



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
WATER DIVISION

NOTICE OF INTENDED ACTION

**Agency Name:** Alabama Department of Environmental Management  
**Rule No. & Title:** 335-6-5-.15 Conditions Applicable to SID Permits (Amend)  
**Intended Action:** The Alabama Department of Environmental Management proposes to amend rule 335-6-5-.15

**Substance of Proposed Action:**

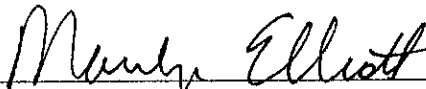
The Department proposes to amend this rule and to make administrative corrections in this rule.

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

Comments may be submitted in writing or orally at a public hearing to be held at 10:00 AM, 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:** Christy Monk, (334) 394-4364

  
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**Lance R. LePleur**  
**Director**

**335-6-5-.15 Conditions Applicable to SID Permits.** The following requirements apply to SID Permits issued to significant industrial dischargers. Provisions implementing these requirements shall be incorporated into each permit.

(1) Duty to comply with a SID Permit.

(a) 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.

(b) The permittee shall comply with applicable pretreatment categorical and general standards or prohibitions established under the FWPCA 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.

(c) 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.

(2) 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 335-6-5-.11, 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.

(3) 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.

(4) 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.

(5) 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.

(6) The permit may be modified, revoked and re-issued, 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.

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

(8) 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.

(9) 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:

(a) 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;

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

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

(d) 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.

(10) Monitoring and records keeping requirements.

(a) All permits shall specify:

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

2. Required monitoring, including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; and

3. Applicable reporting requirements based upon the impact of the regulated activity.

(b) To assure compliance with permit limitations, all permits may specify requirements to monitor:

1. The mass and/or other measurement for each pollutant limited in the permit;
2. The volume of effluent discharged from each outfall;
3. Whole effluent toxicity determinations;
4. 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; and
5. To determine the impact on the treatment works, any of the preceding measurements of influent and effluent from the treatment works.

(c) Samples and measurements taken for the purpose of monitoring shall be in accordance with the terms of the SID Permit.

(d) 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.

(e) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The individual(s) who performed the analyses or under whose direct supervision the analyses were performed;
5. The analytical techniques or methods used; and
6. The results of such analyses.

(f) 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.

(g) Monitoring shall be conducted according to 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 testing laboratories which perform wastewater analyses, only a laboratory certified by the state may be used for contracting wastewater analyses used for SID Permit reporting.

(h) 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.

(i) If sampling performed by any permittee results in a permit violation, the permittee shall repeat the sampling and analysis within 24 hours after becoming aware of the violation and shall submit the results to the Department with the discharge monitoring report for the period in which the violation occurred. If the permit requires daily sampling for the parameter found to be in noncompliance or if the parameter has been sampled for and tested again before the permittee becomes aware of the violation, this requirement shall not apply.

(11) Signatory Requirements. All applications, reports, or information submitted to the Director shall be signed and certified according to the requirements under rule 335-6-5-.14.

(12) Reporting Requirements.

(a) 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 the alteration or addition could result in the discharge of additional pollutants or increase the quantity of pollutants discharged or when the alteration or additions would subject the permittee to the requirements of a categorical pretreatment standard. This notification applies to pollutants that are or are not subject to discharge limitations in the permit.

(b) 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.

(c) 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.

(d) 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 SID Permit, where no additional discharges would be added that would require coverage by an SID Permit and where no additional requirements under the AWPCA or FWPCA are necessary, accomplish transfer of the SID Permit by the following procedure:

1. 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.

2. 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 signed by a representative of both the existing and new permittee, both representatives shall meet the requirements of a signatory to permit applications set forth in rule 335-6-5-.14 and shall be accompanied by the appropriate fee required under chapter 335-1-6.

(e) Discharge monitoring shall be required by all SID Permits in accordance with the following requirements.

1. Monitoring results shall be summarized for each month on a Discharge Monitoring Report form (DMR), ~~approved by the Department and~~ The DMR shall be submitted so that the DMR is received by the Department Director no later than the 28th twenty-eighth day of the month following the reporting period specified in the permit, unless otherwise expressed by the Director. DMRs shall be submitted electronically by the permittee to the Director in compliance with rules 335-6-1-.04 and 335-6-5-.14, with the exception of any period during which the permittee has been granted an electronic reporting waiver for such reports in accordance with paragraph 335-6-1-.04(6).

