; XXXX XX, 2015.