



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
WATER DIVISION

NOTICE OF INTENDED ACTION

**Agency Name:** Alabama Department of Environmental Management

**Rule No. & Title:** 335-6-6-.14 Establishing Limitations, Standards, and Other Permit Conditions (Amend)

**Intended Action:** The Alabama Department of Environmental Management proposes to amend rule 335-6-6-.14.

**Substance of Proposed Action:**

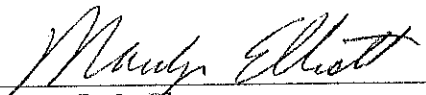
The Department proposes to update this rule for consistency with a federal rule. The Department also proposes to make administrative corrections and revisions in this rule.

**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-.14 Establishing Limitations, Standards, and Other Permit Conditions.**

(1) In addition to permit conditions required under rule 335-6-6-.12 and rule 335-6-6-.13, the Director shall establish permit conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements. An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit.

(2) All applicable requirements shall be incorporated into each NPDES permit either expressly or by reference. If incorporated by reference, a specific citation to the applicable requirements must be given in the permit.

(3) Each NPDES permit shall include conditions meeting the following requirements, where applicable:-

(a) Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under Section 301 of the FWPCA or new source performance standards promulgated under Section 306 of the FWPCA, or case-by-case effluent limitations determined under Section 402(a)(1) of the FWPCA when technology based standards or new source performance standards have not been promulgated, or on a combination of the two. Application of technology-based effluent limitations shall be in accordance with 40 CFR Part 125 (2007) Subpart A.

(b) Other applicable effluent limitations and standards under Sections 301, 302, 303, 304, 307, 318, and 405 of the FWPCA and applicable effluent guidelines and standards under 40 CFR (2007) Subchapter N. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the FWPCA for a toxic pollutant and that standard is more stringent than any limitation on the pollutant in the permit, the Director shall institute proceedings to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(c) Where applicable, requirements for secondary treatment shall be in accordance with the Department's Water Quality Criteria, Section V, and 40 CFR Part 133 (2007).

(d) A reopener clause that requires permit modification or permit revocation and reissuance to include the requirements of any applicable standard or limitation that is promulgated under Sections 301(b)(2)(C), (D), (E), and (F), 304(b)(2), and 307(a)(2) of the FWPCA after the permit is issued and when that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit and that requires permit modification or permit revocation and reissuance to correct

any water quality standard violation caused by the permitted discharge shall be included in all permits.

(e) Other requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under Sections 301, 304, 306, 307, 318, and 405 of the FWPCA shall be included where necessary to:

1. Achieve water quality standards established under Section 303 of the FWPCA and (AWPCA) Code of Alabama 1975, §22-22-9(g);

(i) Limitations must be applied to control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, have reasonable potential to cause, or contribute to an exceedance of a narrative or numerical water quality standard;

(ii) Procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the discharge, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity) and where appropriate the dilution of the effluent in the receiving water shall be considered when determining whether a discharge will cause, have reasonable potential to cause, or contribute to an exceedance of a narrative or numerical water quality standard;

(iii) When the Director determines that a discharge will cause, have reasonable potential to cause, or contribute to an exceedance of a narrative or numerical water quality standard for an individual pollutant, the permit shall contain a discharge limit for that pollutant;

(iv) Except when it can be determined using the methods described in subparagraph 335-6-6-.14(3)(e)1.(ii), toxicity testing data, or other information that chemical specific limits are sufficient to attain and maintain the narrative toxicity water quality standard, the permit shall contain effluent limits for whole effluent toxicity sufficient to attain and maintain the narrative standard.

2. Attain or maintain a specified water quality through water quality related effluent limits;

3. Conform to applicable water quality requirements under Section 401(a)(2) of the FWPCA when the discharge affects another state;

4. Incorporate any more stringent limitations, standards, or schedule of compliance requirements established under federal or state law or regulations in accordance with Section 301(b)(1)(C) of the FWPCA;

5. Ensure consistency with the requirements of a Water Quality Management Plan approved by EPA under Section 208(b) of the FWPCA;

6. Incorporate Section 403(c) (FWPCA) criteria under 40 CFR Part 125 (2007), Subpart M, for ocean discharges;

7. Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors", under 40 CFR Part 125 (2007), Subpart D.; and

8. Incorporate effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, consistent with the requirements of any applicable total maximum daily load allocation established pursuant to section 303(d) of the FWPCA and 40 CFR Part 130.7(2007).