2. Monitoring reports shall be submitted with a frequency dependent on the nature and effect of the discharge, but in no case less than once each six months, and as required by the SID Permit.

3. If the permittee monitors any pollutant more frequently than required by the permit, using 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.

4. 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. When monitoring is in accordance with permit requirements, a less than detectable result shall be considered a zero when calculating averages.

5. The permittee shall be required to monitor for all parameters limited by the permit at least once each six months and report the results of all required monitoring at least once each six months.

(f) Noncompliance reporting shall be required by the SID Permit in accordance with the following requirements.

1. Twenty-four hour reporting. The permittee shall report to the Director within 24 hours of becoming aware of any noncompliance which has caused interference or pass through or an unpermitted direct or indirect discharge to a water of the state and shall follow up the oral report with a written submission to the Director no later than five days after becoming aware of the unpermitted discharge, interference, or pass through.

2. The permittee shall report all instances of noncompliance not reported under the preceding subparagraph, at the time monitoring reports are submitted.

3. Written noncompliance reports 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;

4. Within the next 30 days after the permittee becomes aware of the exceedance of a permit limit for any parameter, the permittee shall sample and test for this parameter and submit the results of the testing to the Department. If the permit monitoring frequency requires the monitoring of the parameter more often than once every 30 days this requirement is satisfied and additional sampling is not required.

(g) Bypass.

1. Bypass Not Exceeding Limitations. The permittee may allow any bypass to occur which does not cause permit limitations, categorical pretreatment standards, nor general pretreatment standards to be violated or exceeded but only if it also is necessary for essential maintenance to assure efficient operation of the waste treatment facility. The permittee shall monitor the bypassed wastewater at least daily and at a frequency sufficient to prove compliance with permit discharge limitations and shall include the results of all such monitoring in the DMR submitted for the period(s) of bypass.

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 335-6-5-.15(12)(f).

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 335-6-5-.15(g)2.(i) 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 335-6-5-.15(g)3.

(13) The SID Permit shall contain the following upset requirements.

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

(b) 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 noncompliance caused by the upset as required under 335-6-5-.15(12)(f) and

(iv) The permittee complied with any remedial measures required under paragraph 335-6-5-.15(4).

(c) In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(14) New, reissued, modified or revoked and reissued SID Permits shall incorporate all applicable requirements of this chapter pertaining to SID Permits.

(15) A SID 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.

(16) That portion of a SID 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 SID Permit or modification of the SID Permit to allow the discharge of increased quantities of pollutants.

(17) The SID Permit shall require the permittee to make notification of hazardous wastes discharges in accordance with rule 335-6-5-.05(7).

(18) The SID Permit shall require categorical dischargers to submit baseline reports in accordance with rule 335-6-5-.05(3).

(19) The SID Permit shall specify the physical location of the sampling point(s) to be used when performing discharge monitoring.

(20) The SID Permit shall require the permittee to notify the publicly or privately owned treatment works and the Department of any slug type discharge that may cause interference with the treatment works. Such notification shall be made to the treatment works immediately after the permittee becomes aware of the event and to the Department during the first normal business day after becoming aware of the event. The permittee shall coordinate with the operator of the treatment works and shall develop a notification procedure that is acceptable to the operator. The permit shall also provide for the establishment of a formal slug load control program if determined by the Director to be required to prevent pass through or interference.

(21) The SID Permit shall require the permittee to report on compliance with any categorical pretreatment standard applicable to the permitted discharge within 90 days following the final compliance date for the applicable standard. The report shall contain the information required by 40 CFR 403.12(d) (1994).

(22) The SID Permit shall require the permittee to comply with the requirements of any categorical pretreatment standard not later than three years after its effective date, unless another compliance date is specified by the standard.

(23) The SID Permit shall require the permittee to 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, Christy Monk.

**Statutory Authority:** Code of Alabama 1975, §§ 22-22-9, 22-22A-5, 22-22A-6, 22-22A-8.

**History:** April 29, 1991.

**Amended:** XXXX XX, 2017