# TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Rule No. 335-6-1012	ingement
Rule Title: Implementation of the Antidegradation Policy	
New X Amend Repeal	Adopt by Reference
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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 requisiscal note prepared in accordance with subsection (f) of Section 41-2	uired to be accompanied by a 2-23, Code of Alabama 1975.
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Certification of Authorized Official	
I certify that the attached proposed rule has been proposed in full con Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to of the Administrative Procedure Division of the Legislative Reference	all applicable filing requirements
Signature of certifying officer Muly Ellio	H
Date September 21, 2016	1 to the second

## ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT WATER DIVISION

#### NOTICE OF INTENDED ACTION

AGENCY NAME:

Alabama Department of Environmental Management

RULE NO. & TITLE:

335-6-10-.12

Implementation of the Antidegradation

Policy (Amend)

INTENDED ACTION:

The Alabama Department of Environmental Management

proposes to amend rule 335-6-10-.12.

#### SUBSTANCE OF PROPOSED ACTION:

The Department proposes to amend rule 335-6-10-.12 to replace the language "on the most recent EPA approved Section 303(d) list;" with "as Category 4 or Category 5 waters;" to better clarify Tier 1 waterbodies.

#### TIME, PLACE, MANNER OF PRESENTING VIEWS:

Comments may be submitted in writing or orally at a public hearing to be held at 1:00 P.M., November 10, 2016, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: November 10, 2016

**CONTACT PERSON AT AGENCY:** 

Chris Johnson (334) 271-7827

Lance R. LeFfleur

Director

### 335-6-10-.12 Implementation of the Antidegradation Policy.

- (1) The antidegradation policy at rule 335-6-10-.04 addresses three categories of waters/uses:
- (a) High quality waters that constitute an outstanding national resource (Tier 3);
- (b) Waters where the quality exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water (Tier 2); and
- (c) Existing instream water uses and the level of water quality necessary to protect the existing uses (Tier 1).
- (2) Tier 3 waters are those waters designated pursuant to the Outstanding National Resource Water (ONRW) special designation at rule 335-6-10-.10, and are identified in rule 335-6-11-.02.
  - (3) Tier 1 waters are:
- (a) Those waters (except waters assigned the use classification of Outstanding Alabama Water, which are Tier 2 waters) identified on the most recent EPA-approved Section 303(d) list; as Category 4 or Category 5 waters;
- (b) Those waters (except waters assigned the use classification of Outstanding Alabama Water, which are Tier 2 waters) for which attainment of applicable water quality standards has been, or is expected to be, achieved through implementation of effluent limitations more stringent than technology-based controls (BPT, BAT, and secondary treatment); and
- (c) Those waters assigned the use classification of Limited Warmwater Fishery or Agricultural and Industrial Water Supply (as identified in rule 335-6-11-.02).
- (4) Tier 2 waters are all other waters (those waters not identified as either Tier 3 waters or Tier 1 waters), including all waters assigned the use classification of Outstanding Alabama Water (as identified in rule 335-6-11-.02).
- (5) All new or expanded discharges to Tier 2 waters (except discharges eligible for coverage under general permits) covered by the NPDES permitting program are potentially subject to the provisions of rule 335-6-10-.04(3). Applicants for such discharges are required to demonstrate that the proposed discharge is necessary for important economic or social development as a part of the permit application process.
- (6) After receipt of a permit application for a potentially covered discharge, the Department will determine whether the proposed discharge is to a Tier 2 water, as defined in paragraph (4) above. Of necessity, this determination will be made on a case-by-case basis.

- (7) The basic framework of the permitting process is unchanged for a covered discharge to a Tier 2 water. However, the process is enhanced to document the consideration of Tier 2 provisions. The additional documentation includes:
- (a) The Department's determination that the application is for a new or expanded discharge;
- (b) The Department's determination that the receiving stream is considered to be a Tier 2 water; and
- (c) The Department's determination, based on the applicant's demonstration, that the proposed discharge is necessary for important economic or social development in the area in which the waters are located.
- (8) All three items will be documented in the permit file and/or fact sheet, and will be used by the Department in its decision process. The public notice process will be used to announce a preliminary Department decision to deny or to allow a covered discharge to a Tier 2 water, while the final determination will be made concurrently with the final Department decision regarding the permit application for a covered discharge.
  - (9) Documentation by the applicant shall include:
- (a) An evaluation of discharge alternatives completed by a Registered Professional Engineer licensed to practice in the State of Alabama.
- 1. The applicant shall document the discharge alternatives evaluation by completing and submitting the following forms<sup>1</sup>, or by submitting the same information in another format acceptable to the Department:
  - (i) ADEM Form 311, Alternatives Analysis; and, as applicable,
- (ii) ADEM Form 312, Calculation of Total Annualized Costs for Public-Sector Projects, or ADEM Form 313, Calculation of Total Annualized Costs for Private-Sector Projects. Alternatives with total annualized project costs that are less than 110% of the total annualized project costs for the Tier 2 discharge proposal are considered viable alternatives.
- (b) A demonstration that the proposed discharge will support important economic or social development in the area in which the waters are located, documented by the applicant's response, in writing, to the following questions. The applicant shall provide supporting information for each response.
- 1. What environmental or public health problem will the discharger be correcting?

<sup>&</sup>lt;sup>1</sup> Forms are listed in ADEM Admin. Code r. 335-1-1-.07 and are available for downloading on the ADEM web page under Forms.

- 2. How much will the discharger be increasing employment (at its existing facility or as the result of locating a new facility)?
- 3. How much reduction in employment will the discharger be avoiding?
- 4. How much additional state or local taxes will the discharger be paying?
- 5. What public service to the community will the discharger be providing?
- 6. What economic or social benefit will the discharger be providing to the community?

Author: James E. McIndoe; Lynn Sisk; Chris L. Johnson. Statutory Authority: Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.

**History:** August 1, 2002. **Amended:** January 18, 2011; XXXXXX, 2017.