(f) Toxic Pollutants. Limitations established under subparagraphs 335-6-6-.14(3)(a), (b), or (e); to control pollutants meeting the criteria listed in subparagraph 335-6-6-.14(3)(f)1. ~~of this rule~~ shall be included. Limitations will be established in accordance with subparagraph 335-6-6-.14(3)(f)2. An explanation of the development of these limitations shall be included in the permit rationale and (if prepared) fact sheet. Permit conditions for toxic pollutants shall be in accordance with the requirements of 40 CFR Part 129 (2007).

1. Limitations must control all toxic pollutants which the Director determines (based on information reported in a permit application or in a notification under paragraph 335-6-6-.13(a) or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology based treatment requirements appropriate to the permittee under 40 CFR Part 125.3 (2007) or in concentrations which would cause violations of state water quality standards in the receiving stream.

2. The requirement that the limitations control the pollutants meeting the criteria of subparagraph 335-6-6-.14(3)(f)1. will be satisfied by:

(i) Limitations on those pollutants;

(ii) Limitations on other pollutants which, in the judgment of the Director, will represent treatment of the pollutants under subparagraph 335-6-6-.14(3)(f)1. to the levels required by technology based treatment requirements under 40 CFR Part 125.3(c) (2007); and/or

(iii) Whole effluent toxicity limits.

3. When no individual water quality standard exists for a substance that the Director determines to be present in concentrations that represent a potential to cause a violation of a narrative water quality standard(s), limitations on the discharge of the substance shall be based on the review of any applicable data available to the Department. Information that may be considered includes, but is not limited to, the following:

(i) EPA water quality criteria or other EPA documents that suggest or predict an acceptable instream pollutant concentration,

(ii) Information that may be available from the Food and Drug Administration,

- (iii) Scientific information available to the permit writer,
- (iv) Review of practices employed by agencies of other states and their success in achieving compliance with the standard,
- (v) Toxicity or other testing performed by the Department or by the permit applicant and others, testing must be in accordance with good scientific practice and must be quality controlled, and
- (vi) When information sufficient to develop a permit limit is not available to the Department, whole effluent toxicity testing may be substituted for a numerical permit limitation.

(g) Notification Level. A notification level which exceeds the notification level of ~~subparagraph paragraph~~ 335-6-6-13(a) or ~~subparagraph~~ 335-6-6-13(b) may be included and upon petition from the permittee or on the Director's initiative. This new notification level may not exceed the level which can be achieved by technology based treatment requirements appropriate to the permittee under 40 CFR Part 125.3(c) (2007).

(h) Twenty-four Hour Reporting. Pollutants for which the permittee must report violations of discharge limitations under subparagraph 335-6-6-12(l)6.(i) shall be listed in the permit. This list shall include any toxic pollutant, hazardous substance, any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance, or any other pollutant specified by the Director.

(i) Monitoring Requirements. To ensure compliance with permit limitations, the permit shall include requirements to monitor:

1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;
2. The volume of effluent discharged from each outfall, except when the volume is not required to evaluate the discharge's impact on water quality or compliance with effluent or treatment standards;
3. The determination of the toxicity of the effluent by whole effluent biological testing, as necessary;
4. Other measurement as appropriate; including pollutants in internal waste streams; pollutants in intake; water for net limitations; frequency, rate of discharge, etc., for noncontinuous discharges; and pollutants subject to notification requirements; and
5. ~~According to test procedures approved under 40 CFR Part 136 (2007) for the analyses of pollutants having approved methods under that part, and according to a test procedure specified in the permit or approved by the Director for pollutants with no approved methods, or according to a test procedure specified in the permit for alternate test methods.~~ According to

sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 for the analysis of pollutants or pollutant parameters or required under 40 CFR chapter I, subchapter N.

