

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management
Rule No. 335-6-6-.21
Rule Title: Public Notice Requirements
 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

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.

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 *M. Mudge Elliott*

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-.21 Public Notice Requirements (Amend)

Intended Action: The Alabama Department of Environmental Management proposes to amend rule 335-6-6-.21.

Substance of Proposed Action:

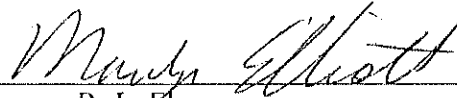
The Department also proposes to make administrative corrections in this rule.

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. LeFleur
Director

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) An 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) An 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;

(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(21) 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 in a daily or weekly newspaper of general circulation within the area affected by the facility or activity.

(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 section ~~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.

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

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