(i) For the purposes of subparagraph 335-6-6-.14(3)(i)5., a method is “sufficiently sensitive” when:

(I) The method minimum level (ML) is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or

(II) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N for the measured pollutant or pollutant parameter.

(ii) In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136 or methods are not otherwise required under 40 CFR chapter I, subchapter N, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters.

(iii) With respect to subparagraph 335-6-6-.14(3)(i)5.(i), applicants or permittees have the option of providing matrix or sample specific minimum levels rather than the levels published in 40 CFR Part 136. Further, where an applicant or permittee can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of “sufficiently sensitive”, the analytical results are not consistent with the QA/QC specifications for that method, then the Director may determine that the method is not performing adequately, and the Director shall select a different method from the remaining EPA-approved methods that is sufficiently sensitive consistent with subparagraph 335-6-6-.14(3)(i)5.(i). Where no other EPA-approved methods exist, the Director should select a method consistent with subparagraph 335-6-6-.14(3)(i)5.(ii).

(j) Pretreatment Program for POTW's. Requirement for POTW's to:

1. Comply with the provisions of paragraph 335-6-6-.13(b);
2. Identify, in terms of character and volume of pollutants, any indirect discharges into the POTW subject to pretreatment standards under Section 307(b) of the FWPCA, general and specific prohibitions under 40 CFR Part 403 (2007), and subject to permitting requirements under ~~rule-chapter~~ 335-6-5;
3. Submit a local program, when required by and in accordance with 40 CFR Part 403 (2007); and ~~rule-chapter~~ 335-6-5 of these regulations, to ensure compliance with pretreatment standards as applicable under Section 307(b) of the FWPCA. The local program shall be incorporated into the permit as described in 40 CFR Part 403 (2007). The Department may choose to assume responsibility for any or all of these requirements. When the Department

assumes partial responsibility, the local program shall address those requirements not assumed by the Department.

(k) Best Management Practices: to control or abate the discharge of pollutants when:

1. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the FWPCA and the AWPCA or;

2. Numeric discharge limitations are infeasible;

(l) Reissued Permits.

1. Except as provided in subparagraph 335-6-6-.14(3)(e)2., when a permit is renewed, modified, or reissued, limitations, standards or conditions shall be included which are at least as stringent as the final limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under rule 335-6-6-.17.

2. When effluent limitations were imposed under Section 402 (a)(1) of the FWPCA in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, subparagraph 335-6-6-.14(3)(e)1. shall apply unless:

(i) The permittee has installed the waste treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved, but shall not be less stringent than required by the subsequently promulgated effluent limitation guidelines;

(ii) The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under rule 335-6-6-.17;

(iii) There is increased production at the facility which results in significant reduction in treatment efficiency, in which case the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads, but in no event shall permit limitations be less stringent than those required by subsequently promulgated standards and limitations;

(iv) The Director determines that technical mistakes or mistaken interpretations of the law were made in issuing the permit; or



(v) The permittee has received permit modification under Clean Water Act Sections 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a).

3. In any case, discharge limitations shall not be less stringent than required to meet water quality standards.

(m) Grants. Any conditions imposed in grants made by the Administrator to POTW's under Sections 201 and 204 of the FWPCA which are reasonably necessary for the achievement of effluent limitations under Section 301 of the FWPCA.

(n) Sewage Sludge. Requirements under Section 405 of the FWPCA governing the disposal of sewage sludge from publicly owned treatment works and privately owned treatment works, in accordance with any applicable regulations and requirements of 40 CFR Parts 122, 123, 124, 501, and 503 (2007).

(o) Other Sludge. Requirements under appropriate state and federal laws governing solid waste disposal or other requirements to ensure that sludges are disposed of in an environmentally acceptable manner.

**Author:** John Poole, Glenda Dean, Daphne Lutz.

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

**History:** October 19, 1979. **Amended:** January 24, 1989; April 29, 1991; July 12, 1995, August 1, 2002; May 27, 2008; XXXX XX, 2015.